

(1998) 08 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3848 of 1998

Md. Hussain

APPELLANT

Vs

A.P.S.R.T.C., Musheerabad, Hyderabad and another

RESPONDENT

Date of Decision : 19-08-1998

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Recruitment) Regulations, 1966 — Regulation 2(xv), 30
Constitution of India, 1950 — Article 226
Road Transport Corporations Act, 1950 — Section 45(1), 45(2)(c), 50(1)

Citation : (1998) 5 ALD 370 : (1998) 5 ALT 764

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mirza Imamulla Baig, for the Appellant; Mr. A.V. Sivaiah, SC for APSRTC, for the Respondent

Judgement

1. The petitioner is presently serving as Foreman (Mech.) in the Mechanical department (Service) of the Andhra Pradesh State Road Transport Corporation for short "the Corporation". The writ petition is directed against the Order No.Ea/402(1)/ 92-PD dated 19-8-1997 rejecting the claim of the petitioner for promotion to the post of Assistant Engineer (Mechanical)/Depot Manager.

2. The petitioner was promoted to the post of Assistant Foreman (Mech.) initially on temporary basis under Regulation 30 of the Andhra Pradesh State Road Transport Corporation Employees (Recruitment) Regulations, 1966 for short "the Regulations", with effect from 20-8-1981. Subsequently he was promoted as Assistant Foreman (Mech.) on regular basis with effect from 10-12-1985. Further, the petitioner was promoted to the post of Foreman (Mech.) with effect from 15-2-1991. On an earlier occasion, the petitioner airing his grievance against the ranks assigned to him in the seniority lists of Assistant Foreman (Mech.) and Foremen (Mech.) had filed WP No. 12547 of 1988 and Writ Appeal No. 1435 of 1989. In pursuance of the direction issued by this Court in its orders dated 18-8-1989 in WP No.12547 of 1988 and the order dated 11-6-1991 in Writ

Appeal No. 1435 of 1989, the claim of the petitioner was reconsidered and the seniority of the petitioner in the cadre of Assistant Foremen (Mech.) was reckoned with effect from 20-8-1991 and consequently his seniority in the cadre of Foremen (Mech.) was also revised treating him to have been promoted as Foreman (Mech.) with effect from 16-12-1987 as against his actual promotion with effect from 15-12-1991. The petitioner assigned rank No. 108(A) in the final seniority list of Foremen (Mech.). The petitioner came under zone of consideration for promotion to the post of Assistant Engineer (Mech.) and the Departmental Promotion Committee (DPC) constituted by the Corporation considered the case of the petitioner on four occasions, viz., 27-10-1992, 22-4-1993, 17-4-1996 and 20-5-1997, and on each occasion, DPC found the petitioner not suitable to the post of Assistant Engineer (Mech.) in terms of merit, treating the post of Assistant Engineer (Mech.) as the selection post. The petitioner had filed another Writ Petition No. 905 of 1992 complaining that the Corporation did not consider his case for promotion to the post of Depot Manager. A Division Bench of this Court disposed of that writ petition by its order dated 24-4-1997 directing the Corporation to consider the case of the petitioner for promotion to the post of Depot Manager and in pursuance of the said direction the petitioner's case was considered and rejected by the impugned order.

3. The cadre of Foremen (Mech.) is the feeder cadre for the promotional cadre of Assistant Engineer (Mech.) in the echelon of the Mechanical Engineering Service of the Corporation. According to the Corporation, the post of Assistant Engineer (Mech.) is a selection post to be filled up by the method of promotion by selection whereas according to the petitioner the post of Assistant Engineer (Mech.) is not a selection post and that post has to be filled up by the method of promotion by seniority-cum-merit.

4. Sri Mirza Imamulla Baig, the learned Counsel appearing for the petitioner contended that the stand taken by the Corporation that the post of Assistant Engineer (Mech.) is a selection post at the relevant point of time is factually incorrect and that post was declared to be selection post only with effect from 19-9-1995 when the Government of Andhra Pradesh granted its approval for the Resolution No. 116/94 dated 8-9-1994 passed by the Board of the Corporation, and that when the petitioner came under zone of consideration by the DPC on 27-10-1992 and 22-4-1993, the post was not treated as selection post; on the other hand, the post of Assistant Engineer (Mech.) had to be filled up by adopting the method of promotion by seniority-cum-merit; the relative seniority of the petitioner was ignored on all the four occasions when the DPC considered the case of the petitioner for promotion and appointed a junior of the petitioner, namely, one Sri K. Ramachandra Rao; the Corporation is quite hostile to the petitioner and deliberately denied promotion to the petitioner with intention to harass the petitioner for the simple reason that the petitioner had approached this Court earlier airing his grievance against the ranks assigned to him in the seniority lists of Assistant Foremen (Mech.) and Foremen (Mech.) and therefore,

the rejection of the claim of the petitioner for promotion is tainted by mala fide. On the other hand, the learned standing Counsel for the Corporation would contend that the post of Assistant Engineer (Mech.) was declared to be a selection post by the Corporation as far back as in the year 1977 vide the Board's Resolution No.156/1977 dated 17-8-1977 by virtue of the power granted to the Corporation under Reg.2(xv) of the Regulations, and therefore, it is factually incorrect to contend that the post of Assistant Engineer (Mech.) was not a selection post at the relevant point of time and the said post was declared to be a selection post only with effect from 19-9-1995; the approval communicated by the Government of Andhra Pradesh vide its letter No.R3/331 (6)/94-HRD dated 9-10-1995 does not declare that the post of Assistant Engineer (Mech.) is a selection post and that approval was confined to the amendment proposed by the Corporation vide its Resolution No. 116/94 dated 8-9-1994 for amending the regulations governing recruitment to the post of Assistant Engineer (Mech.).

5. The primary question to be considered is whether the post of Assistant Engineer (Mech.) is a selection post or not. The Corporation in exercise of its delegated power u/s 45(1) of the Road Transport Corporation Act, 1950 and with prior sanction of the Government of Andhra Pradesh has framed the Regulations. Regulation 2(xv) defines the term "Appointing Authority". According to this definition, the appointing authority means the authority specified by the Corporation by a regulation or resolution to make appointments to posts in the service of the Corporation in accordance with the methods of recruitment specified in Annexure-"A". Entry (2) in Section "C" of Annexure-A provides for method of recruitment and qualification for the post of Assistant Engineer (Mech.) and Assistant Engineer (Works). At this stage itself, it may be noted that though in the Regulations governing recruitment to the post of Assistant Engineer (Mech.) before 19-9-1995 the post of Assistant Engineer (Mech.) was shown under the head and category of post and the feeder post as "Foreman (Mech.)", and in the regulations after 19-9-1995 the post of Deputy Engineer (Mech.) under the head of "Category of Post" and the post of Senior Superintendent (Mech.) as the feeder post, at the time of hearing, the learned standing Counsel for the Corporation submitted that the above differences occurred due to redesignating the promotional as well as feeder posts, and as on the date the promotional post is the post of Assistant Engineer (Mech.) and the feeder post is the post of Foremen (Mech.). Entry (2) referred to above prescribes that in a unit of five vacancies, the first, the third and the fifth shall be filled in by appointment of an officer under training who has successfully completed his training and the second and fourth by promotion of a Foreman (Mech.). The said entry further provides that a candidate for promotion to the post of Assistant Engineer (Mech.) from the cadre of Foreman (Mech.) must hold LME or LAE diploma from a Government Polytechnic or any other recognised institution or possess an equivalent qualification and he must have put in not less than five years of service as such. By virtue of amendment brought about to the regulations governing recruitment to the post of Assistant Engineer (Mech.) with

effect from 19-9-1995, two more qualifications in addition to the above qualifications are prescribed, namely (i) that the candidate must have passed SSC/ITI or its equivalent examination and must have put in not less than eight years of service as such and (ii) that the candidates should have passed higher management departmental examination irrespective of age. There is no controversy between the parties that the petitioner had/has possessed all the prescribed qualifications before and after 19-9-1995.

6. Promotional posts are filled up by two methods, (i) promotion by seniority-cum-merit and (ii) promotion by selection. There is a clear-cut difference in the process to be adopted in the two methods. Unless the Rules or Regulations specify promotion is by way of selection, seniority-cum-merit method has to be followed. The well-settled principles governing the process to be adopted in two methods may be noted briefly. In the case of promotion by seniority-cum-merit, every employee in the feeder cadre who comes under zone of consideration is entitled to the consideration of his case for promotion according to seniority. The promoting authority has to consider the cases of all the employees eligible for promotion strictly according to seniority. If the senior most employee due for promotion is found fit and suitable for promotional post, he has to be promoted. There is no question of comparing his merit with those of his juniors. In other words, unless the senior employee is found unfit for promotion either on account of adverse service record or does not satisfy other conditions or prescribed eligibilities, he has a right to be promoted. Only in a case where the appointing authority after reaching the conclusion that the senior most employee is unfit for promotion, the appointing authority can proceed to consider the case of next senior or so on, on each occasion for promotion. On the other hand, in the case of promotion by selection merit is the sole consideration. The appointing authority has to consider the relative merits of all the employees who come under zone of consideration at a time and decide who is/are best among such employees. The appointing authority is required to make the selection on the basis of merit and on comparison of the merit among the eligible candidates. Seniority in the case of promotion by selection has little role to play. However, seniority has relevance where two or more employees are found to possess equal merit, and in such a case, the seniority should be the basis in making the selection and appointment. But, where the merit is unequal, promotion by selection has to be made strictly in accordance with merit.

7. The contention of the learned Counsel for the petitioner that the post of Assistant Engineer (Mech.) was not a selection post at the relevant point of time and that post was declared to be a selection post only with effect from 19-9-1995 is not well-founded. Regulation 2(xv) defines "Selection post" to mean a post which is declared as such by a resolution of the Corporation. Admittedly the Board of the Corporation passed resolution No.156/1977 dated 17-8-1977 in exercise of power granted to it under Regulation 2(xv) declaring the posts of Assistant Engineer (Mech.) and the Depot Manager as selection posts. By virtue of the amendment dated 19-9-1995 referred to above, only

additional qualifications are prescribed for the promotees. That amendment does not declare that the post of Assistant Engineer (Mech.) is a selection post. The contention of the learned Counsel for the petitioner that the Corporation did not obtain prior sanction envisaged u/s 45(1) of the Road Transport Corporation Act, 1950, for short "the Act", before its Board passed the Resolution No. 156/ 1977 dated 17-8-1977 declaring the posts of Assistant Engineer (Mech.) and the Depot Manager as selection posts and therefore the said resolution is nullity in the eye of law and consequently it should be held that the post of Assistant Engineer (Mech.) was not a selection post at the relevant point of time is not tenable. The Regulations are framed by the Corporation by virtue of the delegated power conferred upon it u/s 45(2)(c) with prior sanction of the Government of Andhra Pradesh. The power conferred upon the Corporation to declare a post/posts as selection post/posts under Regulation 2 (xv) has the prior sanction of the Government. Therefore, the Corporation, as a donee of that power, need not again seek for prior sanction of the Government before it exercises the granted power. If the donee of the power exercises power arbitrarily or irrationally, the affected interest may complain against such action. That is not the contention in this case. Therefore, I hold that the post of Assistant Engineer (Mech.) is a selection post within the meaning of Regulation 2 (xv).

8. The petitioner's case for promotion to the post of Assistant Engineer (Mech.) was considered by the DPC on four occasions noted above and his claim was rejected on each occasion. No case is made out that the assessment of the suitability and merit of the petitioner by the DPC and the appointing authority is vitiated on account of any permissible ground or grounds on the basis of which judicial review can be sought under Article 226 of the Constitution of India. The assessment made and the opinion formed by the DPC or the appointing authority cannot lightly be interfered with by the Court and the Court cannot sit in judgment over the assessment and opinion of the appointing authority. The contention of the petitioner that his junior, namely, one Sri K. Ramachandra Rao was promoted to the post of Assistant Engineer (Mech.) over-looking his seniority, has no merit. In the counter filed by the Corporation, it is stated that the said Sri K. Ramachandra Rao is much senior to the petitioner in the cadre of Foreman (Mech.) and he was promoted as Assistant Engineer (Mech.) in the year 1992. This assertion made by the Corporation in its counter is not denied. Even assuming that Sri K. Ramachandra Rao was junior to the petitioner in the cadre of Foreman (Mech.), the petitioner cannot have any grievance against the promotion of Sri K. Ramachandra Rao to the post of Assistant Engineer (Mech.), that post being a selection post. As already pointed out above, when a promotional post is filled up by the method of promotion by selection, relative seniority is not relevant consideration and the promotional posts have to be filled up strictly on the basis of merit. Similarly there is no merit in the contention of the petitioner that the action of the Corporation in denying promotion to him is vitiated due to mala fide. The petitioner except making sweeping allegations against the Corporation that the Corporation deliberately denied promotion in

order to harass him, he has utterly failed to lay any factual matrix to bring home the allegation of mala fide against the Corporation. The petitioner has not attributed any mala fide against the members of the DPC or against the appointing authority individually and they are not made parties to the writ petition in their individual capacity.

9. The petitioner's claim that he is entitled to be considered for promotion to the post of Depot Manager is totally misconceived, and is grounded on the ignorance of the statutory regulations governing recruitment to the post of Depot Manager. The post of Depot Manager is not a promotional post in the administrative echelon of the Department of Mechanical Engineering of the Corporation. The post of Depot Manager is an independent post and it has to be filled up only by the method of transfer, by transfer of suitable Class I Junior scale officers from the departments of Operations, Mechanical Engineering, Personnel, Accounts, Stores and Purchase, Civil Engineering and Statistics (except Medical and Security Departments). It may be that when the petitioner is promoted to the post of Assistant Engineer (Mech.), he may acquire eligibility to be considered for recruitment to the post of Depot Manager because he belongs to the department of Mechanical Engineering. As on today, the petitioner has not acquired the eligibility. Secondly, the petitioner cannot claim right to be considered to the post of Depot Manager by way of promotion because the post of Depot Manager has to be filled up by the method of transfer only.

10. In the result, the writ petition fails and accordingly the same is dismissed with no order as to costs.