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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No. 454 of 1987.

Date: 31-10-1989.

R. Sowri Rajan : APPLICANT

VERSUS

1. The Secretary (Staff),
Railway Board, New Delhi.
2. The General Manager, S.C.Rly.,
Secunderabad.
3. The Chief Personnel Officer,
S.C.Rly., Secunderabad.
4. The Chief Mechanical Engineer,
S.C.Railway, Secunderabad.

: RESPONDENTS

Appearance:

For the Applicant : Mr. G. V. Subba Rao, Advocate

For the Respondents : Mr. N. R. Devaraj, Standing Counsel
for the Railways.

CORAM:

The Hon'ble Mr. D. Surya Rao, Member (Judicial)
AND
The Hon'ble Mr. D. K. Chakravorty, Member (Admn.)

(Judgment of the Tribunal delivered by Hon'ble Mr. D. Surya Rao,
Member (J)

The applicant herein is a railway employee of the South Central Railway. In this Application, he seeks to question the letter No. P.535/MECH/M&P dated 20-12-1984, Office Order No. 121/84 issued by the 3rd Respondent downgrading six posts of Chief Planner and Estimator (M&P) from the scale of Rs. 840-1040 to Rs. 700-900. He also

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seeks to question the 3rd Respondent's letter No.P.535/Mech/M&P dated 23-9-86 rejecting the applicant's representation.

2. It is the case of the applicant that ^{on 16-11-} ~~in~~ 1981, the Chief Personnel Officer invited applications for filling up of five posts of Chief Planner and Estimator in the M & P (Modernisation and Planning) organisation. Apart from this, it was also proposed to fill up four posts of Foreman and ^{two} ~~four~~ posts of Shop Superintendent. For this purpose, volunteers in the scale of Rs.840-1040/ Rs.700-900 were asked to apply. The newly created posts were to be in the cadre of Rs.840-1040. The applicant states that he was one of those who applied, that after due process of selection, namely, written examination and viva-voce, he was selected and appointed in the said post of Chief Planner and Estimator in the scale of Rs.840-1040 w.e.f. 13-4-82. It is contended that M&P organisation is a new set up and posts therein are ex-cadre posts. The posts of Chief Planner and Estimator were filled from among the Chief Draftsmen of Carriage and Wagon, Loco and J&T wings and ~~on the other hand~~, the posts of Shop Superintendent were filled by JSS of Tool, Machine Mill Wright Trade of Shop staff. It is stated that the notification/circular dated 16-11-1981 made it clear what are the job requirements of Chief Planner and Estimator. On the basis of this job requirement, it is contended that the nature of the Chief Planner and Estimator is distinct from that of Chief Draftsman. While the applicant was working as Chief Planner and Estimator in the grade of Rs.840-1040, he suddenly received the order dated 20-12-84 reverting him to the scale of Rs.700-900. It is stated therein that this reversion was on the basis of the Railway Board's letter

No. PC.III/78/SG/8 dated 17-8-84. It is contended that the C.P.O., the 3rd Respondent, misinterpreted the Railway Board's circular and reverted the applicant alongwith 5 otherd arbitrarily and illegally. The Railway Board's letter directed downgrading only the posts in the Drawing Office cadre operated in the scale of Rs.840-1040 but not downgrading ex-cadre posts. It is further stated that the posts created by the General Manager under delegation of powers, are not to be downgraded as per the Railway Board's directive dated 4-3-1981. It is also contended that the posts having been created long prior to Railway Board's letter dated 17-8-84, the said orders are inapplicable. It is stated that the current tenure of the posts continues tobe upto 31-3-88, that the posts have not been abolished, and that the incumbents have notbeen repatriated to their substantive grades, that the applicant continues to perform the duties of the Chief Planner and Estimator and consequently he is ~~entitled~~ attached to the scale of Rs.840-1040. It is stated that despite the Chief Mechanical Engineer informing the C.P.O. by letter dated 17/20-5-85 that the Board's instructions are not applicable to the ex-cadre posts, the posts were sought to be downgraded. Aggrieved by the reversion, the applicant submitted an appeal on 8-1-1985 to the Secretary, Railway Board through proper channel which was forwarded on 8-3-85. As there was no response, the applicant sought an interview with the Chief Mechanical Engineer, S.C.Rly. on 6-5-85 followed by a reminder dated 6-5-85submitted to the Chief Mechanical Engineer on 9-5-85. He mentioned

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therein that similar work-charged posts created in the Southern Railway were being continued. The applicant was not favoured with any reply and so he made further representations on 9-8-85, 22-11-85, 18-6-86 and 3-9-86. On 23-9-86, the CPO replied that nothing could be done at the zonal railway level. The applicant again made a representation on 21/23-10-86 to the Secretary (Staff), Railway Board, New Delhi. He, therefore, contends that downgrading of posts by the C.P.O. without approval or clarification of the Railway Board is illegal and unwarranted.

3. On behalf of the Respondents, a counter has been filed denying the various contentions of the applicant. It is stated that downgrading was done ^{as a} consequence of Railway Board's circular dated 17-8-84 wherein it was clarified that the posts of CPE in all zonal railways including projects and construction offices should be operated only in the scale of Rs.700-900 and to down grade the posts if they are operated in the scale of Rs.840-1040. It is stated that in the Southern Railway, the posts of CPE were created in the scale of Rs.700-900 and therefore, the question of abolition or reverting the incumbents did not arise. It is stated that the incumbents in the posts of CPE have a choice to go back to the parent posts if they do not wish to work in the ^downgraded posts. In fact, on downgrading, certain incumbents went back to their parent posts. While admitting that the posts of CPE in the scale of Rs.840-1040 were treated as ex-cadre posts, it is stated that the posts were ^{offic}filled only from the drawing cadre. This was basically

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not correct as per the Railway Board's instructions.

Hence, they were to be downgraded to the scale of Rs. 700-900. Though the posts were created prior to 1984, the Board's instructions of 1984 to down grade them would apply since the posts were operated with drawing officer cadre only. It is also stated that if the applicant desires he may also seek repatriation. It is denied that the Chief Mechanical Engineer's recommendations were not taken into account.

4. Heard the arguments of Sri G.V. Subba Rao, Advocate for the applicant and Sri N.R. Devaraj, Standing Counsel for the Railways, on behalf of the respondents.

Sri Devaraj, Standing Counsel for the Railways, contended that the application is time barred in that the cause of action arose on 20-12-84, i.e. the date on which the six posts of CPE were downgraded from the scale of Rs. 840-1040 to Rs. 700-900, whereas the application has been filed in the year 1987. Hence it is contended that the application is time barred. It is seen that the applicant has made a representation on 8-1-85 and he was informed on 23-9-86 by the C.P.O. that the matter was pending with the Board. The applicant, thereafter, made a further representation but received no reply. It is, therefore, pleaded on behalf of the applicant that the application cannot be said to be time barred as the applicant was informed in September 1986 that the case was under consideration by the Railway Board. The record produced also confirms that the applicant was informed that the matter had been referred to the Railway Board and was under consideration. This was in

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September 1986. Consequently, it cannot be pleaded by the Department that the application is time barred. He legitimately had ~~a~~ reason to wait on the assumption that ^{would be done} his representation with the Railway Board is disposed of. The plea that the application is barred by limitation under section 21 of the Administrative Tribunals Act, 1985 is, therefore, negatived.

5. The next question is whether the applicant has a right to continue in the post in the scale of Rs.840-1040 as Chief Planner and Estimator, in the M&P Organisation. It is contended by the applicant that the post was created in the year 1981 as an ex-cadre post alongwith various other posts for the M&P Organisation, that the M&P Organisation is not a part of the Drawing Office cadre, that the newly created post is an ex-cadre post and the Railway Board's letter dated 17-8-84 directing that if any posts in the Drawing Office cadre have been operated in the scale of Rs.840-1040, the same should be down-graded, has no application to the post of CPE in the M&P Organisation. The counter and the contentions of the counsel for the Railways, on the other hand, are that the letter dated 17-8-84 specifically states that if any posts in the Drawing Office cadre are operated in the scale of Rs.840-1040, the same should be down-graded immediately. It has also been stated ^{by the Railway Board} ^{of 17-8-84} in the said letter that earlier ~~to Annexure A to the~~ Railway Board's letter dated 31-1-83 has been wrongly interpreted and that the said letter dated 31-1-83 is being relied upon as an authority for creation of posts in the scale of Rs.840-1040 in the drawing office cadre. It ~~was~~ ^{operated}, therefore, directed that any posts in the Drawing Office cadre in the scale of Rs.840-1040, should be down-graded. Relying upon this, the Respondent-Railways have down-graded the six posts of Chief Planner and Estimator in the M&P Organisation

from the scale of Rs.840-1040 to that of Rs.700-900. It is clear from a perusal of the letters dated 31-1-83 and 17-8-84 of the Railway Board that they clearly prescribed that there could be no post in the drawing office cadre in the scale of Rs.840-1040 and if any such posts have been created, they are liable to be down-graded. The question, however, is whether ex-cadre posts in the M&P Organisation are the posts within the Drawing Office cadre and, therefore, liable to be down-graded. The Chief Mechanical Engineer, in his letter dated 17-5-85 to the Chief Personnel Officer, has specifically raised this question and stated that the instructions in the Board's letter dated 17-8-84 are applicable only to posts created in or directly associated with the Drawing Office cadre and do not apply to ex-cadre posts of Special Service Cells such as M&P organisation. This is relied upon by the applicant's counsel in support of his plea that all that the Railway Board has directed is abolition of posts in the scale of Rs.840-1040 only in the Drawing Office cadre and not in the M&P Organisation. There is no reply in the counter of the Department to the contention that the posts in the M&P Organisation are independent and unconnected with the posts in the Drawing Office cadre. The applicant has also contended that the nature of ^{duties} ~~duty~~ of Chief Planner and Estimator in the M&P Organisation ^{are} ~~the~~ totally different from that of Drawing Office cadre. ^{This is clear from the content of the post of CPE carried out in 1981 when seeking for volunteers in 1981.} It is, therefore, clear that down-grading of posts merely upon the basis of Railway Board's instructions dated 17-8-84 is on the basis of wrong interpretation of the said letter and per-se not a ground for down gradation of the posts.

6. It is, however, contended by the Railways that the posts are ex-cadre posts and could at any time be down-graded or even completely abolished, ^{that} ~~an employee~~ cannot claim a lien on such a post or a prescriptive right

that he should be continued in such a post, and it is open to the Respondents to down-grade the scale of pay of Chief Planner and Estimator from Rs.840-1040 to Rs.700-900. There is no doubt that it is open to the Railways to have created the posts in the scale of Rs.700-900 initially or of ^{the} having created them in the scale of Rs.840-1040 and ^{to} ~~No rule or order is shown which authorizes the down grade from 840-1040 to 700-900~~ later down grade to that of Rs.700-900 scale. Since these posts are ex-cadre posts, obviously, the applicant or ^{also} anybody appointed thereto cannot claim a right or lien to the said post. However, options had been called for informing the applicant and others that they would be given the higher scale of pay of Rs.840-1040 and in fact they were given such a scale right from 1982 to 1985. If it was the intention of the Department to down-grade such posts, then an option should have been given to the persons occupying the posts to continue either in the down graded posts or to go back in the parent department. It is not contended in the counter that any such option has been given. All that is stated is that similarly placed persons were allowed to go back on their own to the Drawing Office cadre. This in fact cannot absolve the Railway authorities of their liability to give an option to the employees who have been brought into the scale of Rs.840-1040 after a selection, to go back to their substantive post drawing the pay in the scale of Rs.700-900 or to continue in the M&P Organisation on such a lower scale. Merely stating that if the applicant feels that he is doing more work or is getting less pay, then it is open to him to seek repatriation to his former post is neither relevant nor can be a valid plea. It was the duty of the Railways to have informed the employees that in view of the impending

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down-gradation, it is open to the applicant and other similarly placed persons to seek repatriation or to continue in the M&P Organisation on the lower scale of pay. *and the applicant is entitled to work as CPE* As long as no such option has been given, the applicant is entitled to continue to draw pay in the higher scale of Rs.840-1040 *applied to him*, and to which he was selected and appointed. We would accordingly direct that the applicant is entitled to continue to draw pay in the scale of Rs.840-1040 in the M&P Organisation till such an option is afforded to him.

7. It has been contended on behalf of the applicant that in the Southern Railway similar posts are being given the scale of Rs.840-1040 and that, therefore, employees in South Central Railway *mainly* *namely* doing the work of Chief Planner and Estimator in the M&P organisation should also be given the same pay. It has been brought to our notice that by letter No.P(S)63/IV/Drawing dated 5-8-87 addressed to the South Central Railway, the Southern Railway informed that only one post of Chief Planner and Estimator is operated in Southern Railway in the scale of Rs.700-900, that this is an ex-cadre post and that there are no proposal to operate this post in the higher grade of Rs.840-1040. It is, therefore, clear that the applicant's contention that in Southern Railway the post is being operated in higher scale ~~of~~ despite the Railway Board's instructions *and* *the contention* *that* there is discrimination between Railways and Railways in this regard is untenable.

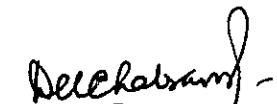
8. In the circumstances, the Application is allowed to the extent that the applicant is entitled to continue to draw pay in the scale of Rs.840-1040 till he is given

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an option to revert back to his parent department in the scale of Rs.700-900 or to continue in the M&P Organisation in the same ^{downgraded} scale of pay. It is open to the Respondent-Railways to immediately give the option and to place the applicant within such lower grade ~~immediately~~ thereafter. In the circumstances, there will be no order as to costs.



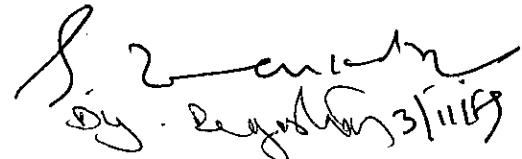
(D. SURYA RAO)
MEMBER (J)



(D.K. CHAKRAVORTY)
MEMBER (A)

Dated: 31/10/1989.

mhb/


S. Venkateswaran
by: Venkateswaran (S.V.)

To:

1. The Secretary (Staff) Railway Board, New Delhi.
2. The General Manager, S.C.Rly., Secunderabad.
3. The Chief Personnel Officer, S.C.Rly., Secunderabad.
4. The Chief Mechanical Engineer, S.C.Railway, Secunderabad.
5. One copy to Mr. G.V. Subba Rao, Advocate, H.No.1-1-230/33, Jyothi Bhavan, Chikkadpalli, Hyderabad-500 020.
6. One copy to Mr. N.R. Devaraj, SC for Rlys., CAT, Hyderabad.
7. One spare copy.

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k.j.

