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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.795 of 1987.

Date of Judgment 19-4-90

A.Sanjeeva Rao

.. Applicant

Versus

The General Manager,
South Eastern Railway,
Calcutta
& Others

.. Respondents

Counsel for the Applicant : Shri B.S.A.Swamy,
Advocate.

Counsel for the Respondents : Shri N.R.Devaraj,
SC for Railways.

CORAM:

Shri
Hon'ble J.Narasimha Murthy : Member(Judl).

Hon'ble Shri R.Balasubramanian : Member(Admn).

[Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn)]

This is an application filed under section 19
of the Administrative Tribunals Act by Shri A.Sanjeeva
Rao against the General Manager, South Eastern Railway,
Calcutta and another.

2. The applicant who was working as Guard Grade B
at Waltair appeared for a suitability test in 1977
and was promoted as Guard 'A' on 29.6.77 against the
backlog of Scheduled Caste quota and posted at Kantabur

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The 2nd respondent by his letter dated 4.4.78 directed the petitioner to take the pre-test coaching for the suitability test for the said post again. The applicant represented against this and did not appear for the test held for Guard 'A' Grade. The applicant also filed O.S.No.1179/78 with the 1st Addl. District Munsif Court at Visakhapatnam for a declaration that the petitioner need not appear again for the self same test again for the post of Guard 'A' Grade. The prayer was granted. The respondents appealed against it in the court of 2nd Addl. District Judge who upheld the judgment given by the 1st Addl. District Munsif, Visakhapatnam by his decree dated 24.2.84. According to the applicant, after he filed this suit the respondents created a new grade of post called Guard 'A' Special and converted all the Guards 'A' Grade without further tests. The applicant is aggrieved that he also should have been promoted as Guard 'A' Special without test. He is also aggrieved that when the respondents regularised his services as Guard 'A' Grade only with effect from 18.9.78 instead of with effect from 29.6.77. He considers his regularisation as Guard 'A' Grade with effect from 18.9.78 as a violation of the judgment in his favour in O.S.No.1179/78 which was subsequently upheld in the higher court. He had also filed a few more cases against the respondents, one of which was transferred to this

Tribunal and dismissed. Eventually the applicant was promoted as Guard 'A' Special by proceedings dated 14.9.87 and was posted as such with effect from 7.5.85.

The applicant has prayed:

- (a) that his promotion as Guard 'A' Grade be treated with effect from 20.6.77 instead of 17.9.78,
- (b) that he be promoted as Guard 'A' Special from October, 1978 at which point of time the new grade was created, and
- (c) for payment of arrears of salary due to him consequent to the prayers as above being granted.

3. The respondents have opposed the prayer.

According to them, his promotion as Guard 'A' Grade in June, 1977 was only an ad-hoc arrangement. They promoted him after conducting an ad-hoc test. When he was to be posted as regular Guard 'A' he was required to undergo a suitability test which he refused to. Instead, the applicant obtained relief from the court in O.S.No.1179/78. When they lost the appeal against this, the respondents promoted him as regular

Guard 'A' with effect from 18-9-78 i.e., the date from which his junior was promoted. It is their contention that the cadre of Guard 'A' Special was created much before the applicant was promoted even as Guard 'A'. The cadre of Guard 'A' Special was created in August, 1977 before the applicant was promoted as Guard 'A' on a regular basis and before he filed

O.S.No.1179/78. When the post of Guard 'A' Special was created it was classified as a selection post. The applicant appeared for the written test on 4.10.77 and was also called for the viva-voce test on 14.11.77. He did not qualify for the post of Guard 'A' Special. It is also their contention that all the posts of Guard 'A' Grade were not converted into Guard 'A' Special. It is also their point that all Guards 'A' Grade were not automatically converted to Guard 'A' Special without further tests.

4. It is their point that the relief he obtained from the court was only in respect of the post of Guard 'A' Grade and not Guard 'A' Special. Later, when restructuring orders came, as a one time measure the promotion from Guard 'A' Grade to Guard 'A' Special was made a non-selection one. In accordance with that the respondents promoted him as Guard 'A' Special with effect from 1.1.84 and posted him to Rayaghada. The applicant however requested that he be retained at Waltair itself even in a lower scale. The respondents agreed to this and also indicated that as and when Mailguard vacancies become available in Waltair the applicant will be posted there. Subsequently by an order dated 14.9.87 the applicant was posted in Guard 'A' Special scale at Waltair itself.

5. The respondents have opposed the prayer of the applicant that he be treated as promoted to

to Guard 'A' Grade from 29.6.77 as this would also affect the seniority of many other officials who have not been impleaded in this case and also his prayer
be
that he/treated as promoted to Guard 'A' Special from October, 1978 when he had persistently been refusing to appear for the test for promotion from Guard 'A' Grade to Guard 'A' Special.

6. The main question before us is whether the relief that the applicant obtained in O.S.No.1179/78 could have seen him through his promotion without test from Guard 'A' to Guard 'A' Special also besides the one he got from Guard 'B' to Guard 'A'. We find from the judgment in O.S.No.1179/78 as subsequently upheld by the higher court that he was held to have passed the test for promotion from Guard 'B' to Guard 'A'. The court also held that the applicant should not be asked to appear for the self same test again to test his suitability to hold the post of Guard 'A'. The applicant was promoted as Guard 'A' on an ad-hoc basis with effect from 29.6.77. Obviously, any test whether a regular one for promotion from Guard 'B' to Guard 'A' or some other kind of a test that would suffice for ad-hoc promotion, could have been held only prior to 29.6.77 before his ad-hoc promotion. It was this test that secured his promotion to 'A' grade through the intervention of the court in O.S.No.1179/78. As regards Guard 'A' Special,

he was required to undergo a test which he refused to. He has therefore no right for promotion as Guard 'A' Special at that stage. He cannot rely on the relief obtained in O.S.No.1179/78 for this promotion. We also find that the posts of Guard 'A' Special were created long before the applicant had approached the court for relief in the case of his promotion from Guard 'B' to Guard 'A'. From the annexure to the counter we find that the respondents had not just converted all the Guard 'A' posts into Guard 'A' Special and they had also not promoted all Guards 'A' as Guard 'A' Special automatically. As such he cannot be treated as having been promoted to the Special grade from October, 1978 itself.

7. The other prayer is that he be treated as promoted to the Grade 'A' on regular basis with effect from 29.6.77. The initial promotion from 29.6.77 was only on an ad-hoc basis. The court order exempted him from appearing for the suitability test again. Hence he was promoted on a regular basis with effect from 18.9.78 when his junior was promoted. Any advancement of this date would confer on the applicant undue seniority to which he has no right.

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8. From the foregoing, the application is liable to fail. We, therefore, dismiss the application with no order as to costs.

MS

R.Balasubramanian

(J.NARASIMHA MURTHY)
Member(Judl).

(R.BALASUBRAMANIAN)
Member(Admn).

Dated 19th April 1990

DE *Advocate Regd* 20/4/90
DE JTY REGISTRAR(.)

TO:

1. The General Manager, (Union of India), Ministry of Railways, South eastern railway, Garden Reach road, Calcutta-43.
2. The Divisional Railway Manager, South eastern railway, Waltair,Visakhapatnam-4.
3. One copy to Mr.B.S.A.Swamy,Advocate, Plot No.41, S.R.K. Nagar, Golkonda 'X' Roads,Hyderabad-500 048.
4. One copy to Mr.N.R.Bavaraj, SC for Railways, CAT,Hyderabad.
5. One copy to Hon'ble Mr.R.Balasubramanian,Member:(A) CAT,Hyderabad.
6. One spare copy.

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7th May 2