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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD :

D.A.No.801/87.

Date of Judgment: 27.11.89.

P.Appala Raju

...Applicant

Versus

The Divisional Personnel Officer, ...
SE Rlys, Waltair & others.

...Respondents

Counsel for the Applicant : Shri M.Surendar Rao

Counsel for the Respondents : Shri P.Venkatarama Reddy,
for R1 & R2.

CORAM: ----- Shri B.Nageswara Rao, Advocate
for R3 to 16, & 18,20,21,23,25,
26.

HONOURABLE SHRI D.SURYA RAO : MEMBER (JUDL)(I)

HONOURABLE SHRI D.K.CHAKRAVORTHY : MEMBER (ADMN)

The applicant herein, ^{is} a Railway Employee,
who seeks a direction to the 1st and 2nd respondents
to fix his seniority in the cadre of Senior Clerk over
and above his immediate juniors herein respondents 3 to
26. It is the case of the applicant that he was/joined
as Mechanic Grade-II (Electric) in the S.E.Railway, Waltair
and fell sick while working in this capacity. He was
medically declassified and declared fit for B.II category
post. As he was not immediately absorbed in the alternative
post, he was constrained/WP 5393/82 in the High Court.
to file
Thereafter he was absorbed and posted as Junior Clerk in
the scale of Rs.260-400 by an order dated 2-5-83. He joined
the post on the same day. He was told that he could
reckon seniority from the date he reports ^{for} duty at Steam-
Loco shed, Waltair. The applicant was aggrieved by such

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Fixation of seniority ^{and} made a representation on 7-7-83. to the Divisional Railway Manager, SE Railway requesting that the service rendered by him prior to decategorisation as Mechanic Gr.II (Electric) should be reckoned in the post of Junior Clerk for the purpose of seniority and promotion. After repeated representations 1st respondent fixed his seniority in the scale of Rs.260-400 as junior clerk and protected his seniority from 1-2-69 i.e. the date of his promotion as skilled artisan in terms of para 2614 of the Indian Railway Establishment Manual. However, he was not given promotions, though his juniors in the post of Junior Clerks have been promoted to Senior Clerks and some of them ^{were} ~~are~~ also promoted as Head Clerks. Subsequently by an order dated 24-10-85 1st respondent ^{was} assigned seniority position No.16A instead of 141 to the applicant ~~as his seniority~~ ^{in the} ~~as~~ Junior Clerk. He thereupon submitted a representation seeking promotion to the next higher cadres. The Divisional Personnel Officer, SE Railway by an order dated 7-11-85 promoted the applicant as Senior Clerk in the scale of Rs.330-560 on adhoc basis with the approval of the Sr. D.M.E., Waltair. The applicant thereupon submitted representation claiming that he should be promoted as Head Clerk on the ground that his juniors ^{are} ~~as~~ already working Head as ~~junior~~ ^{junior} Clerks. Despite several reminder the request was not complied with. It is stated that on

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4-2-87 Senior Divisional Personnel Officer promoted respondents 9 to 26 as Head Clerks. by an order No. WPV/103/213/4 dated 4-2-87. This is the order sought to be impugned. The applicant contends that being at Sl.No.16-A in the seniority list of Junior Clerk he is entitled to fixation in the seniority list of senior Clerk above all other Senior Clerks who are below Sl.No.16-A in the Seniority List of Junior Clerks and consequently he is entitled to promotion as Head Clerk.

3. We have heard the Learned Counsel for the applicant Shri M. Surender ^{Rao} and Shri P. Venkatarama Reddy, ^{and Sri. B. Nagendra Rao} ~~Advocate for respondents~~ ^{4, 10, 11, 18, 20, 21, 23, 25 & 26.} Learned Standing Counsel for Railways. The short question that arises for determination is whether by virtue of the applicant being placed at Sl.No.16-A in the seniority list of Junior Clerks in the office of the Divisional Mechanical Engineer (Diesel), S.E.Railway, Wlatair, he should claim relief over respondents 3 to 26 by being placed above them in the category of Senior Clerks. It is to be noted that applicant ^{was} absorbed as Junior Clerk only on 2/3-5-83. In accordance with the rules his past service as Mechanic Grade-II (Electric) was taken into ^{ac} count and he was placed at Sl.No.16-A notionally. However long prior to his coming to the category of Junior Clerk

[Signature]

a large number of employees including respondents 3 to 26 had been promoted as Senior Clerks. The Seniority List produced by the Standing Counsel confirms the same. This shows respondent 3 was promoted as long back as on 11-10-73. Similarly respondent No. 26 had been promoted as Senior Clerk more than $1\frac{1}{2}$ year prior to the applicant coming into the cadre of Junior Clerk. Since these respondents had got promotions as Senior Clerks long prior to the entry of the applicant in the category of the Junior Clerk, he cannot obviously claim preferential right over these respondents or any other Senior Clerk who had been promoted prior to his de categorisation. The fact that he was given Sl. No. 16-A could only mean that he could get preferential right over all others actually working as Junior Clerks as on the date of entry into service. His contention that he should be given seniority reckoning his date of entry into category and all the promotions made prior to his entry should be set aside or modified would be wholly untenable.

4. We find that though the applicant was promoted as Senior Clerk only in the year 1985, this promotion was given retrospective effect from 25-10-83, the date on which his immediate Junior was promoted after his induction into the category of Junior Clerk. The Seniority List

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To:

1. The Divisional personnel officer, S.E.Railway, Waltair, Visakhapatnam, District.
2. The Senior personnel Divisional officer, Divisional Railway Manager's office, Visakhapatnam.
3. One copy to Mr. M. Surender Rao, Advocate, Plot 5/C, Bagh Amberpet, Hyderabad.
4. One copy to Mr. P. Venkatarama Reddy, SC for Rlys, CAT, Hyderabad.
5. One spare copy.
6. One Copy to Mr. B. Nagaywara Rao, Advocate, Plot No. 7, S B H Colony, Asmangadd, Near T.V. Tower, Kj. Malakpet, Hyderabad - 500 036.

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for

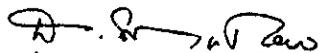
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produced discloses that no junior had been promoted to the category of Senior Clerk after the induction of the applicant as Junior Clerk with effect from 2/3-5-83 prior to 25-10-83. The Department had, thus given the applicant the protection of his Seniority and ranking viz., 16-A in the Seniority List by giving him promotion as Senior Clerk from 25-10-83 the date on which his junior in the category had been promoted. It is clear that no injustice ~~has been~~ caused to the applicant and that every benefit due to him consequent on being fixing at Sl. No. 16-A in the Seniority List of Junior Clerks has been given. In so far as respondents 3 to 26 are concerned they got their promotion long prior to the birth of the applicant in the cadre of Junior Clerks and as such the question of the applicant being notionally promoted as Senior Clerks on the dates on which any one of them were promoted would not arise. He cannot claim Seniority over them in the category of Senior Clerk.

5. For the reasons given above we find no substance in the claim ~~of the~~ ^{of applicant to seniority} respondents 3 to 26 in the category of Senior Clerks ~~as he is~~ ^{is he} entitled to the promotion as of a Head Clerk. The learned Counsel for the applicant, however, pleaded that the applicant was not given increments taking into consideration the retrospective promotion given to him from 25-3-83. There is no such specific averments made in the application. However, ^{the} matter may be looked into by the Railways' Administration and he may be given all the benefits due to him under the rules consequent to such retrospective promotion in accordance with the rules. With these observations the application is dismissed.

No Cost. (Dictated in Open Court.)


(D. SURYA RAO)
Member (J)

tar/

Dt. 27th November, 1989.


(D.K. CHAKRAVORTHY)
Member (A)


Deputy Registrar (J)