

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.NO.157/1989

Date of decision: 17-2-1992.

Between

M.Mallikharjuna Rao

APPLICANT

A N D

1. The General Manager,
South Central Railway,
Secunderabad.
2. The Chief Personnel Officer,
S.C.Rly., Secunderabad.

...RESPONDENTS

Appearance:

For the applicant : Sri R.V.Kameswaram Advocate

For the Respondents : Sri N.R.Devanaj, SC for Rlys.

CORAM

The Hon'ble Sri R.Balasubramanian, Member (Admn.)

The Hon'ble Sri C.J.Roy, Member (Judicial)

J U D G M E N T
(of the Bench delivered by the Hon'ble Mr.C.J.Roy,
Member (Judicial)).

The applicant working as Chief Clerk in the Office of the Chief Signal and Telecommunication Engineer (Construction), South Central Railway, Secunderabad has filed this O.A. under section 19 of the Administrative Tribunals Act, 1985 praying this Tribunal to declare him to have been promoted to the post of Chief Clerk with effect from December 1979 and accordingly direct the Respondent, the General Manager, South Central Railway, Secunderabad and another, to confer all such consequential benefits including fixation of pay and payment of arrears from the said date.

2. The applicant states that he joined the Railway Service (now South Central Railway) as Junior Clerk on 4-3-1958. He was promoted as Senior Clerk on 21-6-62 and was again promoted as Head Clerk on 21-5-1977. While working at Vijayawada as Senior Clerk, the applicant had been drafted to Cipher work as Nucleus Cipher Operator (on honorarium basis) in addition to his regular duties. Later on, while the applicant had been working as Head Clerk in the grade of Rs.425-700 in the Office of the Chief Signal and Telecom. Engineer (Construction) at Secunderabad he was transferred as Cipher Operator (a equivalent post) on 1-6-1978 on regular basis. Subsequently a year later he was also confirmed in the said post of Cipher Operator with effect from 1-6-78 by an order dated 22-8-79. Realising that his service prospects were not bright in the Cipher cadre, the applicant made representation, about two years later, on 1-8-1981 for rescinding his confirmation in the cipher cadre and repatriation to his original parent cadre in ministerial service. The administration has accepted his request for rescinding his confirmation order in the cipher cadre and for repatriation to his parent ministerial cadre on three conditions viz. (i) on repatriation he will be posted as Head Clerk in the scale of Rs.425-700 (from which post he was transferred to Cipher cadre); (ii) his promotion to the next higher grade in the Ministerial cadre will be subject to availability of vacancies in future and subject to his being declared suitable for promotion and after following the procedure prescribed therefor; and (iii) he will not be entitled to any benefits that may be made available in the Cipher Operator cadre in future notwithstanding his past service as Cipher Operator and that he will not request transfer back to CO's cadre. Initially the applicant accepted the conditions (i) and (iii) above vide his letter dated 30-3-1984 but subsequently vide his letter

dated 24-4-84 he accepted for the above said condition (ii) too.

Thereafter, the administration vide 2nd Respondent's Memorandum dated 20-6-84 rescinded with immediate effect the confirmation order of the applicant as Cipher Operator issued earlier w.e.f. 22-8-1979 and by proceedings dated 22-6-1984 he was transferred and posted as Head Clerk (his parent ministerial cadre). The applicant thereafter by hisletter dated 20-7-84 made a representation against the order dated 20-6-84 rescinding his conformation order in the cipher cadre with immediate effect and instead requested for deletion of the words "with immediate effect" from the order dated 20-6-1984.

3. After repatriation to the category of Head Clerk and on restructuring of Ministerial Staff of S&T Department as on 1-1-1984, the applicant was considered and promoted as Chief Clerk in the grade of Rs.550-750 in his turn and on regular basis on 18-11-1985 with effect from 1-1-1984 and his pay was accordingly fixed with effect from 1-1-84 in the promoted post. However, since some of the candidates placed below him in the panel including his immediate junior Shri R.Subrahmanyam, have been officiating in the promoted post on adhoc basis since much earlier and they had the advantage of continuing their pay earlier fixed since the date of their adhoc promotion and thereby they have been drawing higher pay than the applicant as on 1-1-84. Against this anamoly, the applicant has made a representation on 20-3-86,- soon after his pay was fixed in the promoted post, for stepping up of his pay on par with his immediate junior Shri R.Subrahmanyam who was drawing Rs.2150 as on 1-1-84 whereas the applicant was fixed only at Rs.2000/-. The 2nd Respondent, vide his proceedings dated 4-1-88 rejected the plea of the applicant for stepping up of his pay on par with his junior. Thereaftrer the applicant

personally represented to the 1st Respondent on 18-1-88 and also made another representation to the 1st Respondent on 2-3-1988. His plea was again rejected by proceedings dated 9-3-1988 issued by the 2nd Respondent. Aggrieved by this, the applicant has preferred the present O.A.

4. The Respondents have filed a counter denying the claim of the applicant. They emphasised that initially the applicant had volunteered for cipher work and he was accordingly trained in the cipher work and his services were utilised as Nucleus of Cipher Operator on honorarium basis in addition to his regular duties. Subsequently he was drafted on regular basis to cipher cadre on 1-6-1978 and was also confirmed as Cipher Operator by an order dated 22-8-1978. The applicant had not objected to his initial transfer as Cipher Operator nor to his subsequent confirmation in the post on 22-8-1979. In the circumstances, they stated that it could not be said that the applicant had not opted to cipher cadre. His option was evident by his conduct itself in not representing against his initial transfer on regular basis to the cipher cadre or to his subsequent confirmation in the cipher cadre. It was only two years later after his confirmation in the cipher cadre, he made representation for rescinding his conformation order in the cipher cadre which was agreed to but on certain conditions to which the applicant had accepted. The Respondents contended that after accepting for the conditions particularly to the condition that he would be considered for promotion as Chief Clerk only against the future vacancies he cannot now demand promotion on par with his junior who was promoted much earlier than his repatriation to ministerial cadre.

5. We have heard the arguments of Shri R.V.Kameswara, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the Railways, on behalf of the Respondents.

6. In the arguments, the learned Standing Counsel for the Railways argued that the claim of the applicant is barred by limitation under the A.T.Act. Admittedly the applicant has filed this O.A. on 28-2-1989 against the order of the 2nd Respondent dated 20-6-84 as also his subsequent proceedings dated 9-3-88 praying for a declaration that he had been promoted to the post of Chief Clerk with effect from December 1979 and for consequential fixation of his pay and for arrears. Evidently the applicant had been promoted alongwith others vide proceedings dated 18-11-1985. He made a representation for stepping up of his pay on par with his juniors on 20-3-86 soon after his pay was fixed in the promotional post of Chief Clerk. The said representation was rejected vide proceedings of the Respondents dated 1-8-88 followed by the impugned order dated 9-3-88. In the circumstances the limitation starts from 9-3-1988 and the present application which was filed on 28-2-89 is within the prescribed time of one year. We therefore hold that the O.A. is within the time prescribed under Section 21 of the Administrative Tribunals Act, 1985.

7. With regard to the plea of the applicant, though the applicant had prayed for a declaration that he be declared as having been promoted to the post of Chief Clerk with effect from December 1979, the crux of his grievance is that he is eligible for stepping up of his pay on par with his junior Shri R. Subrahmanyam in the category of Chief Clerk. Admittedly, the applicant who had been transferred from Ministerial service to Cipher branch as Cipher Operator and subsequently conformed as such, had been re-transferred back to his original ministerial service after

rescinding the confirmation order in the category of cipher operator. Once the confirmation order in the cipher operator category is rescinded, the applicant is deemed to have been restored back to his original position as he was entitled to and would have been had he not been deputed to another cadre post. Accordingly, the applicant was seen to have been restored to his original position of Head Clerk in the ministerial service and when restructuring of the ministerial posts was taken up he was promoted along with other candidates including his seniors and juniors in the category of Head Clerk, all with effect from a common date viz. 1-1-1984, on regular basis vide proceedings No.P(SG)535/UPG/Ministerial dated 18-11-1985. In all, 22 candidates were promoted as Chief Clerks in the scale of Rs 550-750 and the applicant had been placed at Serial No.7 in the said promotion order. In para 2 of the said order, it was specified that items 1 to 9, 16, 19 and 22 were eligible for fixation of pay with effect from 1-1-84 on proforma basis and all the employees are eligible for higher rate of pay only from the date they assume higher responsibilities of the post. A perusal of the said promotion order reveals that the candidates placed above the applicant in the said order and his immediate four juniors in the said order and some others, had been holding the post of Chief Clerk on adhoc basis and they seem to have been regularised in the post through the present order as per their original turn. Since adhoc promotions are not counted for any service benefits and adhoc promotions are given on various administrative exigencies the applicant cannot have any grievance or claim over the adhoc promotions taken place while he was holding the ex-cadre post in the Cipher branch. Further the applicant's juniors were not given any undue advantage of their adhoc promotions in fixing their seniority, etc. in the promoted category of Chief Clerk vis-a-vis the applicant.

In the circumstances, it cannot be said that the applicant had suffered in any way due to adhoc promotions taken place prior to 1984 and when he was on outside the line of his original cadre in the ministerial service.

8. The question that now remains is at what stage the applicant's pay should have been fixed after being promoted from the category of Head Clerk to the post of Chief Clerk. Admittedly, his pay had been fixed in the higher scale with effect from 1-1-1984 on par with other candidates promoted along with him. However, since some of his juniors had been promoted on adhoc basis earlier and they had been continued as such till their promotions were regularised, they seem to have enjoyed the protection of the pay they were drawing on the adhoc basis, at the time of fixation of their pay in the post on regularisation in which there was no ambiguity. Since the applicant was outside his cadre prior to 1984 he could not get and enjoy the adhoc promotion which his colleagues had. Consequently, he was drawing only his substantive pay whereas his colleagues had been placed in the higher officiating pay and this resulted in the applicant's pay being fixed at a lower slab in the promoted scale than his junior as on 1-1-1984. The point at question to be decided, therefore, is whether the applicant's pay should be stepped up to be on par with his juniors who had been given the benefit of higher pay fixation in the same scale taking into account the increments they have earned by virtue of their adhoc service which benefit the applicant did not have. This Bench had decided ^{a similar issue} while reviewing a Judgment in O.A.No. 622/89 in the case of Vivekanand Vs. Union of India. The

Copy to:-

1. The General Manager, South Central Railway, Sec-bad.
2. The Chief Personnel Officer, S.C.Rly, Secunderabad.
3. One copy to Shri. R.V.Kameswaram Advocate, CAT, Hyd-bad.
4. One copy to Shri. N.R.Devraj, SC for Rlys, CAT, Hyd-Bad.
5. One copy to Deputy Registrar(Judl.) CAT, Hydbad.
6. Copies to all reporters as per standard list of CAT, Hyderabad Bench, Hyderabad.

~~7. One spare copy.~~

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O.A.No.622/89 was filed and the judgment was delivered on 22.6.90. A Revision Petition was filed vide R.P.No.71/90. In the Judgment dt. 27.11.90 of this Bench in the R.P. to which one of us was a party, it was held that the pay of the applicant therein should be stepped up on par with his juniors since the latter had been given higher pay entirely on account of their having enjoyed adhoc promotion which the applicant therein did not have. This matter was subsequently decided by the Hon'ble Supreme Court also and in their decision dated 22.8.91 in S.L.P.No.1399/91 the Hon'ble Supreme Court of India had upheld the decision of this Bench in the Review Petition. Therefore, extending the same principle, the applicant herein also should be given the same pay fixation as his immediate junior who got the higher fixation purely by virtue of the adhoc promotions. We, therefore, direct the respondents to refix the pay of the applicant on par with that of his junior as on 1.1.8 and pay him all arrears from that date also since he had been discharging the duties in the promoted cadre from that date. The respondents are directed to implement the order within a period of three months from the date of receipt of this order. The application is accordingly allowed with no order as to costs.

R.Balasubramanian

(R.Balasubramanian)
Member(A).

(C. J. Roy)
Member(J).

Dated: 17th February, 1992.

5/3/92
Dy. Registrar (Judl.)

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TYPED BY

CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. V.C.

THE HON'BLE MR.R.BALASUBRAMANIAN:M(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY:
M(JUDL)

AND

THE HON'BLE MR.C.J.ROY : MEMBER(JUDL)

DATED: 12/2-1992

ORDER/JUDGMENT:

R.A/C.A/ M.A.No.

in

O.A.No. 157/89

T.A.No.

(W.P.No.)

Admitted and interim directions
issued.

Allowed

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/ Rejected

No order as to costs.

PVM.

