

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL @ HYDERABAD BENCH

AT HYDERABAD

OA 170/89Date of Decision: 3-5-1991.

G.V.Satyanarayana

....Applicant

Vs.

1. The Railway Board,
Represented by Chairman,
Railway Board, Rail Bhavan,
New Delhi - 110 001.
2. General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad-500 371.
3. Chief Personnel Officer,
South Central Railway,
Rail Nilayam,
Secunderabad-500 371.
4. General Manager (P),
Central Railway,
Bombay VT.
5. General Manager (P),
North Eastern Railway,
Gorakhpur, U.P. Pin:273 012 (U.P.)
6. P.Viswanatha Rao,
Confidential Assistant,
Chief Medical Officer's Office,
SC Railway, Rail Nilayam (Ground Floor),
Secunderabad - 500 371.
7. V.N.Parlikar,
Chief Law Assistant,
Chief Claims Officer's Office,
S.C.Railway, Rail Nilayam,
(first floor) Secunderabad-500 371.
8. M.Ramaswamy Iyer,
Confidential Assistant,
Office of the Chief Signal &
Telecommunication Engineer, S.C.Railway,
Rail Nilayam, (Seventh Floor),
Secunderabad - 500 371.
9. M.Nageswara Rao, Confidential Assistant,
Chief Personnel Officer's Office,
SC Rlys, Rail Nilayam (Fourth Floor),
Secunderabad - 500 371.

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10. P.S.P.Rao, Confidential Assistant,
Chief Mechanical Engineer's Office,
South Central Railway, Rail Nilayam
(1st Floor) Secunderabad-500 371.

.....Respondents

Counsel for the Applicant : Shri P.Krishna Reddy

Counsel for the Respondents : Shri N.R.D. Rao, SC for Rlys

^{NO. 165.}
For Respondent No. 6 to 10: none were present.

CORAM:

THE HON'BLE SHRI B.N.JAYASIMHA : VICE-CHAIRMAN

The HON'BLE SHRI D.SURYA RAO : MEMBER (J)

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

The applicant herein joined the Central Railway as
a Junior Stenographer in the Pay scale Rs.130-300 on 3-3-54.
He was promoted to the post of Senior Stenographer on 11-3-64
and confirmed in the said scale of Rs.210-425 by an order
dt.1-4-65. South Central Railway was constituted w.e.f.
2-10-66. One Sri A.K.Prabhakaran, who was appointed
regularly to the scale of senior Stenographer with effect
from 15-9-65 opted to SC Railway. On 6-12-71 the applicant
was appointed on mutual transfer to SC Railway vice
Sri A.K.Prabhakaran. The rules relating to mutual transfer

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required the applicant to accept 15-9-65 as the date of appointment to the scale Rs.210-425 since this was the date of regular appointment of Sri A.K.Prabhakaran to the said scale. The applicant alleges that a provisional seniority list of Senior Stenographers was published on 6-8-1969 wherein A.K.Prabhakaran was assigned Serial No.75. By a revised provisional seniority list dt.26-11-70 their rank was confirmed. By an order dt.2-2-72 the South Central Railway declared that the seniority list issued on 26-11-70 ~~is~~ final. The applicant by virtue of mutual transfer came to occupy the position and on the basis ~~of~~ ^{was} thereof/promoted to the scale Rs.550-750 on 8-8-79. However on 9-3-1981 a revised seniority list of Senior Stenographers in the scale Rs.210-425 was published showing the applicant at Sl.No.121 as against his rank of 75 in the 1970/72 seniority lists. The applicant made representations in March, June and August, 1981 against the revision of the seniority list. In the meanwhile on 11-9-81 the scales Rs.210-425 and 550-750 were raised to Rs.425-700 and Rs.550-900 respectively. The applicant learns that the revised seniority list of 1981 was issued consequently ^{as to} ~~on~~ an order dt.31-10-80 in WP No.4747/1978 and 5499/79 issued by the High Court of Andhra Pradesh. The

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applicant's representation was rejected on 26-9-81. The applicant contends that it was not open to the Railways to alter the seniority of Sri Prabhakaran since he was no longer working in SC Railway. He contends that the case being one of mutual transfer and his seniority having been fixed on the basis of date of regular promotion of AK Prabhakaran, it (applicant's seniority) cannot be modified. He contends that Sri Prabhakaran ^{neither B} ~~was~~ ^{nor B} the applicant were ~~not~~ made a parties to the WP 4747/78 and WP 5499/79 and hence their seniority as determined by the 1972 seniority list cannot be affected. It is contended on the merits that the Single Judge's order dt.31-10-80 is wrong, that the matter was carried in appeal viz., WA Nos.292/81 and 293/81 by Ramana Rao Pantulu and others who were also aggrieved by the revision of the seniority list in 1981 and that the Division Bench directed that the Railway Board should decide the matter after hearing the parties and that the revised seniority list of 1981 will be subject to the decision of the Railway Board. The applicant states that he also filed WP 9041/1981 questioning the revision of the seniority list in 1981, that this W.P. was transferred and numbered as T.A.329/86 and that this Tribunal disposed

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the T.A. and other connected cases with a direction that the applicant should also approach the Railway Board as in the case of Ramana Rao Pantulu and others. The representations of Sri Ramana Rao Pantulu and the applicants and others were rejected ^{by the Railway Board} by an order E(NG)I-87/SR6/16 dated 28-1-88. The applicants seeks to assail this order dt.28-1-88 and the earlier order dt.9-3-81 passed by the C.P.O., SC Railway rejecting the applicants representations. The main contention raised is that the Railway Board ought to accepted the date of empanellment or appointment to the scale Rs.210-425 as the relevant date for determination of seniority and not the notional date viz., 1.4.65. ~~as the date of promotion for reckoning seniority.~~ He contends that the party respondents 6 to 10 had been empanelled long after 1-4-65 but were illegally deemed to have been promoted on 1-4-65. He also contends that these respondents were empanelled and promoted not against the vacancies arising as a result of upgradation order but against later vacancies which had arisen in 1966. The applicant also submits that he ought to have been given an opportunity to revert back to Central Railway in view of changes in seniority of Sri Prabhakaran.

2. On behalf of the Railways viz., Respondents 1 to 5 a counter has been filed opposing the application. It is contended that the applicant having come on mutual transfer with A.K.Prabhakaran is entitled to the seniority assigned to the latter, that revision of seniority of Sri Prabhakaran and consequently the applicant in 1981 was as a result of the decision of the High Court of Andhra Pradesh dt.31-10-80 in WP Nos.4747/78 and 5499/79, that the judgement laid down that notice was not required to be given to them, that the seniority list of 1981 was confirmed by the Railway Board on 28-1-1988 after notice to the relevant parties and that there is no infirmity or illegality in the said order. It is therefore contended that the application is liable to be dismissed.

3. We have heard the arguments of Sri P.Krishna Reddy, learned counsel for the applicant and Shri D.Gopal Rao, learned standing counsel for the Railways for the Respondents 1 to 5. N (10)

4. The present case is identical to the case O.A. 126/88 filed by one Sri Ramana Rao Pantulu wherein the order of the Railway Board, ^{2/28-1-1988} has been assailed on the ground

that 1-4-65 should not be taken as the date of empanellment. It was also pleaded therein that there were illegalities in the 1981 seniority list in that persons not eligible to be empanelled against the vacancies which had arisen consequent to upgradation of posts as on 1-4-65 has been given the benefit of proforma appointment/promotion as on 1-4-65. By a separate order pronounced by us today in OA 126/88 we had upheld the Railway Board's order dt.28-1-1988. We had however held in favour of the applicant in regard to empanellment of unqualified persons in the following terms:-

"5. Sri Venkateswara Rao has made out another grievance on the part of the applicant viz., that persons who had failed to qualify for selection at the first attempt to the up-graded posts which were to come into effect from 1-4-65 but who had subsequently qualified in subsequent selections had been assigned seniority over those like the applicant who had qualified in the first attempt. The applicant had cited instances of such persons who though not entitled to seniority had been given seniority over him. The Railway Board disposed of this contention in the following terms :

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"However, it is observed that the benefit of seniority in gr.210-425 from the common date i.e.1-4-65 would be admissible only to those persons who were promoted to this grade on the basis of the upgradation order No.PC-64/PS-5/OS/17 dt.22-1-65. Others will count seniority from the date they were actually promoted on regular basis after passing the selection. While it is appreciated that it may not be possible for SCR at this distant date to re-examine the factual position in this regard in all the cases and they have to rely on the information furnished by the concerned Rlys. at that time, SCR should none-the-less re-examine the cases of Viswanatha Rao, V.N.Purlikar, S.Nagarajan, S.Rama Rao, T.S.Jagadeesan, S.Ramanathan and U.Srinivasan in consultation with the concerned Rlys., in the light of the documents made available by P.V.Ramana Rao Pantulu. Their SRs and P.Files could also be checked up. If this re-examination leads to the conclusion that they were not promoted against the vacancies arising out of 1965 upgradation, the Rly. may revise the seniority as warranted under the rules and orders on the subject after giving them an opportunity of hearing against the proposed revision."

Sri Venkateswara Rao contends that the SC Railway must examine the cases of all persons who were promoted and only if they were promoted against vacancies arising out of the upgradation on 1-4-65 and had passed the selection test in the first attempt then only such persons would be entitled to get 1-4-65 as the notional date of promotion and seniority. He contends that it was the duty of the Railways which alone

all

had the records of all employees to verify and determine these questions and that this verification and review should not be limited to only those employees referred to in the Railway Board's order dt.28-1-88.

We see considerable force in this contention. Obviously it was for the Railways to determine who had been promoted against the upgraded vacancies which arose as on 1-4-65 and also who had passed in the selections held for appointment to the upgraded vacancies in the first attempt. Those who had passed in subsequent attempts obviously cannot claim seniority over those who had qualified at an earlier selection would be entitled to seniority over those who had qualified later.

The S.C.Rly. authorities will, therefore, examine the records relating to the employees at serial nos. 56 to 141 and verify if they had been promoted against the upgraded vacancies of 1-4-65 and whether they had passed the selection for the said vacancies in the first attempt and only those who had been so promoted or qualified would be entitled to the benefit of

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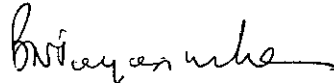
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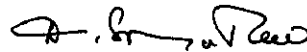
seniority in the lower grade
Rs.130-300 applying Rule 315
of the Indian Railways Establish-
ment Manual. The Railway autho-
rities of S.C.Rly. will verify
the records of the above men-
tioned employees and if revision
of the 1981 seniority list is
required effect such revision
after notice to the affected

parties. This exercise will be completed
by the Railway authorities within 6 months
from the date of receipt of this order. *Ro*


5. Following our decision in OA 126/88 it would
follow that this application also is to be allowed to the
extent indicated in para-4 supra. Sri Krishna Reddy has
sought to contend that the applicant should have been given
an option of reverting back to Central Railway since he
had no knowledge at the time of seeking mutual transfer
with Sri Prabhakaran that the latter's seniority or ranking
will undergo a change. This in our view cannot give the
applicant a cause of action to revert back to the Central
Railway. He had sought mutual transfer with Sri Prabhakaran
and consequent there to he ^{has} stepped ^p into the shoes of the
latter. All service benefits and infirmities attached to
the post occupied by Sri Prabhakaran will enure to
the applicant. If as a consequence of a court decision on
otherwise the seniority or ranking of Sri Prabhakaran is
modified the applicant also will have to bear with ^{the same} *Ro* them.

He cannot make ^{that} a ground for re-opening the case of mutual transfer. Hence we reject the contention of Sri Krishna Reddy. The application is allowed to the extent indicated in para-4 above and rejected in other respects. The parties are directed to bear their own costs.


(B.N. JAYASIMHA)
Vice-Chairman


(D. SURYA RAO)
Member (J)

Dated: 3rd May, 1991.


Deputy Registrar (J)
13/5

To The Railway Board,
Represented by Chairman,
1. Railway Board, Rail Bhavan,
New Delhi - 110 001.

2. General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad-500 371.

Chief Personnel Officer,
South Central Railway,
Rail Nilayam,
Secunderabad-500 371.

Manager (P),
Railway,

Manager (P),
Railway,
Pin: 273 012 (U.P.)

Office,
Ground Floor),

(H) 8/5/91
TYPED BY

CHECKED BY

14/5/91
COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH:HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA: V.C. ✓
AND

THE HON'BLE MR. D. SURYA RAO: M(J) ✓
AND

THE HON'BLE MR. J. NARASIMHA MURTHY: M(J) ✓
AND

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

DATED: 3rd 5/1991. ✓

~~ORDER~~ / JUDGMENT. ✓

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

in

~~T.A.No.~~

~~W.P.No.~~

O.A.No.

170/89 ✓

Admitted and Interim directions
issued.

partly
Allowed. ✓

Disposed of with direction.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs

