

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 343 of 1989

Date of Decision : 19.8.1991.

~~Text~~

Mr. Noor Basha Negul Meera Basha

Petitioner.

Mr. G. Ramachandra Rao

~~Text~~

Advocate for the
petitioner (s)

Versus

Union of India and 2 others

Respondent.

Mr. N. R. Devaraj, SC for Railways.

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. J. Narasimha Murthy, Member (Judl.)

THE HON'BLE MR. R. Balasubramanian, Member (Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HJNM
M(J)

HRBS
M(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD
BENCH: AT HYDERABAD

ORIGINAL APPLICATION NO. 343 of 1989

DATE OF JUDGMENT: 19.8.1991.

BETWEEN:

Mr. Noor Basha, Nagul Meera Basha .. Applicant

AND

1. The Union of India rep. by
the General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.

2. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam,
Secunderabad.

3. The Chairman,
Railway Board,
New Delhi.

.. Respondents

COUNSEL FOR THE APPLICANT: Mr. G. Ramachandra Rao

COUNSEL FOR THE RESPONDENTS: Mr. N.R. Devaraj,
SC for Railways.

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CORAM:

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

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

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

This petition has been filed by the petitioner for a relief to declare that the applicant is deemed to have been appointed to the posts of Charge man and Assistant Foreman (Foreman Gr.II) from the dates when he has been working in the said posts after quashing the proceedings No.P(E)535/TM (Office Order No.E 645/88), dated 28.11.1988 issued by the 2nd respondent. The facts are briefly as follows:-

The applicant at present is working as Assistant Foreman (Foreman Gr.II) in the pay scale of Rs.1600-2660 (RSRP) in the Track Machine Organisation, South Central Railway at Rayanapadu, Krishna District under the administrative control of the Chief Engineer, Open Line. While working as Tele-communication Maintainer in the pay scale of Rs.330-480

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in the Signal & Telecommunication Department, Secunderabad Division, the applicant had given option of his services in the Track Machine Organisation, South Central Railway, in the year 1977. On the basis of the option, the applicant was duly selected by a Selection Committee for the post of Chargeman in the pay scale of Rs.425-700 and appointed and posted in the Track Machine Organisation of South Central Railway. While working as Chargeman, the applicant was selected to the post of Assistant Foreman (Foreman Gr.II) after passing a written and viva-voce tests and he was appointed as Assistant Foreman on regular basis. Prior to that the applicant was working as Assistant Foreman (Foreman Gr.II) on adhoc basis from March 1980. Ever since he has been working continuously as Assistant Foreman.

2. The Track Machine Organisation in the Civil Engineering Department of the South Central Railway was created in the year 1974 when three time tamping machines were allotted by the Railway Board to the South Central Railway in the month of June 1974. A circular was issued by the Respondents 1 and 2 proposing to fill up the vacancies of Foremen, Assistant Foremen, Chargemen in the Track Machine Organisation by way of selection by calling volunteers working in Civil Engineering, Electrical, Mechanical

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and S&T Departments of the South Central Railway.

It was also stated in the circular that preference will be given to staff with requisite qualifications and experience volunteering from Civil Engineering Department and applications of staff from other Technical Departments ~~as~~ will be considered only to make up the deficiency thereafter.

Subsequently, circulars dated 11.1.1977 and 14.7.82 were issued by the 2nd respondent proposing to fill up the vacancies of several posts in the Track Machine Organisation by way of selection by calling volunteers from persons in all departments of South Central Railway.

3. In pursuance of the notification, the applicant had applied for the post of Chargeman in the Track Machine Organisation. The applicant was selected in the grade of Rs.425-700 and he has been working continuously. Subsequently, the applicant was promoted to the next higher grade of Assistant Foreman (Foreman Gr.II).

4. The posts in the Tie Tamping Organisation in the Civil Engineering Department which were created for operation and maintenance of Tie Tamping Machine

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were initially treated as ex-cadre posts. Several representations were made by the staff working in the Track Machine Organisation to form a separate cadre for the Track Machine Organisation. In this regard, a sub committee was constituted to study the various aspects of the Track Machine Organisation and the sub committee submitted a report which was approved by the Railway Ministry. The approval of the Ministry was copied/communicated in their letter dated 31.3.83. In para 5.7 of the report, the ~~subcommittee~~ sub committee made recommendations in respect of recruitment and promotion to various grades in the Tie Tamping Organisation., basing on which the 3rd respondent decided a staffing pattern in this regard and the said decision was communicated in his proceedings dated 3.12.1984. The 1st respondent did not take any immediate decision to form a separate cadre for the Track Machine Organisation. However, the 1st respondent took the decision to form a separate cadre in the Track Machine Organisation only with effect from 1.11.1986 and the said decision was communicated under circular dated 3.10.1986 issued by the 2nd respondent. It was stated in para 2 of the circular dated 3.10.1986 that as per directives of the Railway Board, the 1st respondent decided to form a separate Track Machine Organisation from 1.11.1986 and an avenue of promotion of staff of Track Machine Organisation was being published. In pursuance of the above said circular, options were called from all

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the staff working in the Track Machine Organisation and the applicant had opted to be absorbed in the Track Machine Organisation. The 1st respondent had also published the avenue chart of promotion for the staff working in the Track Machine Organisation and the same was published in the Fortnightly Gazette dated 15.4.19888 against item No.115 at pages 17-18 of the Gazette.

5. The applicant continued to have his lien in his parent department while working in the Track Machine Organisation and when appointments were made in his parent department to next higher grade posts of Telecommunication Maintainer 'A' and Telecommunication Inspector in the scales of pay of Rs.330-560 and 425-700 respectively, the applicant was not called for any trade tests and one of the juniors to the applicant viz., Mr.S.R.N.Chowdhury was empanelled and promoted to the said post in the grade of Rs.425-700. Since the position of the applicant in the Track Machine Organisation was to be fixed with reference to his position in the parent department vis-a vis his juniors, the applicant made a representation on 10.8.1986 to the 2nd respondent requesting to fix the position of the applicant above his juniors in the parent department so as to get the benefit of the same in the Track Machine Organisation where he has been working from the year

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1977 and where he has been asking for absorption.

The said representation did not elicit any reply.

6. While so, the 2nd respondent issued proceedings dated 24/28.10.1986 proposing to form a separate Track Machine Organisation in the Civil Engineering Department with effect from 1.11.1986 and inviting options from all the staff members who were working in the Track Machine Organisation. The applicant had given his option for absorption of his services as Assistant Foreman in the Track Machine Organisation without prejudice to question the conditions laid down therein inasmuch as the conditions laid down under the circular dated 24/28th October 1986 are contrary to the Ministry of Railways letter dated 31.3.1983. The 2nd respondent issued proceedings dated 3.10.1986 showing the name of the applicant along with others who are selected to work in the Track Machine Organisation.

7. As the applicant did not receive any reply to his representation dated 10.8.1986, he made a further representation on 9.9.1987 to the 2nd respondent bringing to his notice that a junior to the applicant, viz., Mr. S.R. Chowdhury was promoted to the grade of Rs.425-700 as Telecommunication

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Inspector Grade-III in his parent department in the year 1981 itself and the 2nd respondent was requested to take the same into consideration while showing the position of the applicant in the Track Machine Organisation in the post of Assistant Foreman. He received no reply to this representation also. The applicant made a further representation on 31.10.1988 to the 2nd respondent requesting him to regularise his services as Chargeman in the pay scale of Rs.425-700 without prejudice to his claim for regularisation as Assistant Foreman in the pay scale of Rs.550-750 in the Track Machine Organisation with effect from the date of his promotion to the said post. The 2nd respondent in his proceedings dated 28.11.1988 absorbed the applicant in the Track Machine Organisation in the grade of Rs.425-700 as Chargeman-cum-Operator with effect from 1.11.1986 though the applicant was selected and appointed as Chargeman in the Track Machine Organisation in the year 1977 itself. It is also stated in the proceedings that the absorption of the applicant as Chargeman-cum-Operator was pending finalisation of his case regarding the proforma promotion to higher grades in the parent department., and that the applicant should appear in the ensuing selection/suitability test to the post of Telecommunication Maintainer and Telecommunication Inspector in the parent department otherwise the proceedings dated 28.11.1988 will be

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treated as final and the applicant has to seek further promotions to higher grades in the Track Machine Organisation as per avenue chart of promotion of the said Organisation. The applicant states that the said directions calling upon the applicant to appear for selection or suitability test in the parent department at this stage is illegal, unjust, arbitrary and contrary to the rules. Since the applicant has been working in the Track Machine Organisation after his selection to the post of Chargeman in the year 1977 and also as Assistant Foreman from the year 1980, the question of his appearing for selection or suitability test in the parent department at this stage does not arise. Since the applicant was initially appointed and promoted and later absorbed in the Track Machine Organisation, only after the due process of selection, he is deemed to have been selected and promoted to the post of Chargeman and Assistant Foreman respectively on regular basis. Hence, the applicant filed this application for the above said relief.

8. The respondents filed a counter opposing the contentions of the applicant. It is stated that if the employees have been promoted in Track Machine Organisation, the same will be restricted to only a

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grade higher than what they would have got in their parent unit. In case the employees who have got more than one promotion and not willing to accept to continue in the Organisation with only one promotion, they will be repatriated back to their parent departments. Insofar as the employees, who have been promoted to the grade of Rs.425-700 in the Organisation, they will be allowed to continue in the grade Rs.425-700, though they had come from lower grades and have got more than one grade. However, they would be allowed only upto two promotions than what they would have got in their parent cadre. While calling for ~~as~~ volunteers against the vacancies which would be left over and also against the additional posts sanctioned, if any, the same will be restricted to the staff upto grade Rs.550-750. The employees who have got promotions in Track Machine Organisation, which they would not have got in their parent cadres, would be ex-cadred from the date the Organisation is formed. Accordingly, the Divisional Railway Managers were advised of the decision to form a separate Track Machine Organisation and they were requested to obtain and forward options from the staff working against the ex-cadre posts either for their continuation in TM Organisation or to go back to their parent departments, vide proceedings dated 24/27.10.1986. The Divisional

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Railway Managers were advised through CPO's letter dated 3.10.1986 that a separate T.M. cadre was being formed and they were requested to furnish service particulars of the employees in T.M. Organisation. The employees, who have been drafted, through a process of selection, to the T.M. Organisation, and opted to remain in the newly created T.M. Organisation were absorbed in the grades to which they were eligible as per the decision taken in the T.M. Organisation, with effect from 1.11.1986, vide CPO's letter/Office Order dated 15.9.1987. Those opted to continue in T.M. Organisation were absorbed in the T.M. Organisation as per the decision arrived at vide CPO's Office Order dated 15.9.1987.

9. The posts of Telecommunication Inspector Grade-III are selection posts. In case the applicant is found suitable in the trade test for promotion to the post of Telecommunication Maintainer 'A' in the pay scale of Rs.380-560, he will be subjected for selection to these posts and if found suitable, he will be given proforma promotion as TCI/Gr.III scale Rs.425-700 from the date his junior was promoted. Pending finalisation of trade test/selection to the posts of TCI/Gr.III, scale Rs.425-700 in his parent department, the applicant vide his letter dated 31.10.88 requested without any prejudice to his claim for regularisation as Assistant Foreman, scale Rs.550-750 for his regularisation as Chargeman-cum-Operator,

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scale Rs.425-700 in T.M.Organisation. The applicant was absorbed as Chargeman-cum-Operator in T.M.Organisation with effect from 1.11.1986 at his request and he was advised that he should appear for trade test/selection for promotion to higher grades in his parent department, failing which his absorption as Chargeman, in the pay scale of Rs.425-700 in T.M.Organisation would be treated as final. The promotion of the employees, who are working in ex-cadre posts, to higher grades in their parent department will be considered subject to their passing trade test/selection. The applicant was considered for promotion to higher grade and was called for to appear for trade test in March 1978 along with his juniors, to the post of TCM'A' in the pay scale of Rs.380-560. However, the intimation did not reach him. It has, therefore, been decided to give him proforma promotion to the post of TCM'A' provided he is found suitable in the trade test. Prior to 1.11.1986, the posts of Chargemen and Assistant Foremen were ex-cadre posts. Staff working in ex-cadre posts would have their lien maintained in their cadre posts and are entitled to be considered for all benefits like promotion etc., in their parent cadre. The ex-cadre posts of T.M.Organisation were turned into cadre posts from 1.11.1986. Hence, it is not permissible to assign

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seniority in favour of the applicant is with effect from 29.11.1980 when he was selected to the ex-cadre post of Assistant Foreman in T.M. Organisation. Hence, it is clear that the applicant has not made out any case and there are no merits in the application and the application is liable to be dismissed.

10. Shri G.Ramachandra Rao, learned counsel for the applicant and Shri N.R.Devaraj, learned Standing counsel for the Respondents/Railways, argued the matter.

11. It is a fact that the applicant was working as Telecommunication Maintainer in the pay scale of Rs.330-480 in the Signal & Telecommunication Department Secunderabad. It is also a fact that the Track Machine Organisation was formed in the Civil Engineering Department and options were called for. The applicant gave option to work in the Track Machine Organisation. Before he came to T.M.Organisation, he was working as Telecom Maintainer in his parent department. After he came to the T.M.Organisation, a selection was conducted for the post of Chargeman in the pay scale of Rs.425-700 and in the written and viva-voce tests, the applicant was selected and appointed as Chargeman. The applicant has been continuously working in the post of Chargeman from 1977. While so, in 1980 he was selected to the post of Assistant Foreman (Foreman Gr.II) in the pay scale

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of Rs.550-750 after passing written and viva-voce tests and appointed as such on regular basis, with effect from 29.11.1980.

12. When the applicant was working as Chargeman ~~xxxxxxxx~~ in the T.M.Organisation, a test was conducted in his parent department to the next higher grades of the posts of Telecommunication Maintainer 'A' and Telecommunication Inspector in the scale of pay of Rs.380-560 and Rs.425-700 respectively and the applicant was not called for any such trade tests and one of his juniors viz., Mr.S.R.N.Chowdhury was empanelled and promoted to the said post in the grade of Rs.425-700 vide proceedings dated 23.9.1981 whereas the applicant was occupying the post in the pay scale of Rs.550-750 at that point of time by virtue of his option to come over ~~xxx~~ to the T.M.Organisation in 1977 itself. The applicant was selected in the T.M. Organisation for the posts of Chargeman and Assistant Foreman (Foreman Gr.II) after qualifying ⁱⁿ the written and viva-voce tests. It is a fact that his parent department did not inform of the trade tests for the posts of Telecommunication Maintainer 'A' and Telecommunication Inspector. If the parent department informed of the test, to appear for the tests that took place in 1980, there will not be any grievance for the applicant because since 1977 he has been working as Chargeman in T.M.Organisation itself.

It is not proper at this stage to ask him to go and appear for the trade tests in his parent department

for selection to the posts of Telecommunication Maintainer 'A' and Telecommunication Inspector in the scales of pay of Rs.330-560 and Rs.425-700 respectively.

13. The applicant joined as Chargeman in 1977 in T.M.Organisation and he was promoted by way of a regular selection ~~xx~~ to the post of Assistant Foreman (Foreman Gr.II) in the pay scale of Rs.550-750 with effect from 29.11.1980 and at this stage to ask him to go to the parent department and get his promotion as ~~Chargeman~~ Telecommunication Maintainer 'A' and Telecommunication Inspector in the pay scale of Rs.380-560 and Rs.425-700 for getting the benefit of seniority in the T.M.Organisation, is not proper because he was already selected in 1977 as Chargeman and in 1980 as Foreman Gr.II. The relative seniority of the staff should be decided based on the length of service in the specific grade and the applicant was regularly selected in the posts of Chargeman and Foreman Gr.II and he has been working as such for a long time. So, the applicant is entitled to get the benefit of his service from the date of his appointment to the posts. Moreover, the applicant opted to remain in the T.M.Organisation and he is not willing to go back to his parent department. So, his length of service has to be considered from

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the date of his appointment to the respective posts and the impugned proceeding No.P(E)535/TM(Office Order No.E 645/88), dated 28.11.1988 is liable to be quashed and it is accordingly quashed. The applicant is entitled to be treated to have been appointed to the posts of Chargeman and Assistant Foreman (Foreman Gr.II) from the dates when he has been working in the said posts, on a regular basis.

14. The application is accordingly allowed. There is no order as to costs.

MS

R.Balasubramanian

(J.NARASIMHA MURTHY)
Member (Judl.)

(R.BALASUBRAMANIAN)
Member (Admn.)

Dated: 19/8/1991

Registrar

S 21/8/91

To

1. The General Manager, Union of India, S.C.Rly, Railnilayam, Sec'bad
2. The Chief Personnel Officer, S.C.Rly, Railnilayam, Secunderabad.
3. The Chairman, Railway Board, New Delhi.
4. One copy to Mr.G.Ramachandra Rao, Advocate
3-4-498, Barkatpurachaman, Hyderabad.
5. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
6. One copy to Hon'ble Mr.J.Narasimha Murty, Member (J)CAT.Hyd
7. One spare copy.

pvm

VSN

15/8/91