

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 444/89
T.A. No.

198

DATE OF DECISION 2 April, 1992

Sri P.Suryanarayana Petitioner

Sri K.Sudhakar Reddy Advocate for the Petitioner(s)

Versus

General Manager, South ~~Central~~ Respondent
Central Railway, Sec'bad

Sri N.R.Devaraj, Addl.CCSC Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R. BALASUBRAMANIAN, MEMBER (ADMN)

The Hon'ble Mr. T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

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 Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

(HRBS)
M(A)

(HTCR)
M(J)

(sh)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO. 444/89

DATE OF JUDGEMENT 2nd April, 1992

BETWEEN

Sri P. Suryanarayana

.. Applicant

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1. General Manager,
South Central Railway
Secunderabad.

2. The Chief Personnel Officer(Engg.)
South Central Railway
Secunderabad .. Respondents

Counsel for the Applicant : Sri K.Sudhakar Reddy

Counsel for the Respondents: Sri N.R.Devaraj, Addl.CGSC

CORAM:

THE HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER(ADMN)

THE HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

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JUDGEMENT OF THE DIVISION BENCH AS DELIVERED BY
THE HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This is an application filed by the applicant herein under Section 19 of the Administrative Tribunals Act, [redacted]

- i) to direct the respondents to regularise the services of the applicant in the post of I.O.W. Gr.I from the date of his initial promotion i.e. 27.4.1987
- ii) to direct the respondents to pay the salary attached to the post of IOW Gr.I along with arrears due from 27.4.1987 till 25.5.89

and pass ~~such~~ such other orders as may deem fit and proper in the circumstances of the case.

2. According It will be convenient to take up the first prayer of the applicant, in the beginning. According to the applicant, he was appointed as his I.O.W.Gr.I as per seniority on adhoc basis w.e.f.27.4.1987. As per recruitmentrules, the applicant's selection was held during the year 1988 and the applicant was empanelled to the post of IOW GR.I on 23.12.88 by an order dated 9.1.89. It is the case of the applicant that till he was regularly appointed on the basis of his selection during the year 1988 on promotion from the post of IOW GR.II to IOW Gr.I, that the adhoc service as IOW GR.I from the date of his adhoc promotion i.e. 27.4.1987 had got to be counted and taken into consideration and on that basis his seniority had to be fixed in the post of IOW Gr.I. In this context, it will

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be worthy to note the decision ~~of~~ the Full Bench Judgement reported at Page 137 of Full Bench Judgements of CAT (1989-1991) - R.D.Gupta and others (applicant) Vs Union of India and others (Respondents) wherein it is laid down as follows:

".....If an employee has been duly promoted after the DPC had found him fit for promotion, that period will count even if his promotion may be termed as 'adhoc' or temporary or officiating. For determining the actual date of promotion, the mere fact that an employee has been appointed on an adhoc basis by way of stop-gap arrangement de hors the recruitment rules, will have to be ignored...."

Hence, the fact that the applicant had been promoted on regular basis as IOW Gr.I as per the recruitment rules in the selection that was held in 1988 is not in dispute in this case. So, in view of the Full Bench Judgement of CAT cited above, the learned counsel appearing for the applicant did not press for the relief ~~one~~ ~~one~~ prayed for. Hence, with regard to the first prayer, this OA is liable to be dismissed.

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3. With regard to the 2nd prayer of the applicant, it will be pertinent to state certain facts, hence we now proceed to narrate the facts.

4. The applicant herein, at present is working as "Inspector of Works" Railway Electrification, Kazipet, South Central Railway. According to the applicant, the respondent authorities as per the Office Order No.B/W 349/VI/IOWS/Staff dated 27.4.1987, promoted the applicant as IOW Gr.I from IOW Gr.II. Consequent to the promotion, the applicant was posted under CE/CP/SC against an existing vacancy along with his juniors. As per the case put forth by the applicant in the OA, the applicant thereafter was posted at Rail Coach Factory, Kapurthala in the capacity of IOW Gr.I on 22.5.1987. Thereafter, the applicant was repatriated to South Central Railway and was posted as IOW Gr.II. It is the case of the applicant that after the applicant's repatriation from Kapurthala, that his juniors were working in the post of IOW Gr.I and that ~~the applicant was made to work as IOW Gr.II and hence, the applicant is entitled to arrears of six salary from 27.4.1987 upto the date he was regularly promoted as IOW Gr.I.~~
~~the applicant was made to work as IOW Gr.II and hence, the applicant is entitled to arrears of six salary from 27.4.1987 upto the date he was regularly promoted as IOW Gr.I.~~

5. It is the case of the respondents that when the applicant left the South Central Railway ~~without assuming~~ the charge of IOW Gr.I and hence, the applicant had left the SC Ry only as IOW Gr.II and after repatriation he had been absorbed only in the Post of Gr.II, the post which he was working prior to his transfer to Kapurthala.

6. It is significant to note the pleading of the OA of the applicant at page 2/wherein he had stated as follows:

"The Respondent authorities through their office order No.B/W 349/VI/IOWS/Staff as IOW Gr.I dated 27.4.1987 promoted the applicant as IOW Gr.I Gr. Rs.2000-3000 RSRP and posted under CE/CP/SC, against an existing vacancy along with his juniors and thereafter posted at "RAIL COAH FACTORY" KAPURTHALA, in the capacity of IOW Gr.I (Rs.2000-3200) on dt.22.5.1987. Two advance increments also granted in favour of the applicant from the date of promotion as IOW Gr.I Rs.2375-3500/-."

The said advance increments to the applicant are granted at Rail Coath Factory, Kapurthala, as incentive increments.

The applicant seems to have made [redacted] the railway authorities at Kapurthala [redacted] believe that he had been working as IOW GR.I when he left South Central Railway even though the applicant had not worked as IOW GR.I when he left South Central Railway to Kapurthala. The applicant had been posted in the [redacted] capacity of IOW GR.I(Rs.2000-3200) at Kapurthala. This posting at Kapurthala had been given as a consequence as the applicant had made [redacted] them believe that he had worked as IOW Gr.I in South Central Railway. During the course of the hearing,

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the learned counsel appearing for the applicant produced a photostat copy of the proceedings signed 4.5.87 said by AE/RW/Rajamundry dated ~~nil~~. In the proceedings it is mentioned that the applicant assumed charge as (1.5.87) IOW Gr.I on the date/indicated against him. In the counter filed by the respondents, it is specifically pleaded at Page 4 as follows:

"The respondents deny that the applicant discharged the duties attached to IOW Gr.I from 27.4.87 to 4.12.87. It is submitted that instead of carrying out the promotion order dated 10.4.1987, the applicant joined the RCF/Kapurthala on 20.5.87. On repatriation to SC Railway, he was posted as IOW Gr.II, scale Rs.1600-2660(RSRP) from which post he went on transfer to Kapurthala on 4.12.87."
....."

So, in view of the said pleadings, we thought it fit to peruse the concerned records relating to the ~~.....~~ promotion of the applicant from Grade II to Gr.I Iow, and summoned the ~~.....~~ records. A perusal of the records disclose that the applicant had never assumed charge as IOW Gr.I inspite of the promotional orders to him as IOW Gr.I. Hence, it is quite evident that the applicant had left South Central Railway only as IOW Gr.I but not as IOW Gr.I. No doubt, as already pointed out, the proceedings of the AE/RW/Rajamundry dated 4.5.87 indicate that the applicant assumed the charge of IOW GR.I w.e.f. 1.5.87, but the ~~re~~ original/records that ~~was~~ produced before us ~~does~~ not support the content of the applicant that he had assumed charge as IOW Gr.I w.e.f. 1.5.87, in South Central Railway before leaving for Kapurthala.

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In view of this position, the contention of the applicant that he had worked as IOW Gr. I before leaving for Kapurthala cannot be accepted.

Even though the applicant had been promoted as IOW Gr.I before leaving for Kapurthala and even though he had worked as IOW Gr.I at Kapurthala after making the authorities at Kapurthala believe that he had worked as IOW Gr.I in the South Central Railway, the applicant does not have any vested right to get posted as IOW Gr.I in South Central Railway on his return from Kapurthala as the applicant had never worked as ICW Gr.I before the applicant left to Kapurthala. No doubt, at the time of his return from Kapurthala the juniors to the applicant were working as IOW Gr.I. No fault can be found with the authorities in not considering the case of the applicant to appoint him as IOW Gr.I on return from Kapurthala in view of the conduct of the applicant in leaving the South Central Railway even without assuming charge as ICW Gr.I and joining in the post of IOW GR.I at Kapurthala making the authorities at Kapurthala believe that he had been relieved as IOW Gr.I from South Central Railway. So, as could be seen, as the applicant had not worked as ICW Gr.I, on adhoc promotion and left for Kapurthala and got posted himself as IOW Gr.I and his contention that he had worked as IOW Gr.I before leaving for Kapurthala from South Central Railway is found to be false, we are not prepared to interfere with the orders of the respondent in posting him as ICW Gr.II after ~~return~~ from Kapurthala. To say the least, the applicant has not approached this Tribunal with clean hands. It is needless to point out that, from this Tribunal, a government servant will be entitled to relief

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only if he approaches with clean hands. From the acts of the applicant, it is quite evident that he had not approached this Tribunal with clean hands. So, it will not be fair for this Tribunal to interfere with the action of the respondents in posting the applicant as IOW Gr.II after ~~xx~~ his return from Kapurthala. Further, the applicant will not be entitled for any arrears of pay in the promotional post of ICW Gr.I as the applicant had not worked in the said promotional post ~~On~~ the Principle of 'No work; No pay'.

Hence, we see no merits in this OA and this OA is liable to be dismissed, and is accordingly dismissed. The parties are directed to bear their own costs.

R.B. Subramanian

(R. BALASUBRAMANIAN)
Member(A)

T.C. Chandrasekhara Reddy

(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated:

April 3, 1992

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Dy. Registrar (J)

To

1. The General Manager, S.C.Railway, Secunderabad.
2. The Chief Personnel Officer (Engg) S.C.Rly, Secunderabad.
3. One copy to Mr.K. Sudhakar Reddy, Advocate, CAT.Hyd.
4. One copy to Mr.N.R.Devraj, ~~Asst.~~ SC for Rlys, CAT.Hyd.
5. One spare copy.

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