

(43)

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 759489  
T.A. No.

Date of Decision :

B.K.Rao

Petitioner.

Mr. J.V. Lakshmana Rao

Advocate for the  
petitioner (s)

The Secretary, Min. of TeleVersus  
Communications, New Delhi and 2 others.

Respondent.

Mr. N.R. Devraj.

Advocate for the  
Respondent (s)

CORAM :

THE HON'BLE MR. A.B. GORTHI, MEMBER (ADMN.)

THE HON'BLE MR. T. CHANDRASEKHARA REDDY, MEMBER (JUD L.)

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)

  
(HABG)  
M(A)

  
(HTCSR)  
M(J)

44

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.759/89

Date of Judgement: 21-10-1992

BETWEEN:

B.K.Rao

.. Applicant.

A N D

1. Union of India, rep. by its  
Secretary, Ministry of Tele-  
communications, Sanchar Bhavan,  
New Delhi.

2. Chief General Manager,  
Telecommunications,  
Andhra Pradesh Circle,  
Hyderabad.

3. The Telecom District Manager,  
Vijayawada, Krishna Dist. A.P.

.. Respondents.

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Counsel for the Applicant

.. Mr.J.V.Lakshmana Rao

Counsel for the Respondents

.. Mr.N.R.Devraj,

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CORAM:

HON'BLE SHRI A.B.GORTHI, MEMBER (ADMN.)

HON'BLE SHRI T.CHANDRASEKHARA REDDY, MEMBER (JUD L.)

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✓

P10

Judgement   of the Division Bench delivered  
Hon'ble Shri A.B.Gorthi, Member (Admn.)

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The applicant who joined the Telegraph Department on 22.10.1956 claims his promotion as Supervisor on the ground that his seniority for promotion should reckon w.e.f. that date. The respondents however fixed his seniority w.e.f. 5.3.1961 because the applicant went on mutual transfer to Vijayawada Division in place of one Sri V.Ramakrishna Rao who joined the service as a Telephone Operator w.e.f. 5.3.1963.

The applicant was serving under the Divisional Engineer, Telegraphs, Hyderabad and was posted as an Operator at Secunderabad Telephone Exchange. As the policy of Feminisation of Secunderabad Exchange was to be implemented, the male employees of the Exchange were asked to give their option for appointment else-where. The applicant along with another Operator opted for Vijayawada Division. His option was accepted but he could not be posted to Vijayawada as there were no vacancies there. Having been waited till 1970, the applicant sought mutual transfer to Vijayawada Division, Under Rule 38 of P&T Manual Vol.IV. Accordingly he was transferred to Vijayawada on 14.2.1970 in place of Sri V.Ramakrishna Rao. In the year 1974 his juniors were promoted as Supervisors. Therefore the applicant represented his grievance to the concerned authorities. The department clarified that his seniority was brought down on account of his mutual transfer to Vijayawada Division. In the meantime the Supreme Court held in a batch of Civil Appeals that the seniority of those candidates who were appointed between 22.6.1949 to 21.2.1959 should be fixed on the basis of the date of their entry into the department. In the process of implementing the directions of the Supreme Court, the respondents fixed the seniority of the applicant at serial No.265-A in the Gradation list of Telephone

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Operators vide communication dated 3.7.1979. In other words the applicant's seniority was fixed on the basis of his date of entry into the service. Later on, the respondents revised the seniority of the applicant and brought <sup>down</sup> his name from serial No.265-A to S.No.941. Aggrieved by the said decision of the respondents the applicant approached the High Court of Andhra Pradesh through a W.P.No.1733/83. It was heard by this Tribunal as T.A.No.499/86 and the respondents were directed to give an opportunity to the applicant and thereafter take a decision with regard to his seniority. Consequently the applicant was served with a notice, his reply was considered and a final decision was taken by the respondents to place the applicant at serial No.941 in the gradation list. Hence this application.

The respondents have stated in the reply affidavit the reasons in justification of their decision to refix the seniority of the applicant. According to the respondents the applicant having come to Vijayawada Division on mutual transfer in the place of Sri V.Ramakrishna Rao, he (the applicant) had to take the position as was occupied by Sri V.Ramakrishna Rao in the gradation list. As Sri V.Ramakrishna Rao was appointed as Telephone Operator on 5.3.1963 in Vijayawada Division. The applicant's seniority had to be reckoned w.e.f. that date.

For a proper appreciation of the issue involved Rule 38 of the P&T Manual Vol.IV needs critical examination. Paras 1 to 3 of Rule 38 relevant to the facts of this case are produced below:

Transfer at one's own request:

"Transfer of officials when desired for their own convenience should not be discouraged if they can be made without injury to the rights of others. However, as a general rule, an official should not be transferred from one unit to another

either within the same circle, or to accomodate an official borne on one gradation list into another gradation list without injury to the other members in that gradation list such transfers should not ordinarily be allowed except by way of mutual exchange, if in themselves inherently unobjectionable should be allowed, but in order to safeguard the rights of men borne in the gradation lists of both offices, the official brought in should take the place, in the new gradation list; that would ~~be~~ have been assigned to him had been originally recruited in that unit or the place vacated by the official with whom he exchange appointment, which ever is the lower.


Note: Transfer of officials who are not permanent in the grade, may indeserving case, be permitted with the personal approval of the Head of Circles/ Administrative office.

When an offician is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order is issued. Including also all persons who have been approved for appointment to that grade as on that date.

If the old and new units from part of wider unit for the purpose of promotions to a higher cadre, the transferee (whether by mutual exchange or otherwise) will retain his original seniority in the gradation list of the wider unit.\*

Under Rule-38(1) an official who is allowed, mutual transfer should take the place, in the new gradation list, that would have been assigned to him had he been originally recruited in that unit or the place vacated by the official with whom he exchanges appointment, which ever is lower. The contention of the learned counsel for the respondents is that in compliance with this Rule the seniority of the applicant has been correctly fixed because he was given the same seniority position as was held by Sri V. Kamakrishna Rao. Learned counsel for the applicant, on the otherhand, urged before us that the case of the applicant is more appropriately covered under Rule 38(3) because both Hyderabad Division and Vijayawade Division fall under one and the same Circle, i.e. A.P. Circle. Under Rule 38(3) if the old

Copy to:-

1. Secretary, Ministry of Telecommunications, Union of India, Sanchar Bhavan, New Delhi.
2. Chief General Manager, Telecommunications, A.P.Circle,Hyd.
3. The Telecom District Manager, Vijayawada, Krishna Dist, A.P.
4. One copy to Sri. J.V.Lakshmana Rao, advocate, flat No.301, Balaji Towers, New Bakram, Hyd.
5. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
6. Copy to Reporters and All Benches as per the Standard list of CAT, Hyd.
7. One copy to Deputy Registrar(Judl.), CAT, Hyd.
8. One ~~space~~ copy 

Rsm/-

*Handwritten signature and initials at the bottom left corner.*

and the new units form part of the same Circle the transferee, whether by mutual exchange or otherwise, will retain his original seniority in the Circle gradation list.

In view of the rival contentions, the question hinges upon the fact whether <sup>or not</sup> the Hyderabad Division and Vijayawada Division came under the A.P.Circle. Learned Senior Standing Counsel for the respondents stated categorically that the twin cities of Hyderabad and Secunderabad formed a distinct and separate <sup>district</sup> which did not form part of the A.P.Circle. Seperate gradation lists were maintained for Hyderabad District and for Andhra Pradesh Circle. From a perusal of the material before us we are inclined to accept this position as stated by Sri N.R.Devraj as correct. Accordingly Rule 38(3) of the P&T Manual would apply to the case of the applicant and his seniority would be the same and was held by Sri V.Ramakrishna Rao. The respondents therefore, have correctly determined the seniority position of the applicant.

As regards the contention raised in the application that in compliance of the judgement of the Hon'ble Supreme Court the seniority of the applicant must <sup>be</sup> reckoned w.e.f. 22.10.1956 i.e. the date on which he <sup>ed</sup> entered the service, there can be no two opinions about it. His seniority was <sup>to</sup> reckoned from 22.10.56 and would have been so reckoned but for his transfer on mutual exchange to Vijayawada Division and the application of Rule 38 (3) of the P&T Manual Vol.IV to the case of the applicant.

In view of the what is stated above, we find no merit in this application and the same is hereby dismissed. There shall no order as to costs.

(A.B.GORTHY)  
Member (Admn.)

(T.CHANDRASEKHARA REDDY)  
Member (Judl.)

Dated: 21 October, 1992

Dipty Reg. Str. (Judl.)

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759/87

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COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR A-B. Goshwami, A.M.

AND

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: 21/10/1992

ORDER/JUDGMENT:

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

in

O.A.No. 759/87

T.A.No.

(WR.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

