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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. No. 143/90

Date of decision: 28-9-93.

Between:

Mohd. Shamsher Ali

.. Applicant

and

1. Chief Personal Officer,
Personal Branch, Hqrs. Office,
S.C.Railway, Secunderabad.
2. S.C. Railway rep. by its
General Manager, Rail Nilayam,
Secunderabad.
3. Asst. Engineer (T.T.)..,
S.C. Railway, Vijayawada,
Krishna Dist.

.. Respondents

Appearance:

Counsel for the applicant : Sri K.R. Srinivas for

Counsel for the respondents: Sri D. Gopala Rao S.C for Rlys.

Coram:

The Hon'ble Mr. A.B. Gorthi, Member (Admn.)

The Hon'ble Mr. T. Chandrasekhar Reddy, Member (Judl.)

J u d g e m e n t

I As per the Hon'ble Mr. A.B. Gorthi, Member (Admn.) X

The applicant seeks a direction to the respondents to absorb him as a Foreman in the scale of Rs.700-900 (R.S.) w.e.f. 1-1-84 to 1-11-86 and as Shop Superintendent in the scale of Rs.840-1040 (R.S.) from 1-11-86.

2. The applicant was working as a Chargeman in the grade

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of Rs.425-700 (R.S.) in Hubli Carriage and Wagon Workshop. In 1976 he was selected for the ex-cadre post in the Track Machine Organisation (TMO for short), which was established in the year 1974 to inspect and maintain the railway tracks. The TMO became a regular unit of the establishment w.e.f. 1-11-86. In the TMO, he was selected and appointed as Asst. Foreman in the in the grade of Rs.550-750 (RS) in 1980. The applicant's contention is that he was holding an ex-cadre post in the TMO, and became due for promotion as Foreman in the cadre of Rs.700-900 in his parent unit i.e. Hubli Wagon Workshop in the year 1984. The parent department ignored the name of the applicant and promoted his juniors to the grade of Rs.700-900 (RS) w.e.f. 1-1-84. He came to know of his supersession in 1987 and immediately thereafter he represented to the authorities concerned. His representation was however rejected.

3. The respondents, in their reply affidavit have not disputed the material facts averred in the application. They however contended that the applicant having joined the TMO in the ex-cadre post of Chargeman-cum-Operator, was given promotion to the post of Asst. Foreman in the scale of Rs.550-750 in the TMO. Since the applicant was working against an ex-cadre post in the TMO, his lien was maintained in the parent department i.e. Wagon Workshop, Hubli. The applicant did become eligible for promotion to the post of Foreman/Jr. Shop Superintendent in the parent cadre w.e.f. 1-1-84 against an upgraded post. The promotion was not given to the applicant mainly because he was no longer in the parent department, but was working in the TMO eversince 1976. The TMO started functioning/regular basis w.e.f. 1-11-86 and accordingly it was declared as a separate cadre. On a

representation made by the applicant claiming promotion in the parent cadre w.e.f. 1-1-84 he was given an option to revert to the parent department in case he desired to be considered for promotions in the parent department. The applicant, however, opted to remain with the TMO only. In other words, the respondents contention is that as at the relevant time the applicant was not in the parent department, but was holding an ex-cadre post in the TMO, he was not eligible for consideration for promotion to the upgraded post w.e.f. 1-1-84.

4. The learned counsel for the applicant contended that the fact that the applicant was working in an ex-cadre post should not come in the way of his being considered for promotion in the parent cadre as and when the applicant became due for such promotion. Admittedly, there was cadre restructuring w.e.f. 1-1-84, and the applicant was eligible to be promoted w.e.f. that date had he remained in the parent cadre only. In short, the issue that requires to be considered and decided is whether on account of the fact that the applicant was working in an ex-cadre post, he would be disentitled to be considered for promotion within the parent cadre.

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5. We have shown the relevant record by the learned counsel for the respondents. When the applicant made a representation, the same was considered by the authorities concerned. On a detailed consideration of the applicant's case a note was put up by the concerned staff officer, relevant extracts of which are reproduced below:

" Since the post of Chargeman-cum-Operator in scale Rs.425-700 (RS) and Asst. Foreman in scale Rs.550-750 (RS) were treated as "Ex-cadre" he was entitled to be considered for promotions to higher grades in his turn in his parent cadre under Dy.CME/UBLS, till the caderisation of T.T. Organisation is finalised and he gets absorbed in the new Organisation based on his option whether to continue in T.T. Organisation or go back to his parent cadre under Dy.CME/UBLS.

The caderisation in T.T. Organisation has taken place on 1.11.86 and Sri Shamshir Ali has

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been absorbed as AFOM in scale Rs.550-750(RS) in that Organisation w.e.f. 1.11.86 based on his option vide O.O. No.144/87 issued under No.P(E) 529/TM dt. 15.9.1987.

He has represented to the Union that he has been denied the benefits of upgradation in his parent cadre in UBLS to grade Rs.700-900 (RS) due to reclassification of Supervisory cadre effective from 1.1.84, whereas his junior Shri E.N.Bunayan has been promoted to that grade.

The Union's letter at P-2 was forwarded to CWM/UBLS for remarks. CWM/UBLS in his remarks at pages 4 & 5 has stated that Shri Bunayan was junior to Shri Shamshir Ali and was absorbed as Chargeeman 'B' (Rs.425-700/RS) on completion of Apprentice Mechanic Training during 1975. Shri Bunayan was promoted as Chargeeman 'A' in scale Rs.550-750(RS) on 2.1.79 and Shri Shamshir Ali did not represent at that time against this promotion.

CWM/UBLS has further stated that generally lien is maintained in such cases for a period of 3 years or till the date the employee is absorbed in the unit to which he was transferred and that the upgradation benefit has come during 1986 giving effect from 1.1.84 i.e. after 7 years of transfer of Shri Shamshir Ali from UBLS to T.T. Organisation and hence he was not considered for promotion in UBLS.

The contention of CWM/UBLS is not correct since the post of Chargeeman-Cum-Operator to which Shri Shamshir Ali was selected in T.T. Organisation was declared as "Ex-cadre" post without fixing the time limit for its tenure and even the next higher post to which Shri Shamshir Ali was promoted i.e. Asst. Foreman in Grade Rs.550-750(RS) in T.T. Organisation was also declared as "Ex-cadre".

In the workshop promotions from Chargeeman 'B' to Chargeeman 'A' are made on seniority-cum-suitability basis as per avenue and the next promotion to the post of JSS (in scale Rs.700-900/RS) is made on selection basis. Hence Sri Shamshir Ali should have been given proforma promotion to the post of Chargeeman 'A' in scale Rs.550-750(RS) duly considering his suitability by CWM/UBLS from 2.1.79 i.e. the date from which his junior Shri Bunayan was promoted and should have been considered for further promotion to the post of J.S.S. in scale Rs.700-900(RS) w.e.f. 1.1.84 during 1986 consequent on restructuring of the cadre duly asking the employee to give an option whether he would like to come back to UBLS on promotion to grade Rs.700-900(RS) or like to continue in T.T. Organisation.

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The cases quoted by GM/UBL in his letter at page 5 pertain to staff who have gone from UBL to TPTY and RYPS on option basis and are not relevant in this case.

It could be seen from the above that Shri Shamshir Ali was absorbed in Track Machine Organisation w.e.f. 1.11.86 during Sept. 1987 and till then he was working against "Ex-cadre" Posts in that Organisation. Hence he cannot be deprived of the legitimate benefits due to him in his parent cadre till he was finally absorbed in T.M. Organisation."

6. Although the aforesaid note was meant for internal consideration only, we cannot help, but observing that the reasoning given therein is sound and correct. We have also not been shown any rule or instruction under which an employee working in an ex-cadre post automatically gets disentitled to be considered for promotion, even on proforma basis, within the parent cadre/organisation. The respondents should have, therefore, considered the case of the applicant for promotion to the post of Foreman/Jr. Shop Superintendent in the scale of Rs.700-900 (R.S.) w.e.f. 1-1-84, consequent on the restructuring of the cadre. Even the policy letter governing the restructuring would indicate that for the purpose of restructuring, the cadre strength as on 1-1-84 would be taken into account. There is no dispute that as on 1-1-84 the applicant was on the cadre of the Wagon Workshop, Hubli and was not yet regularly absorbed in the TMO.

7. In view of the above, we find that there is sufficient merit in the application, and the same deserves to be allowed. Consequently, the application is allowed with the following directions to the respondents:

(a) The case of the applicant will be considered for promotion to the post of FM/Jr. Shop Superintendent w.e.f. 1-1-84 consequent to the restructuring of the cadre. If the applicant is found suitable for such promotion, it shall be given to him on a proforma basis as per the extant instructions.

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(b) The respondents shall further consider the case of the applicant for promotion to the post of Shop Superintendent w.e.f. 1-11-86. For this purpose, a Review DPC may be held, ^{and} if the applicant is found suitable, ^{he} shall be promoted on a pro forma basis to the post of Shop Superintendent w.e.f. 1-11-86.

(c) The pay and allowances of the applicant will be notionally refixed together with consequential increments upto 22-8-91.

(d) On the basis of the notional refixation of pay he will be given the actual benefit of such refixation of pay w.e.f. 23-8-91 on which date he was actually promoted as Shop Superintendent in the TMO.

(e) The respondents are given six months time to comply with the above directions, and make payment of the arrears of pay and allowances.

8. The application is allowed with the above directions without costs.

Dated 28th September, 1993.
Dictated in the open court.

T. C.
(T. Chandrasekhar Reddy)
Member (Judl.)

A. B. Gosthi
(A.B. Gosthi)
Member (Admn.)

S. H. J. 10/93
Deputy Registrar

To

kmv

1. The Chief Personal Officer,
Personal Branch, HQrs, Office, S.C.Rly, Secunderabad.
2. The General Manager, S.C.Railway,
Railnilayam, Secunderabad.
3. The Asst.Engineer (T.T.) S.C.Rly, vijayawada, Krishna Dist.
4. One copy to Mr.P.v.S.S.S.Rama Rao, Advocate, 3-5-594
Himayatnagar, Hyd.
5. One copy to Mr.D.Gopala Rao, SC for Rlys. CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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16/9/93
S. H. J. 10/93

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER (A)
AND

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

AND

THE HON'BLE MR. E. T. TIRUVENGADAM : M (A)

Dated: 28 - 9 - 1993

ORDER/JUDGMENT:

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

in

O.A. No. 143/90.

T.A. No.

(W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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