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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.21/90.

Date of Judgement 31-3-1993

B.V.Ramana Murthy

.. Applicant

Vs.

1. Union of India,
Rep. by the Secretary
(Establishment),
Railway Board,
Rail Bhavan, New Delhi.
2. General Manager,
S.C.Rly., Rail Nilayam,
Secunderabad.
3. The Chief Personnel Officer,
S.C.Rly., Rail Nilayam,
Secunderabad.
4. The Chief Engineer(Open Line),
S.C.Rly., Secunderabad.
5. The Divl. Personnel Officer,
Central Railway, Sholapur.. Respondents

Counsel for the Applicant :: Shri G.V.Subba Rao

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

CORAM:

Hon'ble Shri Justice V.Neeladri Rao : Vice-Chairman

Hon'ble Shri R.Balasubramanian : Member(A)

X Judgement as per Hon'ble Shri R.Balasubramanian, Member(A) X

This application has been filed by Shri B.V.Ramana Murthy against the Union of India, Rep. by the Secretary(Establishment Railway Board, Rail Bhavan, New Delhi & 4 others under section 19 of the Administrative Tribunals Act, 1985 seeking a declaration that the applicant is entitled to be shown between serials 39 and 40 of the integrated seniority list of PWI etc., issued by the CPO/SCR/SC vide his proceedings No.P(E)612/SC/Cl.II dt. 8.11.89.

2. While working as PWI Gr.II in Sholapur Division, the Division was transferred from S.C.Rly., to Central Railway w.e.f. 2.10.77. Options from the staff were called and the

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applicant opted for S.C.Rly., on 30.10.77. He was, however, retained in the Central Railway for administrative ~~reasons~~

While so, his name was shown at serial 107 in the provisional seniority list of PWIs Gr.II and Gr.III issued by the 3rd respondent vide his letter dt. 31.3.78. In the said seniority list it had ^{even} been mentioned against his name in the last column that he was "working on Central Railway and opted to S.C.Rly.". His services ^w to the post of PWI Gr.II were confirmed w.e.f. 1.1.79 vide Office Order No.P/Engg.11/80 dt. 11.1.90 issued by the SPO Personnel Branch of the S.C.Rly., Secunderabad. The applicant represented on 13.4.80 to the CE/OL of the Central Railway through proper channel, requesting him to relieve ^{him} on transfer to the S.C.Rly. on the basis of his option dt. 30.10.77. He had also urged therein that if he was not relieved from the Central Railway he would ~~lose~~ ^{of promotions} his chances in the S.C.Rly. A copy of such a representation was also marked to the CPO, S.C.Rly., with a request to inform the applicant about the selections, if any, that were being held and also to make arrangements for his relief from the Central Railway. He has subsequently been sending a number of reminders in April, 1981, November, 1982, April, 1983, October, 1984 and March, 1985 urging relief from the Central Railway and transfer to the S.C.Rly. At last the Chief Track Engineer of the S.C.Rly., addressed a D.O. letter dt. 7.3.86 to the CE/Central Railway informing that the S.C.R has no objection to absorb the applicant in case he was relieved to the S.C.Rly. He was finally relieved by the DPO/Central Railway, Sholapur vide his letter No.SUR/2/Adm. dt. 24.6.86. In that letter it had been clearly stated that the applicant who opted for the S.C.Rly., could not be relieved earlier due to administrative reasons and hence he is eligible for all transfer facilities and option benefits. Thereafter, the applicant reported for duty on 26.6.86 forenoon to the CPO (Engg)/CR/SC along with the relief order issued

by the DRM/CR/Sholapur and prayed for posting orders. When he did not get any posting orders, he pursued the matter further with the CE/OL/SCR/SC. On this, the applicant was informed that unless he gives a letter stating that he would forego his right of seniority, promotion to higher grades etc., over his juniors in the S.C.Rly., who were ^{already} promoted to higher grades i.e., PWI Gr.I and CPWI etc., he cannot get posting orders. Although the applicant holds that such action was illegal, placed as he was in a precarious position he had no other option except to submit to such a condition. He accordingly gave a letter on 22.7.86 as required. He was posted as PWI Gr.II in the Office of the CE/OL/SCR/SC. Thereafter, he appeared for the test for promotion to the post of PWI Gr.I and in the selections held between 5.12.87 and 7.2.89 he was ^{placed} put on the top of the list vide letter No.P(E)/608/PWI/Gr.I/VII dt. 27.3.89 of the CPO/SCR/SC. In the meantime, the CPO/SCR/SC issued a provisional seniority list of PWI Gr.II as on 1.8.87 in which the applicant's name was shown at serial 46(A) i.e., between his immediate senior and junior i.e., Shri A.Satti Raju and Shri K.N.Murthy. However, his name was not included in the seniority list in the PWI Gr.I and CPWIs issued as on 1.8.87, in-as-much as he was not yet promoted to that post.

While his representations for restoration of his seniority in the category of PWI Gr.I were still pending the CPO issued the integrated seniority list dt. 8.11.89 which is the impugned list. In the integrated seniority list of 8.11.89 the applicant's name is not included. It is in this list that the applicant wants his name to be included between Shri A.Satti Raju and Shri K.N.Murthy. The applicant represented against it. Without even disposing of his representation, the CPO/SCR/SC had issued a letter dt. 18.12.89 fixing the date ^{for} of written examination for selection to Group-B services. Aggrieved, the applicant has approached this Tribunal.

3. The respondents have filed a counter affidavit and oppose the application. It is admitted that the Sholapur Division was transferred from the S.C.Rly., to the Central Railway Central w.e.f. 2.10.77. It is also averred that the Divl. Supdt., Sholapur vide his D.O. letter dt. 25.10.77 addressed to the 3rd respondent had advised that the applicant desired to remain in the Sholapur Division and that his option ^{for S.C.Rly.} ~~said~~ to have been exercised ~~to come to the S.C.Rly.,~~ had not been received in that office. However, ~~_____~~ his name was ^{erroneously} included in the provisional seniority list of PWI, published by the S.C.Rly., on 31.3.78 with even an indication that the applicant was working in the Central Railway and had opted for the S.C.Rly. The same mistake resulted in his confirmation also in the S.C.Rly., in the grade of PWI Gr.II. It is, however, contended that mere exercising of option to come over to the S.C.Rly., does not automatically confer any right upon the optee for transfer. One of the 3 conditions specified in the option form is very clear on this aspect that mere exercising of option does not ^{guarantee} ~~imply~~ that the transfer would be automatically effected. It is also stated that the applicant appeared for the promotional test held by the Central Railway in the years 1980, 1981, 1983 and 1986 but could not be placed on the panel. The applicant failed in securing promotion to the post of PWI in the Central Railway ~~_____~~
~~_____~~ in the years 1980, 1981, 1983 and 1986. It is stated on behalf of the respondents that it is only at that stage that the applicant approached the Chief Track Engineer, S.C.Rly., in 1986 and the transfer ^{to S.C.Rly.} ~~was effected.~~ ~~_____~~ The respondents contend that the applicant was absorbed in the Central Railway and assigned seniority amongst PWIs Gr.II of that Railway (Central Railway) (We do not find a copy of the seniority list supposed to have been enclosed in support of the contention either in the counter or ~~_____~~ in the records furnished by the respondents at the time of hearing). The

S.C.Rly., considered that the transfer in June, 1986 of the applicant from the Central Railway to the S.C.Rly., on the basis of option said to have been exercised was not in order. The CPO/Central Railway and the DRM/Sholapur (Central Railway) were advised accordingly and the applicant was directed to go back to the Central Railway vide Office Order No.P(E)676/PWI/BVR dt. 22.7.86. It is stated that the applicant at this stage submitted an application on his own volition that he was prepared to join as PWI Gr.II of the S.C.Rly., without any claim for seniority over his erstwhile juniors, who might have been promoted to higher grades. He had also declared that he was prepared to appear for the selection to the post of PWI Gr.I as and when conducted in the Central Railway and accepted the seniority below all those who had already been promoted. It is also stated that he pleaded for consideration ^{for posting,} ~~on~~ humanitarian grounds. Taking into account his pleadings, he was posted as PWI Gr.II in the 4th respondent's office vide order dt. 30.7.86 stipulating terms and conditions. The respondents deny that they compelled the applicant to give such a declaration. In 1987, a selection was conducted in the S.C.Rly., for promotion to the posts of PWIs Gr.I. The applicant was successful in that. It is their case that his claim for seniority between Shri A.Satti Raju and Shri K.N.Murthy is untenable since Shri A.Satti Raju and Shri K.N.Murthy were promoted long back in 1981 itself as PWI Gr.I and the applicant was selected for that post only in the year 1989. The applicant having become eligible for the post of PWI Gr.I only in the year 1989 could not come within the integrated seniority list prepared for consideration for the selection to Group-B services.

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4. The applicant has filed a rejoinder. We do not find anything new and worthwhile in this rejoinder which will alter the situation presented either by him in the affidavit or by the respondents in the counter affidavit.

5. We have examined the case and heard the rival sides. The applicant contends vigorously that he belongs to the S.C.Rly., while the respondents contend that he does not. As can be seen from what is to follow, it is not necessary to go into this controversy. That the applicant joined the S.C.Rly., on transfer from the Central Railway only in July, 1986 is not disputed. The relief order dt. 24.6.86 issued by the DRM/Sholapur states that the applicant was relieved in the same grade and capacity (PWI Gr.II) on transfer to S.C.Rly. So, when he joined the S.C.Rly., it was only as PWI Gr.II. The applicant alleges that agreeing to certain terms and conditions was insisted upon by the respondents as a pre-condition to his being accepted by the S.C.Rly. The respondents deny this allegation. Let us see what these conditions were:

- (i) He will not claim seniority over his erstwhile juniors in S.C.Rly., who are now working in higher grades.
- (ii) He should appear for selection to the grade of Rs.700-900 viz: PWI Gr.I as and when it is conducted (subject to his otherwise being eligible) and accept the seniority in Grade-II scale of Rs.550-750 (RS) below all those who have been promoted to the scale of Rs.700-900 (RS) by virtue of their promotion to that grade.
- (iii) He will not claim seniority over his erstwhile juniors in S.C.Rly., based on the date of his option.

This certainly is not a bottom seniority transfer as alleged by the applicant. He was not placed below PWI's Gr.II of S.C.Rly. The terms and conditions were only to ensure that PWI, Gr.II persons, who had already been promoted are not disturbed.

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The applicant had joined S.C.Rly., with his seniority as PWI Gr.II intact. For that matter, the terms and conditions agreed to by the applicant are not necessary. He can find a place in the gradation list of PWIs Gr.I only after he becomes one, after passing the required tests. The first occasion when he passed such tests was long after he joined S.C.Rly., on transfer. Shri A.Satti Raju and Shri K.N.Murthy with whom the applicant ties up his seniority had become PWIs Gr.I much earlier in 1981 itself. Therefore, the applicant cannot claim an equal place with them. He can get the due place in the gradation list of PWIs Gr.I only, based on his promotion to that grade. The applicant's contention that had he been transferred to S.C.Rly., in 1977 itself he would have become PWI Gr.I much earlier is hypothetical. He had unsuccessfully appeared for such tests on 4 occasions (it makes no difference if it is in Central Railway). It is difficult to believe that the applicant was not at all aware of when similar tests for promotion of PWI Gr.II to PWI Gr.I were being conducted in the S.C.Rly. It is not the case of the applicant that he wanted to appear for similar tests conducted by the S.C.Rly., and that promotion was denied to him on the plea that he was ^{not} working in the ~~S.C.~~ Rly. Such being the position, we are not impressed with the contention of the applicant that he was unjustly denied chances of promotion in the S.C.Rly.

6. Apart from lacking merits, the case is also hit by limitation. Even according to the applicant, while in the list of PWI Gr.II issued by the S.C.Rly., on 1.8.87 he was shown at the correct place [serial 46(A)], his name was not included in the gradation list of PWIs Gr.I published on the same day i.e., 1.8.87. His reluctant submission to the terms and conditions allegedly thrust upon him was even earlier in July, 1986. Yet, it was only in January, 1990 that this O.A. was filed. This certainly attracts limitation.

7. The case was reserved for judgement on 9.3.93. It was even posted for judgement on 23.3.93. However, based on a letter from the learned counsel for the applicant ^{received} before the date of pronouncement, the case was posted for 'For being mentioned' on 29.3.93 to entertain additional material facts and documents which the learned counsel for the applicant ^{stated he} could not file earlier and to hear the substantial point of fact and law which he insisted upon. The case was accordingly heard and the case was again reserved for judgement on 31.3.93.

8. In view of what is stated in para 6 and after hearing the learned counsel for the applicant ^{again} on 29.3.93 we dismiss the O.A. with no order as to costs.

Mr.

(V. Neeladri Rao)
Vice-Chairman.

R.Balasubramanian

(R.Balasubramanian)
Member (A).

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Dated: 31st March, 1993.

S. M. S. 3
Deputy Registrar (J)

To (Estt.)

1. The Secretary, /Union of India,
Railway Board, Rail Bhavan, New Delhi.
2. The General Manager, S.C.Rly, Railnilayam, Secunderabad.
3. The Chief Personnel Officer, S.C.Rly, Railnilayam, Secunderabad.
4. The Chief Engineer (Open Line) S.C.Rly, Secunderabad.
5. The Divisional Personnel Officer, Central Railway, Sholapur.
6. One copy to Mr. G.V. Subba Rao, Advocate, CAT.Hyd.
7. One copy to Mr. N.R. Devraj, SC for Rlys, CAT.Hyd.
8. One spare copy.
9. One copy for Library, Estt.

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CHECKED BY *VS* APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

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

AND

THE HON'BLE MR.K.BALASUBRAMANIAN :
MEMBER(ADMN)

AND

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

DATED: 31-3-1993

ORDER/JUDGMENT

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

in

O.A.No. 21/90

T.A.No. (W.P.No)

Admitted and Interim directions
issued.

Allowed.

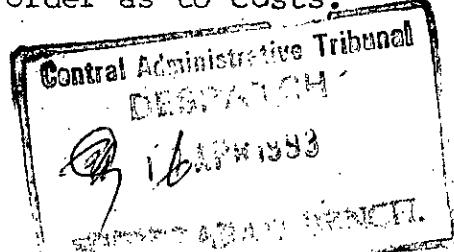
Disposed of with directions
Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.



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