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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD.

O.A. No.39/90

Date of order: 13-07-1993

Between

Sri T.M.Rao

.. Applicant

and

1. The Divisional Railway Manager
South Eastern Railway
Visakhapatnam
2. The Divisional Personnel Officer
South Eastern Railway
Visakhapatnam .. Respondents

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

Counsel for the Respondents:: Mr N.R.Devraj, Sr.CGSC

CORAM:

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

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

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

The applicant states that while he was working as Head Clerk in the scale of Rs.1400-2300 in South Eastern Railway, ^{he} was called upon to shoulder higher responsibility ^{as} as Office Superintendent Gr.II pending finalisation of the selection. When the selection was yet to be finalised, the applicant retired from the service on 30.4.1989. His claim in this application is for grant of the scale of pay admissible to the post of Office Superintendent Gr.II, from the date of his assumption of office as Office Superintendent Gr.II, till the date of his retirement together with all consequential benefits.

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2. The respondents in their brief counter affidavit, have denied the fact that the applicant was never ordered to officiate in the higher post of Office Superintendent Gr.II.

3. Mr G.V.Subba Rao, learned counsel for the applicant, has placed heavy reliance on a document dated 3.7.1988 purporting to have been signed by the Divisional Personnel Officer (DPO) to the effect that, Sri T.M.Rao, Head Clerk is being asked to should higher responsibility of Office Superintendent Gr.II, pending finalisation of the selection. The same memo dated 3.7.1988 states that orders for the promotion of the applicant will however be issued on finalisation of the selection. As the applicant, in obedience of the said order of the Divisional Personnel Officer, shouldered the higher responsibility and also performed duties in the post of Office Superintendent Gr.II till the date of his retirement the applicant is entitled to the pay scale that is admissible to Office Superintendent Gr.II.

4. The respondents, in support of their contention that the applicant never officiated as Office Superintendent Gr.II, annexed two noting sheets signed by the applicant on 27.2.1989 and 21.3.1989 wherein, the applicant had showed his designation as HC(Enact). Further, the respondents stated that one Sri K.D.Prasada Rao was senior to the applicant, and, therefore, the question of asking the applicant to shoulder the higher responsibility of Office Superintendent Gr.II, did not arise

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From this point of view, the respondents' contention is, that the note dated 3.7.1988 issued by the Divisional Personnel Officer is, without any authority or sanction.

5. Two questions come up for consideration. The first is, whether the applicant did perform duties in the higher post of Office Superintendent Gr.II; and, secondly, if so, whether he would be entitled to the pay scale of the Office Superintendent Gr.II. On the first issue, apart from the note dated 3.7.1988 issued by the Divisional Personnel Officer, there is nothing on record even to remotely suggest that the applicant did, in fact, officiate as Office Superintendent Gr.II. Even the note dated 3.7.1988 merely states that the applicant is being asked to shoulder higher responsibility as Office Superintendent Gr.II and does not categorically state that the applicant assumed duties in the higher post of Office Superintendent Gr.II.

6. As regards the second aspect, although no reference has been made either in the application or in the counter affidavit to any rule governing the same, we have noticed that paragraphs 645 to 648 of the Indian Railway Establishment Manual Volume I are relevant. These rules are on the same lines as Rule 49 of the Fundamental Rules. They inter alia stipulate that the General Manager of the Indian Railways or an officer of the equal status may appoint a railway servant other than a railway servant in the senior administrative grade to hold temporarily or to officiate in more than one post and to fix the pay of the subsidiary post and the amount of compensatory allowance to be drawn, upto a

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maximum period of six months. The dual arrangement shall not be continued beyond six months under any circumstances. The said provisions of the Railway Establishment Manual further indicate that, in all such cases, there should be a formal appointment ^{order} to hold full charge of the duties of a higher post. In the instant case, admittedly, there is no such formal order issued by the competent authority.

7. Mr GV Subba Rao contends that the respondents wilfully withheld the issuance of the formal order of appointment in respect of the applicant. He therefore contends that as the applicant factually performed duties in the higher post, he should be entitled to the pay of the higher post. In support of his contention, he refers to the doctrine of 'Equal Pay for Equal Work' and states that as the applicant performed the duties of Office Superintendent Gr.II, he should be given the pay of Office Superintendent Gr.II.


8. The theory of 'Equal Pay for Equal Work' comes into play only where it is shown that the applicant is denied pay and allowances, as are being paid to others similarly situated. The question here being the entitlement of pay and allowances in the officiating post of Office Superintendent Gr.II, one has to look up to the relevant regulations on the subject. It is not the case of the applicant that others who were allowed to officiate are given the benefit of higher pay and that the applicant alone has been denied similar benefit. As already stated, the relevant rules do not cover a case of this

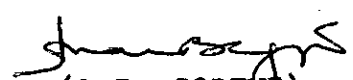
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nature under which the applicant could be said to be entitled for the pay in the higher post of Office Superintendent Gr.II.

9. The selection process admittedly, was not completed ~~prior to the date of retirement of the~~ applicant. It was completed after the applicant had retired from service and the respondents had denied the benefit of selection to the applicant. In our view, the respondents have committed no wrong in denying the benefit of the selection to the applicant because, as on the date of selection, the applicant was no longer in service.

10. In the result, we are unable to accede to the request made in this OA. OA is therefore dismissed. But there shall be no orders as to costs.


(T.CHANDRASEKHARA REDDY)
Member(Judl.)


(A.B. GORTHI)
Member(Admn)

Dated: 13th July, 1993.

(Dictated in the open court)

mvl


Deputy Registrar (J)

To

1. The Divisional Railway Manager, South Eastern Railway, Visakhapatna
2. The Divisional Personnel Officer, S.E.Railway, Visakhapatnam.
3. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
4. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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CHECKED BY

COMPARED BY

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. A. B. GORTY : MEMBER (AD)

AND

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

AND

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

Dated : 13-7-1993

ORDER/JUDGMENT:

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

in

O.A. No. 39/90.

T.A. No.

Admitted and Interim directions
issued

Allowed

Disposed of with directions

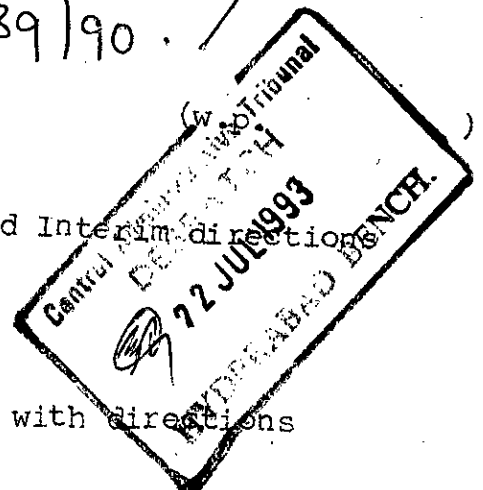
Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/ Ordered

No order as to costs.



7.15/7.13