

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

(31)

O.A. No. 231 of 1991

Date of Decision :

~~To be~~

Mr. A. Venkataramana Ramakrishnaiah Petitioner.

Mr. P. Krishna Reddy Advocate for the  
petitioner (s)

Versus

The Divl. Railway Manager (MG), Respondent.  
S.C. Railway, Secunderabad and 5 others

Mr. V. Bhimanna, SC for Railways Advocate for the  
Respondent (s)

CORAM :

THE HON'BLE MR. J. Narasimha Murthy, Member (Judl.)

THE HON'BLE MR. R. Balasubramanian, Member (Admn.)

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)

HJNM  
M(J)

HRBS  
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO.231 of 1991

DATE OF JUDGMENT: 30/6 July 1991

BETWEEN:

Mr. A.Venkataramana Ramakrishnaiah .. Applicant

AND

1. The Divisional Railway Manager (MG),  
South Central Railway,  
Secunderabad.
2. The Sr.Divisional Personnel Officer(MG),  
S.C.Railway,  
Secunderabad.
3. The Bridge Inspector,  
Hyderabad (MG) Division,  
S.C.Railway,  
Secunderabad.
4. The Birdge Inspector  
(MG) Division,  
S.C.Railway,  
Poorna.
5. Mr. Jangaiah,  
Rivettor,  
S.C.Railway,  
Secunderabad.
6. Mr. P.K.Chandra Kirshna Nair,  
Erector,  
S.C.Railway,  
Secunderabad.

.. Respondents

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COUNSEL FOR THE APPLICANT: Mr. P.Krishna Reddy

COUNSEL FOR THE RESPONDENTS: Mr. V.Bhimanna,  
SC for Railways.


CORAM:

Hon'ble Shri J.Narasimha Murthy, Member (Judl.)

Hon'ble Shri R.Balasubramanian, Member (Admn.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE  
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

This petition was filed by the petitioner for a relief to declare the order No.YP/Engg/131/Decasualisation Scheme-II, dated 5.11.1990 issued by the 2nd respondent transferring the applicant from the post of Erector Grade-III in the pay scale of Rs.950-1500 (RSRP) under Bridge Inspector (MG), Secunderabad (3rd respondent herein), to the same post to Bridge Inspector (MG), Poorna (4th respondent herein) and posting the 5th respondent in his place and also transferring the 6th respondent as Erector to work under the 3rd respondent, and the order of the 1st



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respondent No.YP/Engg/131/Art/BRI/CAT, dated 8.11.91 rejecting the representation of the applicant, as illegal and without jurisdiction and the same may be set-aside. The facts of the case are briefly as follows:-

The applicant joined Railways on 3.3.1978 as Casual Skilled Artisan-Erector/Revitter and posted to work under the 3rd respondent. Even though he attained temporary status and eligible for A.P. w.e.f. 3.3.1978 Scales/ he was given temporary status and paid A.P. Scales, from 15.4.1981 by an order dated 25.4.1981. The applicant was working as a Skilled Artisan for more than 12 years. In the Decasualisation Scheme towards 37½% quota meant for direct recruitment, the applicant was appointed as a Skilled Artisan in a regular establishment and retained under the 3rd respondent.

2. The 5th respondent was working as Khalasi Helper under the 3rd respondent. He was promoted as<sup>a</sup> Revitter and posted to work under the 4th respondent at<sup>oo</sup> Purna in an existing vacancy, but he refused to go on transfer to work under the 4th respondent. After completion of one year, he was offered promotion by an order dated 22.11.1988 and posted to Poorna to work under the 4th respondent. Once<sup>again</sup> he refused to go on promotion. There was no vacancy of the Skilled



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Artisan under the 3rd respondent as the only one post allotted to Hyderabad was filled up by appointing the applicant. In spite of the fact that the post of Skilled Artisan is a selection post and it has been filled up by holding regular trade test, the 5th respondent was once again promoted without any trade test as Skilled Artisan i.e., Revittor/Trolleyman in the pay scale of Rs.950-1500 (RSRP) and posted to work under the 4th respondent, by an order dated 30.4.1990. The order dated 30.4.1990 was also not given effect by the 5th respondent. Thereafter, the impugned order dated 5.11.1990 was passed posting the 5th respondent who was promoted on 2.5.1990 in the place of the applicant by transferring the applicant to Poorna to work under the 4th respondent. Aggrieved by the same, the applicant sent a representation on 8.11.1990 to the 1st respondent and also he caused a notice dated 12.11.1990 issued to the 1st respondent. As no reply was received from the respondents to the representation/notice, the applicant filed O.A.No.110 of 1991 before this Tribunal. At the stage of admission of the O.A., the Tribunal disposed of the application directing the respondents to dispose off the representation dated 8.11.1990 of the applicant. The 1st respondent, by an order dated 8.11.1990, which was received by the applicant on 8.3.1991, rejected the representation of the applicant and confirmed the order of transfer dated 5.11.1990. Hence, the applicant filed this application for the above said relief.



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3. The respondents filed a counter with the following contentions:-

The applicant was appointed as CMR Khalasi on 19.7.1978 in the pay scale of Rs.196-232 (RS). He was promoted as CMR Artisan in BRI Organisation in the pay scale of Rs.260-400 on adhoc basis on 15.4.1981. In the BRI Organisation, there were 6 CMR Artisans including the applicant eligible for absorption in the pay scale of Rs.950-1500 (RSRP) against 37½% quota earmarked for the CMR Artisans. The applicant was the juniormost CMR Artisan in the BRI Organisation.

4. In the Decasualisation Scheme, only six posts of BRI Artisans were sanctioned (Driver/Mechanic at Purna-1, Erector at Purna-1, Revetter Dollyman at Hyderabad-1 and at Purna-3). 3 posts were meant for rank promotees against 50% quota, 2 posts for CMRs against 37½% quota and 1 post for LDCE against 12½% quota. The two posts meant for CMRs have already been filled by absorbing the two senior-most CMRs i.e., S.No.2 and 3 in the seniority list and they were posted at Purna vide Posting Orders dated 21.4.1985

5. When a vacancy was available in January 1990 against 50% quota and there was no post under 37½%



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quota, the applicant was absorbed as Erector against the vacancy meant for the rank promotees to which Shri Jangaiah (5th respondent herein) should have been promoted as he became eligible in December 1989. The absorption of the applicant as Erector was due to oversight and immediately after the mistake has been noticed, the 5th respondent has been promoted. As on the date, the applicant has been transferred to Purna, and no junior to him was working at Secunderabad. The 5th respondent who was at Purna and transferred back to Secunderabad on request, is also senior to the applicant.

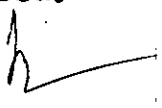
6. The contention of the applicant that only the post of Skilled Artisan allotted to BRI Organisation was filled, is not correct. The post against which the applicant was appointed due to oversight, was meant for the rank promotees against 50% quota. The 5th respondent while he was working as Khalasi Helper passed the trade test for Rivetter and refused promotion on two occasions and again he became eligible for promotion in December 1989 after expiry of the refusal period of one year. However, the 5th respondent could not be promoted in December, 1989 by mistake and he was promoted on 30.4.1990 and posted to Purna. On review, it has been found that he being senior, posted to Purna and the applicant being a junior retained at Secunderabad. The contention of the applicant that the post of Skilled Artisan

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is a selection post and that the 5th respondent who refused promotion on two occasions cannot be promoted automatically without holding trade test is not correct and the orders issued promoting the 5th respondent are in order.

7. The 6th Respondent (Shri P.K.Chandran Krishna Nair) who was the seniormost CMR Artisan was posted to Purna on 21.4.1989. Subsequently, he registered his name for request transfer to Secunderabad and the same was considered during November 1990 and he has been transferred to Secunderabad in place of the applicant who is <sup>he</sup> the junior most and cannot claim his retention at Secunderabad since two of his seniors are still at Purna. The 5th respondent (Shri Jangaiah) and the 6th Respondent (Shri P.K.Chandra Krishna Nair) are seniors to the applicant. S/Shri Veeran Kutty Pokker and P.Swamy Kutty Appu, CMR Artisans are seniors to the applicant at Purna. So, the contention of the applicant that, to facilitate a junior, a senior cannot be transferred, is not correct and the applicant being a junior most will have to carry out the transfer orders. So, there are no grounds for the petitioner to get the relief asked for and the application is liable to dismissed.

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8. Heard Shri P.Krishna Reddy, learned counsel for the applicant, and Shri V.Bhimanna, learned Standing Counsel for the Respondents/Railways. In this case, the question involved is not the seniority and also under which quota the applicant was promoted. Either by mistake or accidentally, the applicant was given promotion in some other quota. As per the respondents, the applicant has been continuing to work as a Skilled Artisan at Secunderabad. It is admitted by the respondents that Shri Jangaiah, the 5th respondent herein, while working as Khalasi Helper passed trade test for Revitter and he refused promotion ~~respondent to go to Purna~~ to go to Purna and he became eligible for promotion in December 1989 after expiry of refusal period of one year. However, he could not be promoted in December 1989 by mistake and he was promoted on 30.4.1990 and posted to Purna. But according to the applicant, the 5th respondent refused promotion for second time also when he was promoted in December 1989 and posted to Purna. The contentions of the respondents that by mistake they could not promote the 5th respondent in December 1989 and he was promoted only on 30.4.1990 and posted to Purna is a bare statement and there is no evidence. The <sup>5th</sup> respondents cannot keep quiet when <sup>was</sup> 5th he ~~respondent~~ overlooked for promotion in 1989 till 30.4.1990. The contention of the applicant is that,

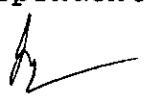
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in 1989 also the 5th respondent was promoted and posted to Purna and he refused the promotion in order to avoid going to Purna. This contention of the petitioner appears to be somewhat reasonable than the contention of the respondents. The contention of the respondents that due to oversight they could not promote the 5th respondent in 1989 cannot be accepted for the reasons stated above. Whatever it may be, this is not the question to be decided in this application. The reason for refusing promotion twice by the 5th respondent might be because he was posted to Purna and to avoid the posting at Purna, he might have refused his promotion. No ordinary prudent man who is working in a Department refuses his promotion not only once but twice except the fact that he wanted to avoid to go to Purna but not on any other ground, and for this reason he might have refused promotion. The contention of the respondents that after the 5th respondent was promoted and posted to Purna on 30.4.1990 they made a review of the issue and they found out that the applicant is junior to the 5th respondent and hence they retained the 5th respondent at Secunderabad and to accommodate the 6th respondent (Shri P.K.Chandra Krishna Nair) who made a request for transfer to Secunderabad the applicant was transferred to Purna and in his place the 6th respondent who is senior to the applicant

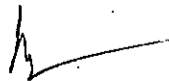


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and working at Purna made a request for transfer to Secunderabad. So, the respondents placed the 6th respondent in the place of the applicant stating that the applicant is junior most.

9. In this case, the 5th respondent who was promoted and posted to Purna, and after that the Department suo-moto reviewed the case of the 5th respondent and retained him at Secunderabad, and when the 6th respondent who made a request for transfer to Secunderabad who is senior to the applicant and to accommodate him, the applicant was transferred and posted to Purna. In making transfers, the question whether the applicant is junior or senior will not arise. Generally, the transfers are made on administrative grounds or on the public interest but not to accommodate a person who requests for transfer to a particular place. A person who is working at a particular place cannot be transferred on that account. Moreover, keeping the 5th respondent who refused promotion on transfer to Purna on two occasions only to remain at Secunderabad but in order to accommodate the 5th respondent to continue at Secunderabad, the Department invented a ground stating that the 5th respondent is senior to the petitioner, so they transferred the petitioner to

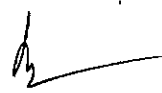


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Purna. ~~Long after the applicant was promoted as Sickled~~  
~~and the 5th respondent was promoted as Sickled~~  
~~and the 5th respondent was promoted as Sickled~~  
~~and the 5th respondent was promoted as Sickled~~  
~~and the 5th respondent was promoted as Sickled~~  
The 5th respondent was promoted  
and posted to Purna and he was bound to proceed to  
Purna and instead of that the Department retained him  
at Secunderabad on the ground that he was originally  
senior to the applicant and posted the applicant to  
Purna without any administrative grounds and without  
any public interest but to accommodate the 5th respon-  
dent and also to accommodate the 6th respondent only.  
The transfer of the applicant to Purna was made in  
order to accommodate the 5th respondent at Secunderabad  
but not on any other administrative ground or in public  
interest. Transfer of the petitioner to Purna is  
discriminative and malafide but not on any other  
genuine ground.

10. The Judgment cited by the learned Counsel  
for the Respondents/Department, viz., AIR 1991 SC 532  
(March Part), is not applicable in this case as the  
facts in that case and the facts in the present case  
are different. The transfer of the applicant was not  
on administrative grounds nor on public interest. It  
is only discriminative and malafide and hence the  
Judgment cited by the respondents is not applicable in  
this case.



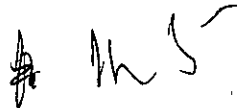
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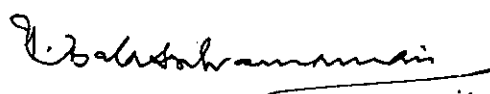
To

- 1) The Divisional Railway Manager (MG),  
South Central Railway, Secunderabad.
- 2) The Sr. Divisional Personnel Officer (MG),  
S.C. Railway, Secunderabad.
- 3) The Bridge Inspector, Hyderabad (MG) Division,  
S.C. Railway, Secunderabad.
- 4) The Bridge Inspector, (MG) Division,  
S.C. Ry. Poona.
- 5) one copy - to Mr. P. Krishna Reddy, Advocate. (AT. Hyd.
- 6) one copy - to Mr. V. Bhramanna, S.C. for Ry. (AT. Hyd.
- 7) one copy - to Hon'ble Mr. J. Narasimha Murthy, M (J) (AT. Hyd.
- 8) one spare copy.

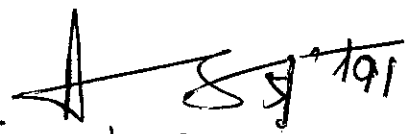
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11. The attitude ~~xxx~~ of the Department in mixing the seniority with the transfers and showing discrimination on the grounds of seniority is not proper. The seniority question can only be considered at the time of promotion, but not in cases of transfers. The 5th respondent when he was promoted and posted to Purna, he was bound to go and join but the respondents/Department instead of allowing him to go to Purna they wanted him to retain on the ground of seniority to move the applicant from Secunderabad. It is not proper on the part of the Department to make such a discrimination. If at all the Department wanted to accommodate the 6th respondent, they ought to have allowed the 5th respondent to go and join at Purna. To effect the request of the 6th respondent for transfer to Secunderabad, shifting the applicant from Secunderabad is not just and proper. So, we hold that the transfer of the applicant from Secunderabad to Purna is not proper and the contention of the respondents cannot be accepted. We further hold that the applicant is entitled to continue in his post at Secunderabad. We accordingly quash the impugned orders dated 5.11.1990 and 8.11.1991 rejecting the representation of the applicant as illegal. The application is accordingly allowed. There is no order as to costs.

  
(J. NARASIMHA MURTHY)  
Member (Judl.)

  
(R. BALASUBRAMANIAN)  
Member (Admn.)

Dated: 30th July, 1991.

  
Deputy Registrar

PPS  
7/8 (13)

TYPED BY  
CHECKED BY  
COMPARED BY  
APPROVED BY  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR V.C.

AND

THE HON'BLE MR. M(J)

AND

THE HON'BLE MR. J. NARASIMHA MURTY: M(J)  
AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATED: 30-7-1991

ORDER/ JUDGMENT

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

D.A. No. 231/91

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

Admitted and Interim directions  
issued.

Allowed. ✓

Disposed of with direction.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

Central Administrative Tribunal

DESPATCH

12 AUG 1991

HYDERABAD BENCH.

Checked  
7/8/91