

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 827/91.

Dt. of Decision : 22.6.94.

Mr. T.R. Rangarajan

.. Applicant

Vs

1. Union of India, rep. by
The Chief Personnel Office,
SC Rly, Rail Nilayam,
Secunderabad.
2. The Chief Engineer (open line)
SC Rly, Rail Nilayam,
Secunderabad.

.. Respondents.

Counsel for the Applicant : Mr. V. Krishna Rao

Counsel for the Respondents : Mr. V. Bhimanna, SC for Rlys.

CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

J U D G M E N T

I as per Hon'ble Sri R.Rangarajan, Member(Administrative)

The applicant joined Railway Service on 7.5.1957 as Mistry and he was promoted as Inspector of Works (I.O.W. for short) Gr.III with effect from 21.6.1972 in the scale of Rs.1400-2300 (R.S.) in the Civil Engineering Department of South Central Railway. He was promoted as I.O.W.Gr.II in the scale of Rs.1600-2660 (R.S.) and was transferred to Guntakal Division in terms of Office Order dt. 2.8.1985. He requested for his retention in Sec'bad as I.O.W. Gr.II on promotion due to family problems. When his request for his retention at Secunderabad could not be agreed to, he gave his acceptance to forego promotion for a period of one year with effect from 16.8.1985 vide his application dt. 26.11.1985 (Annexure R-1). After the expiry of one year, he was again promoted against the first available vacancy on 21.1.1987 and posted to Guntakal Division. Again, the applicant gave in writing dated 25.3.1987 refusing promotion for the second time also (Annexure R-2).

2. The second time bar on the promotion of the applicant had expired on 25.3.1988 and after that a vacancy of I.O.W. Gr.II had arisen on 19.1.1989 in the office of Chief Engineer, Open Line in Secunderabad; but the applicant could only be promoted against this vacancy on regular basis if he was placed on the select list once again after following the prescribed procedure. However, later on at the request of the Chief Engineer, the post was filled promoting the applicant on adhoc basis, by an

office order dt. 14.2.1990. He was selected and was placed on the select-list by office order dt. 28.2.1990 (page-3 of the material papers).

3. During the course of the period of bar on his promotion, Shri Vishweswara Rao and Sri S.V.Ramana who were juniors to the applicant were promoted as I.O.W. Gr.II on adhoc basis on 1.12.1987 and 31.3.1987 respectively against the vacancies caused due to retirement of S/Sri M.V.Anssari and P.L.Desai at Secunderabad. The contention of the applicant is that he should have been promoted as I.O.W. Gr.II with effect from 25.3.1988 and to that effect he represented on 2.4.1990 for his retrospective promotion with effect from 25.3.1988. This was not accepted to and it was informed to him by R-1 by letter dt. 28.8.1990 that it is not permissible to extend the benefits of promotion with retrospective effect (page-7 of the material papers).

4. Aggrieved by the refusal of the administration to give him retrospective promotion as I.O.W. Gr.II with effect from 24.3.1988, he has filed this O.A. for a declaration that he is entitled for his promotion as I.O.W. Gr.II from 24.3.1988 with all consequential benefits.

5. The respondents placed before us the contents of para-224 of Indian Railway Establishment Manual which talks about the effect of refusal of promotion for both selection posts and non-selection posts. The relevant para reads as below:-

"224. Refusal of promotion:

(1) Selection Posts: (1) The employee refusing promotion expressly or otherwise (i.e. that he does not give in writing his refusal but also does not join the post for which he has been selected) is debarred for future promotion for one year but he is allowed to be retained at the same station in the same post. Promotion after one year will be subject to continued validity of the panel in which he is, borne otherwise he will have to appear again in the selection.

E(NG)I-64 PM 1-66 dt. 21.1.1965 and E(NG)I-71/PM-1-106 dt. 15.12.71.

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(ii) at the end of one year if the employee again refuse promotion at the outstation, his name may be deleted from the panel, deletion being automatic requiring no approval from any authority and the administration may transfer him to out-station in the same grade. He will also have to appear again in the selection notwithstanding the fact that he is in the meantime, has officiated non-fortuitously against short term vacancy based on his panel position.

(iii) seniority will be as from the date of effect of promotion and he will be junior to all the persons promoted earlier than him from the same panel irrespective of his panel position. He will not, however, lose seniority to another employee promoted to the same promotion category during the one year period of penalty as a result of a fresh selection subsequently held.

E(NG) I-66 SR-6/41 dt. 14.10.1966.

II. Non-Selection Posts: (i) Such an employee should be debarred for future promotion for one year but not be transferred away from that station for one year if unavoidable domestic reasons exists. He should again be debarred for promotion for one year in case he refuses promotion again after the first year of debarr-
ment or refusal of promotion for second time, the Administration can however transfer him to outstation in the same grade and the employee has again to appear for a suitability test when his turn for promotion comes.

6. As per the above rule, when an employee refuses promotion, he is debarred from being promoted on the basis of the earlier select-list for a period of one year.

Employees in the select-list who are promoted during this period will rank senior to him. When he refuses promotion when ordered for the second time, he will be debarred for promotion for one more year. His refusal for the second time will make him ineligible for promotion on regular basis after the expiry of the ban period for the second time. He has to appear for selection once again and only if he is empanelled on the basis of that selection, he can be promoted on regular basis.

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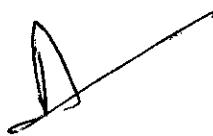
7. In the present case, the applicant refused promotion for the first time on 16.8.1985 when he was posted to Guntakal Division as I.O.W. Gr.II. When he was again promoted against a vacancy on 21.1.1987, he refused this promotion also for the second time by Annexure R-2 letter dt. 25.3.1987. Thus he was debarred for promotion on his second refusal upto 24.3.1988. As he had refused promotion two times his name had been deleted from the panel prepared some time in 1985. He was empanelled after his second refusal by the office order dt. 23.2.1990. He became eligible for regular promotion, only on the basis of the select list dt.28.2.90. However, on the basis of recommendations of Chief Engineer, he was promoted as I.O.W. Gr.II on adhoc basis from 14.2.1990.

8. The main contention of the applicant is that he should have been promoted immediately on 24.3.1988 when the period of debarring him for promotion for the second time is over. For this he relied on the Board's letter No. E(NG) I-82-PM.I/204 dt. 27.6.1986. He further contended that, he should have been promoted reverting his juniors S/Shri Visweswara Rao and S.V.Ramana who were promoted on adhoc basis during the period when he was debarred for promotion. A perusal of the above said letter will reveal that it only states that adhoc promotions should be resorted to only sparingly. It does not indicate that seniors who were debarred for promotion due to the refusal of their promotion should be promoted after the barred period is over by demoting their juniors who were promoted on adhoc basis in the meantime. The learned counsel for the applicant could not produce any material to show that a senior who has completed the period of bar on promotion due to his refusal to accept the promotion, has to be promoted after the bar period for promotion is over by demoting his juniors who were promoted on adhoc basis

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in the meanwhile. He could not even place before us any order/instruction/circulars etc. to show that he should be promoted even on adhoc basis if there is a vacancy immediately after the period of bar on promotion imposed on him is over. On the other hand, the learned Counsel for the respondents state that the rule~~s~~ as incorporated in para-224 of I.R.E.M. is equally applicable even for adhoc promotions. The respondent's counsel further submitted that the applicant can be regularly promoted only after he is empanelled on the basis of selection. But juniors who were promoted on adhoc basis during the period he was barred for promotion will not rank senior to him when regularly promoted. This fact is corroborated by the fact that his juniors S/Shri Vishweswara Rao and S.V.Ramana who were junior to him but promoted on adhoc basis during the period the applicant was debarred for promotion had been placed junior to the applicant in the regular select-list published on 28.2.1990 (page-3 of the material paper).

9. The learned counsel for the applicant had shown the necessity and the rule for ordering of adhoc promotions in the reply given to Question No.12 in Chapter-V of Bhattacharjee's Guide on Railway Establishment Rules. The answer to this question only shows that the adhoc promotions can be ordered by the competent authority to eligible employees when no panel or select-list is readily available. The answer does not indicate that an employee should be promoted as a matter of right on adhoc basis when the vacancy arises. This answer does not also indicate even obliquely that the applicant herein is to be promoted on adhoc basis immediately after the period



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of bar on promotion is over. Hence, the material in answer to this question on adhoc promotion is in no way helpful to the applicant.

10. S/Sri Wishweswara Rao and S.V.Ramana, juniors to the applicant were promoted with effect from ~~31.12.1987~~ and ~~31.3.1987~~ respectively. If at all the applicant challenges their promotion, he should have done so within the period of one year after their promotion, which he did not do so. He filed this O.A. only on 23.8.1991. Hence, this O.A. is also not maintainable because of laches.

11. In the result we find no merit in this O.A. and is liable only to be rejected. Accordingly, we do so. No costs.

DR
(R.Rangarajan)
Member(Admn.)

V.Neeladri Rao
(V.Neeladri Rao)
Vice Chairman

Dated 22 June, 1994.

Pratya
Deputy Registrar (J)u

To

1. The Chief Personnel Office, S.C.Rly, Union or India, Railnilayam, Secunderabad.
2. The Chief Engineer (Open Line) S.C.Rly, Railnilayam, Secunderabad.
3. One copy to Mr. v. Krishna Rao, Advocate, CAT.Hyd.
4. One copy to Mr. v. Srinivasa, SC for Rlys, CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. Copy to All Reporters as per standard list of CAT.Hyd.Bench.
7. One spare copy.

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Pratya
27/6/94

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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. G. RTKI : MEMBER(A)

AND

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

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER(A)

Dated: 22-6-1994.

ORDER/JUDGMENT:

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

in

O.A.No.

827/91.

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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22/6/94
93/6/94

