

(31)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD  
---

O.A. No. 905/91.

Dt. of Decision : 26-9-94.

Mr. D.S.R. Murthy

.. Applicant.

Vs

1. Union of India, rep. by  
the Secretary, Establishment,  
Railway Board, Rail Bhavan,  
New Delhi.
2. The General Manager,  
SE Rly, Garden Reach,  
Calcutta - 43.
3. Chief Personnel Officer,  
SE Rly, Garden Reach,  
Calcutta - 43.
4. Chief Admn. Officer (Construction),  
SE Rly, Dondaparthi,  
Visakhapatnam.

.. Respondents.

Counsel for the Applicant : Mr. V. Venkateswara Rao

Counsel for the Respondents : Mr. C.V. Malla Reddy, SC for Rlys.

CORAM:

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

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

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I AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,  
VICE-CHAIRMAN I

J U D G E M E N T

The applicant joined service as Bridge Inspector on 7-6-1960. A panel of 25 Assistant Engineers Class-II was published on 15-3-1977. The applicants' name was not included in the panel. But he was promoted as Asst. Engineer on ad hoc basis on 8-10-77 and he was regularised in that post on 20-12-78.

CR(W) 6501/78 was filed in the Calcutta High Court by some of the Bridge Inspectors contending that the Respondents were not justified in preparing the panel published on 15-3-77 for only 25 when there was notification for 80 vacancies in the grade of Assistant Engineers and the seniority has to be prepared on the basis of the marks obtained and not on the basis of the seniority <sup>from</sup> amongst the qualified candidates. The said Writ petition was allowed on 16-7-84. The Writ <sup>appeal</sup> ~~petition~~ thereon filed by the administration and the SLP thereon were dismissed. Based on the above judgement, the panel prepared was published on 12-8-85. Basing on the panel published on 12-8-85, the applicant was regularly promoted as District Engineer Sr. Scale on 23-8-85. When the panel published on 12-8-85 was challenged by alleging that it is not in accordance with the judgement of the Calcutta High Court and when the contentions therein were upheld, fresh directions were given by the Calcutta High Court and then a new panel was prepared and published on 8-10-85. Then the applicant



was shown at sl. No. 61. For want of sufficient vacancies in the grade of District Engineer, the applicant was reverted on 17-10-85. Again on the basis of objections by some, a fresh panel dated 21-2-86 was prepared and therein the applicant's name was shown at sl. 49. That panel was ultimately confirmed by the Calcutta High Court on 19-6-90.

3. Then the applicant was promoted <sup>as</sup> District Engineer on 18-7-90. As Shri N.H.S. Iyer was at sl. 50 of the list published on 21-2-86 and as he was promoted as District Engineer on 28-9-82, the applicant submitted representation dated 27-8-90 requesting the Respondents to give him promotion in the grade of District Engineer from 28-9-82, the date on which Shri N.H.S. Iyer who was the immediate junior as per the latest panel of Asst. Engineers was appointed as District Engineer and he was continuously in that post. When the said request was not considered, this OA was filed on 9-9-91 praying for a declaration that the applicant is entitled to the promotion to the post of District Engineer in the pay scale of Rs. 3,000-4,500/- with effect from 28-9-82. The applicant retired from service as District Engineer on 28-2-91 i.e. even before filing this OA.

4. The facts which were referred to above are not in controversy. It is seen from the latest panel of Asst. Engineers published on 21-2-86 which has become final that Shri N.H.S. Iyer was at sl. 50 while the applicant was at sl. 49. Till the panel was published on 21-2-86, the applicant could not have his <sup>known</sup> ranking in his seniority <sup>now</sup> vs. N.H.S. Iyer. ~~Shri-Viswas~~. Naturally, he could not <sup>have</sup> challenged

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his reversion on 17-10-85. He could not also claim the benefit of promotion even in 1982 as it was not shown that the applicant was senior to Shri N.H.S. Iyer. The applicant submitted the representation shortly after he was promoted as District Engineer. It is also seen that the applicant was promoted only after the panel published on 21-2-86 was confirmed on 19-6-90.

5. It is one thing to say as to whether there is delay in claiming promotion from the date on which his junior was promoted, and it is another thing to say as to whether there is delay in claiming the monetary relief. As it is a case where the applicant could not challenge the promotion of Shri N.H.S. Iyer in 1982 for by then it was not shown that the applicant was senior to Shri N.H.S. Iyer, and as ultimately the seniority list was finalised in 1990 only and as the applicant submitted the representation within 3 months from the date of that finalisation, it is just and proper to hold that the applicant is entitled to claim promotion from 28-9-82, the date on which Shri N.H.S. Iyer his immediate junior <sup>to</sup> was promoted as District Engineer. Subject ~~for~~ <sup>to</sup> consideration ~~is~~ as to whether he is entitled to the monetary benefit from that date. The normal rule is no work no pay. There was no bar for the applicant to claim promotion to the post of District Engineer after the latest panel was published on 21-2-86 when he knew that his immediate junior was working as District Engineer. The mere existence of a challenge by some in regard to the said panel did not debar the applicant to claim promotion. But he

To

1. The Secretary, Union of India, Establishment,  
Railway Board, Railbhavan, New Delhi.
2. The General Manager, SE Rlys, Garden Reach,  
Calcutta-43.
3. The Chief Personnel Officer, S.E.Rly,  
Garden Reach, Calcutta-43.
4. The Chief Admn. Officer (Construction),  
S.E.Rly, Dondaparthi, Visakhapatnam.
5. One copy to Mr.V.Venkateswar Rao, Advocate, CAT.Hyd.
6. One copy to Mr.C.V.Malla Reddy, SC for Rlys, CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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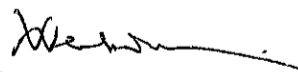
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has not chosen to do so. But as the representation was made shortly after he was promoted as District Engineer, it is just and proper to hold that he is entitled to the monetary benefit with effect from 18-7-90, the date on which he was appointed as District Engineer.

6. In the result, the pay of the applicant in the category of District Engineer has to be fixed on 28-9-1982 <sup>on the basis of promotion</sup> notionally and on that basis, his pay in the post of District Engineer on 18-7-90 has to be fixed, and the arrears of salary <sup>from</sup> on that date till the date of his retirement have to be paid to him. Further on the basis of the said fixation of the pay of the applicant in the grade of District Engineer, his pension has to be revised and the difference in pension and the commutation if any also <sup>have</sup> ~~has~~ to be paid, ~~if the applicant is entitled.~~ Any difference in the DCRG and also encashment of leave if <sup>arises</sup> ~~arises~~, on the basis of the fixation of the pay of the applicant in the grade of District Engineer in pursuance of this order, <sup>also have</sup> ~~the same~~ has to be paid. The OA is ordered accordingly. No costs. If the amounts due as per this order are not going to be paid by 31-3-95, the said amounts carry interest at 12% per annum from 1-4-95./




(R. RANGARAJAN)  
Member (Admn.)



(V. NEELADRI RAO)  
Vice-chairman

Dated the 26th September, 1994  
Open court dictation

NS

  
Deputy Registrar (S) CC

TYPED BY

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. R. RANGARAJAN : M.(J.D.N)

DATE: 26-9 - 1994

~~ORDER~~ JUDGMENT

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

C.A.No. 905/91 in

(T.A.No. (W.P.NO

Admitted and Interim directions  
Issued.

Allowed.

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected

No order as to costs.

*no spare copy*

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