

(49) (60)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD  
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O.A. No. 602/92.

Dt. of Decision : 22.7.94.

Mr. G. Kanaka Durgaiah

.. Applicant.

Vs

1. Union of India, rep. by  
the Secretary, Railway Board,  
Rail Bhavan, New Delhi.
2. The General Manager,  
SCRly, Rail Nilayam,  
Secunderabad.
3. The Chief Personnel Officer,  
SC Rly, Rail Nilayam,  
Secunderabad.
4. Sr. Divisional Personnel Officer,  
SCRly, Guntakal.
5. Sr. T.G. Murthy.

.. Respondents.

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

Counsel for the Respondents : Mr. N.V. Ramana, ~~Asst. Sec.~~ *for phys.*

CORAM:

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

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

DA.602/92

Judgement

( As per Hon. Mr. Justice V. Neeladri Rao, Vice Chairman )

Heard Sri G. V. Subba Rao, learned counsel for the applicant and Sri N.V. Ramana, learned counsel for the respondents.

2. R-5 joined service as Junior Clerk in Guntakal Division Personnel Branch on 28-2-1976. Later i.e. on 4-10-1979 the applicant joined as Junior Clerk in the same unit. R-5 volunteered for the post of typist, and then he was appointed as Junior Typist on 31-5-1979 in the office of AEN, Pakala. R-5 stated that before he was promoted as Senior Typist in 1980, he requested that he may be sent back to his parent cadre i.e. as Junior Clerk. <sup>and no</sup> ~~no~~ action was taken inspite of his repeated requests. But R-5 was promoted as Senior Typist on 16-8-1980. On 22-3-1982 R-5 made a representation praying for his transfer to Divisional office as Senior Clerk. Then he was informed by letter dated 30-6-1983 that he can request for transfer as Junior Clerk only and not as Senior Clerk, for the transfers are permitted as against Direct recruitment quota only, and as there was no direct recruitment quota for the posts of senior clerks (at present there is a direct recruitment quota for graduates in the cadre of senior clerks).

3. The applicant was promoted as Senior Clerk and he was given adhoc promotion as Head Clerk on 16-6-1986. R-5 was transferred as Senior Clerk and he was promoted as Head Clerk in the Guntakal Division by reverting the applicant as Senior Clerk on 17-6-1987. Then the applicant was going

on making representations protesting the action of authorities in showing the R-5 as senior to him. In the latter SC vacancy, the applicant was promoted as Head Clerk on 1-7-1988.

4. Alert notice was issued on 22-6-1992 for promotion to the post of OS Grade II in regard to the written examination to be conducted on 26-7-1992. When the name of the R-5 was in the said list and the name of the applicant was not included in that list, this OA was filed on 20-7-1992 praying for declaration that the promotion of R-5 as Head Clerk by recruiting the applicant as Senior Clerk is violative of Articles 14 and 16 of the Constitution and for a consequential direction to substitute the name of the applicant in the place of R-5 in the seniority list of Head Clerks.
5. Both the applicant and R-5 are SC candidates and they were being considered for promotion to the post of Head Clerk as against SC Roster Point.
6. As it is a case of R-5 who joined service as Junior Clerk, volunteering for the post of typist in pursuance of the notification calling for volunteers for the posts of typists from the inservice candidates and as on that basis R-5 was appointed as Junior Typist, transfer from the grade of Junior Clerk to the grade of Junior typist cannot be held as irregular. When it is a case where R-5 volunteered for the post of Junior Typist and when he was appointed as such, he had to be treated as an employee of the category of typists, and he cannot continue the lien in the category of Junior Clerks. If it is a case where such an employee wants retransfer to his original category, and if it is accepted he has to take the bottom seniority as per Para - 312 of I.R.E.M.
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7. This is a case where R-5 was transferred as Senior Clerk from the post of Senior Typist in 1987. By then the applicant was already Senior Clerk in the Guntakal Division. As such R-5 had to take his place below the applicant amongst SC candidates in the category of Senior Clerks. As it is already stated that the applicant was promoted, though on adhoc basis as Head Clerk on 16-6-1986 and as it is not stated that he was not suitable for promotion to the post of Head Clerk, and as promotion of the applicant to the post of Head Clerk was even earlier to the date of retransfer, R-5 and as it is a case of transfer of R-5 to the post of Senior Clerk, after the applicant was promoted to the post of Head Clerk, and as R-5 had to take his place among the SC Candidates, below the applicant in the category of Senior Clerks, the reversion of the applicant from the post of Head Clerk to the post of Senior Clerk for promoting R-5 as the Head Clerk is illegal.

8. As R-5 was transferred from the post of Senior typist to the post of Senior Clerk in 1987 i.e. about 7 years back, it is not proper to cancel that transfer and to give a direction to send him back as Senior Typist with effect from that date even if such transfer can be held as illegal, and hence it is not necessary for disposal of this OA to consider as to whether the transfer of R-5 as Senior Clerk in 1987 is regular or not.

9. As already observed the applicant was senior to R-5 in the category of Senior Clerk in the Guntakal Unit. Hence, the case of the applicant for promotion to the post of Head Clerk even before the case of promotion of R-5 for the said post is considered. Hence, the seniority list of Head Clerks has to be modified by inserting the name of the

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applicant in the place of R-5, and the name of R-5 in the place of the applicant. As such the applicant was within the zone of consideration for promotion to the post of OS Gr.II for which alert notice was given on 22-6-92. It is stated that as R-5 failed, he was not promoted as OS Gr.II.

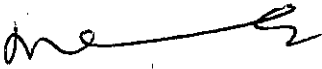
10. Pending disposal of this OA, the applicant was permitted to appear for the written examination conducted on 20-7-1992 for consideration for promotion to the post of OS Gr.II. The applicant was qualified in the written test and he was also permitted to appear for the viva-voce. But the result was not published in view of the order dated 20-7-1992 in MA.769/92 in this OA. As we held that the applicant was eligible for consideration for promotion to the post of OS Gr.II in regard to the SC vacancy which was in existence as per alert notice dated 22-6-1992, a direction has to be given for announcing the result on the basis of the performance of the applicant as per rules. In case he is included in the panel he has to be given promotion with effect from the date on which his immediate junior next to SC vacancy assumed charge with all consequential benefits including monetary benefits.

11. In the result, the OA is ordered as under :

In the Seniority List of Head Clerk, the name of the applicant had to be shown in the place of R-5 and that of the R-5 in the place of the applicant. The result on the basis of the performance of the applicant as per rules for consideration for promotion to OS Grade II posts as against SC vacancy as per alert notice dated 22-6-1992 has to be published. If the applicant is


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empanelled he has to be given promotion to the post of OS Gr.II with effect from the date the immediate junior to SC vacancy assumed charge as OS Gr.II with all consequential benefits including monetary benefits. No costs.

  
(R. Rangarajan)  
Member (Admn)

  
(V. Neeladri Rao)  
Vice Chairman

Dated : 22nd July, 94  
Dictated in Open Court

  
Deputy Registrar (J) CC

To

1. The Secretary, Railway Board, Union of India,  
Railbhavan, New Delhi.
2. The General Manager, S.C.Rly,  
Railnilayam, Secunderabad.
3. The Chief Personnel Officer, S.C.Rly,  
sk Railnilayam, Secunderabad.
4. The Sr.Divisional Personnel Officer,  
S.C.Rly, Guntakal.
5. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
6. One copy to Mr.N.V.Ramana, EC for Rlys, CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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