

(64)

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

C.A.NO. 971/92

DATE OF JUDGMENT: 28-8-95.

BETWEEN:

Mir Jahangir Ali.

.. Applicant.

and

1. The Chief Personnel Officer,
S.C.Rly, Railnilayam, Secunderabad.
2. The Divisional Railway Manager(P)
Hyderabad (MG) Division, S.C.Rly,
Secunderabad.
3. Mr.Narasimha.

.. Respondents.

COUNSEL FOR THE APPLICANT: SHRI P.Krishna Reddy.

COUNSEL FOR THE RESPONDENTS: SHRI D.Gopal Rao, SC for Rlys.
~~xx/xxxxxx~~

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN
HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

O.A.No.971/92.

(63)

Date: 28-8-1995.

J U D G M E N T

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

Heard Sri P.Krishna Reddy, learned counsel for the applicant and Sri D.Gopal Rao, learned Standing Counsel for the respondents.

2. The applicant herein joined as Junior Clerk in South Central Railway against Physically Handicapped quota by order dt.1.3.1980 at Secunderabad. He was promoted as Senior Clerk on adhoc basis and was posted to work under Assistant Engineer(N), M.G., Secunderabad. While he was working as adhoc Senior Clerk he was asked to appear for suitability test for promotion to the post of Senior Clerk. By order dt. 20.8.1986 it was declared that he was not eligible for promotion as he did not qualify in the suitability test. Consequently he was reverted to the post of Junior Clerk.

3. Questioning the above reversion, he had filed OA in this OA 373/86. An interim order dt. 4.11.1986 was passed by this Tribunal at the time of admission directing the respondents to continue the applicant as Senior Clerk. In the suitability test held in the year 1988 for promotion to the post of Senior Clerk, the applicant qualified himself for promotion and he was posted as Senior Clerk by order dt. 12.9.1988. OA 373/86 filed by the applicant was disposed of on 5.9.1989 as it was not pressed due to the fact that the applicant was regularly promoted in the meantime.

...3/-

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4. Seniority list of Senior Clerks in the Engineering Branch was published on 31.10.1988. The applicant herein was shown at Sl.No.60 in the said seniority list, whereas R-3 was shown at Sl.No.74. On the basis of that seniority list, the applicant was also given the special pay of Rs.70/- per month attached to the identified posts of Senior Clerk with effect from 27.8.1990. It is stated for the respondents that R-3 who joined as Junior Clerk on 20.6.1979 earlier to the applicant represented that he is senior to the applicant and he should be ^{shown} above the applicant of Senior Clerk in the seniority list. The above fact was found to be correct on examination of records, as R-3 joined as Junior Clerk earlier to the applicant and both were promoted as Senior Clerk on the same date. It is further stated for the respondents that the above mistake was rectified and the seniority position of the applicant was revised placing him below R-3 in terms of office order No.YP/121/Admn./Sr.Clerk/Engg. dt. 24.9.1991 after following the usual procedure of giving notice to the applicant before revising the seniority.

5. Both the applicant herein and R-3 though appeared for suitability test held in 1986 failed to qualify in the test, but one Sri T.Ravindranath Tagore and Smt.T.Parvati were qualified in the suitability test held in the year 1986 and were promoted as Senior Clerk earlier to the applicant and R-3. Accordingly they were shown senior to the applicant in the cadre of Senior Clerk though Sri T.Ravindranath Tagore and Smt.T.Parvathi were juniors to them in the cadre of Junior Clerk. When the mistake of showing the applicant as Senior Clerk only right from 1986, when he was promoted on adhoc basis from 1986 was detected and his seniority was revised in the cadre of Senior Clerk from the date he actually qualified for promotion to Senior Clerk in the year 1988. As per this revised seniority the applicant did not become eligible for getting the special pay of Rs.70/- as his turn has not come by then.

because of the fact that they qualified for Sr.Clerk post earlier to applicant and R-3.

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/as their
turn had
come for
grant of
spl.pay

~~to grant~~ him the special pay of Rs.70/-. His erst-
while juniors in the category of Junior Clerk Sri T.Ravindra
nath Tagore and Smt.T.Parvathi who had superceded the
applicant for promotion to the Senior Clerk category, ^{held in 1986,}
they were qualified in the suitability test/for promotion
to the post of Senior Clerk, were given the special pay
of Rs.70/-/and the special pay granted to the applicant
was withdrawn in terms of office order dt.29.5.1992
bearing No.YP/121/Admn/Engg/Spl.pay. ~~The~~ applicant, then
represented his case to R-1 on 22.7.1992 requesting for
revision of his seniority in the category of Sr.Clerk
and for payment of special pay of Rs.70/-. It was informed
by R-1 that as he had qualified ⁱⁿ the suitability test for
Senior Clerk only in the year 1988, ~~the applicant is not~~
~~entitled for the seniority position as claimed by him~~ ^{also}
and his seniority position below that of R-3 was confirmed.
~~He~~ was also further informed that he has to wait for
his turn to have the special pay of Rs.70/-, by letter No.
P(E)/Misc./Clerk/II dt. 28.9.1992. The same was also
informed to him by R-2 in terms of his letter dt.20.12.1991
bearing No.YP/121/Admn./Engg. Aggrieved by the above, he
has filed this OA praying for setting aside the order of R-1
dt. 28.9.1992 bearing No.P(E)Misc./Clerk/II rejecting the
representation filed by the applicant against the order of
R-2 dt. 20.12.1991 bearing No.YP/121/Adm/Engg. wherein the
applicant's seniority as Senior Clerk was revised and made
him junior to Mxx R-3 and also to set aside the consequential
order issued by the Dy.Railway Manager (P), Hyderabad (MG)
Division, Sec'bad dt. 29.5.1992 bearing No.YP/121/Adm/Engg/
Spl.pay withdrawing the special pay of Rs.70/- p.m. which
was being paid to the applicant and for a further direction

...5/-

✓

that his seniority should be revised by showing him at Sl.No.60 in the seniority list and restore the special pay of Rs.70/- with effect from 1.6.1992 and pay him the arrears.

6. At the time of admission of this OA on 5.11.92 an interim order was passed wherein the respondents were directed to restore the special pay of Rs.70/- to the applicant. In view of that interim order he continued to get his special pay of Rs.70/-.

7. It is a fact that R-3 joined service as Junior Clerk on 26.6.1979 and the applicant joined on 3.3.1980. When both were not eligible for promotion to the post of Senior Clerk in the year 1986, as they did not qualify the suitability test in that year, both were reverted as Junior Clerk. However, the applicant managed to continue as Senior Clerk on adhoc basis in view of the interim order of this Tribunal in OA 373/86 dt. 4.11.1986. The operative portion of that interim order reads as follows:-

"We accordingly direct the applicant be continued as Senior Clerk provided that a vacancy is available without prejudice to the person who have been selected consequent to the suitability test, pending further orders on this application."

on 5.9.89
However, that OA was disposed of/as not pressed as the applicant was regularly promoted in the year 1988 as Senior Clerk after having qualified in the suitability test. R-3 also qualified in the suitability test held in 1988 along with the applicant. The date of entry of the applicant as Senior Clerk was erroneously shown as 1986 as he had continued on adhoc basis on the basis of interim orders in OA 373/86. Hence, in the seniority list issued on

31.10.1988 The applicant was shown at Sl.No.60 whereas R-3 was shown at Sl.No.74. When challenged by R-3 by submitting a representation, it came to light that R-3 having joined Railways as Junior Clerk earlier to the applicant and as both were promoted as Senior Clerk only in the year 1988, the inter-se seniority between them has to remain as it was when they were as Junior Clerks. This would mean that R-3 who joined as Junior Clerk earlier to the applicant should be shown senior to the applicant in the category of Senior Clerk also. Hence, show-cause notice was issued before showing R-3 as senior to the applicant and on the basis of that show-cause notice, the applicant's seniority was ^{correctly} revised showing him below that of R-3. Hence, we see no reason to give any direction to revise the seniority of the applicant showing him senior to R-3. Seniority of R-3 as Senior Clerk, above that of the applicant in that category, needs no revision.

8. It is ^{disputed} ~~not~~ that the applicant was superceded by Sri T.Ravindranath Tagore and Smt.T.Parvathi for promotion to the category of Senior Clerk as the above mentioned two officials were qualified in the suitability test held for promotion to Senior Clerk in the year 1986. Hence, they were granted special pay of Rs.70/- and the special pay of Rs.70/- already granted to the applicant earlier, because of erroneous showing of ^{applicant's} ~~the~~ category of ^{the category of} ~~his~~ promotion to Senior Clerk in the year 1986 itself, was withdrawn in terms of office order dt.29.5.1992 bearing No.YP/121/Admn/Engg/Spl.Pay. However, because of the interim order passed in this OA he continued to get the special pay of Rs.70/-. At the time of hearing, the seniority list of ^{Sr.Clerk of} Civil Engg. Department was produced wherein the applicant stands at Sl.No.22 and the special pay was given only upto Sl.No.10 the last recipient of special pay being Smt.T.Parvati who was promoted to the post of Senior Clerk on 20.8.1986.

/by the
learned
Standing
Counsel

The learned Standing Counsel submitted that the turn of the applicant has not come for grant of special pay and when his turn comes, he will be given the special pay as he entered the category of Senior Clerk only on 12.9.1988.

9. As the turn of the applicant has not come for grant of special pay and there are about 9 Senior Clerks above him still to get special pay, it will not be in order if he is allowed to enjoy the benefit of special pay because of the interim order dt. 5.11.1992 of this Tribunal in this OA. However, as the applicant is a low paid employee and ^{as} he is enjoying the special pay for considerable time it will cause lot of hardship to him if the special pay already paid to him is recovered from his pay. The payment of special pay had arisen because of respondents carelessness in showing his promotion as Senior Clerk from 1986 onwards erroneously. If the respondents had taken care to show his regular entry as Senior Clerk from 1988 onwards the payment of special pay of the applicant would not have arisen. Hence, we feel that the amount of special pay received by him so far should not be recovered. However, the respondents are at liberty to withdraw the special pay from now onwards if his turn has not come.

/as the recovery will cause considerable dent in his monthly emoluments

10. In the result, the following direction is given:-

The seniority of the applicant should be shown below that of R-3 and he is not entitled to continue to get of Rs.70/- special pay from the date of receipt of this order if his turn for grant of special pay has not come by now.

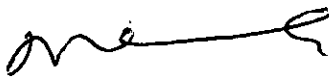
/and placed at the appropriate place in the seniority list

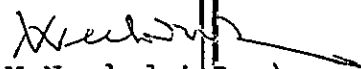
...8/-



No recovery should be made from the applicant for the amount of special pay received by him so far.

11. The OA is ordered accordingly. No costs. /


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated 28th Aug., 1995.


Deputy Registrar (J) CC

Grh.

To

1. The Chief Personnel Officer, S.C.Rly,
Railnilayam, Secunderabad.
2. The Divisional Railway Manager (P)
Hyderabad (MG) Division, S.C.Rly,
Secunderabad.
3. One copy to Mr. P. Krishna Reddy, Advocate, CAT. Hyd.
4. One copy to Mr. D. Gopal Rao, SC for Rlys, CAT. Hyd.
5. One copy to Library, CAT. Hyd.
6. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

A N D

THE HON'BLE MR. R. RANGARAJAN: (M(ADMN))

DATED 28/8 1995.

ORDER/JUDGMENT:

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

in
OA.No. 971/92
TA.No. (W.P.)

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

Central Administrative Tribunal
DESPATCH
7 SEP 1995 NSH
HYDERABAD BENCH.