

(6)

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.NO. 1072 OF 1992.

Between:

T. Pardha Saradhy, s/o late
T. Jagannadha Rao, Hindu, aged
52 years, Senior Stenographer,
Dy. Chief Signal & Telecom Engineer's
(Construction) Head Quarters,
South Eastern Railway,
Visakhapatnam.

.....Applicant.

Residing at: Quarter No.31/C, Diesel colony,
Kancharapalem, Visakhapatnam.

The address for service of all notices and
summons etc., of the above named applicant
is that of his counsel Mr. P.B. Vijaya Kumar,
Advocate, 1-9-312/6/A&B, Atchyutha Reddymarg,
Vidyanagar, Hyderabad - 500 044.

AND

1. Union of India, represented by its
General Manager, South Eastern Railway,
Calcutta - 43.
2. Chief Personnel Officer,
South Eastern Railway,
C A L C U T T A.
3. Divisional Railway Manager,
South Eastern Railway,
VISAKHAPATNAM - 4.
4. Divisional Personnel Officer,
South Eastern Railway,
VISAKHAPATNAM - 4.

....Respondents.

The address for service for the purpose of
summons and process etc., is the same as
stated above.

DETAILS OF THE APPLICATION

1. Particulars of the Order against which the application is made:-

Proceedings No.WPV/190/Pt.IV/TPS/Misc., dated 11-10-91
of the third respondent denying the request to regularise his
promotion with effect from 17-11-1984 instead of 31-5-1990,
as extended to other Senior Stenographers.

2. Jurisdiction of the Honourable Tribunal:-

The Applicant submits that this Tribunal alone has got jurisdiction Under Section-14 of the Administrative Tribunals Act, 1985 as he is working under Railways at Visakhapatnam.

3. Limitation:-

This application is well within the period of limitation as prescribed under Section-21 of the Administrative Tribunal Act, 1985 as his appeal to the second respondent dated 26-10-91 followed by reminder dated 21-2-1992 is pending against the Impugned Order dated 11-10-1991.

4. Facts of the case:-

a) The Applicant herein joined the Railways on 17-8-1969 as Store Issuer and later promoted as Typist in 1963. In 1969 he was promoted as Steno-typist and on 5-10-78 as Stenographer Junior. He was promoted as Senior Stenographer under Sr. DME (Diesel) with effect from 17-11-1984 and later transferred to C.A.O. (C) VSKP. By 1987, 8 (eight) persons were working as Senior Steno graphers on adhoc basis. All other 7 Senior Stenographers have been regularised with effect from the date of Adhoc Promotion. Following chart will explain the position clearly.

	Adhoc Promotion as Sr. Stenos.	Regularisation	Date of suitability test.
1. D.H.R.K.Sanyasi Setty.	28-2-1981.	28-2-1981	13-11-1987
2. K.V.S. Murthy	1986	12-7-1981 11-5-1983	do.
3. R. Narasinga Rao	12-7-1981	12-7-1981	do.
4. A.Y. Narayana.	9-3-1982	9-3-1982	do.
5. P.S. Narsingarao	2-7-1982	2-7-1982	14-9-1988.
6. A.V. Rama Murthy	2-7-1982	2-7-1982	do.
7. G. Bhaskara Rao.	22-10-1984	22-10-1984	do.
8. T. Parthasarady.	17-11-1984	31-5-1990.	30-5-1990.

b) As seen from above Chart, all the other 7 Stenographers were extended the benefit of regularisation with effect from the date of their Adhoc promotion by conducting the suitability test long after their adhoc promotion. The applicant herein has been working in construction side, as such he was not called for the suitability test along with second batch on 14-9-1988. This is purely an administrative lapse. The applicant should not be allowed to suffer on account of administration lapse. Having realised the mischief, he made a representation dated 14-8-1989, basing on that and having realised the mistake he was called for test on 30-5-1990. He made a representation dated 18-6-1990 to extend the benefit of regularisation on par with other 7 persons. Contrary to his expectations, he has received an order dated 13-7-1990 regularising his services with effect from 31-5-1990 instead of 17-11-1984.

c) The Applicant submits that Sri K.V.S. Murthy was promoted on adhoc basis as Senior Stenographer only in 1986. This is evident from the following as extracted from the orders dated 16-11-1984, in which the applicant was promoted on adhoc basis.

"Note-2: Sri K.V.S. Murthy, Junior & Steno in scale of Rs.330-560 (Rs.) attached to SO's office WAT having refused to move on transfer to Sr. DME (D)'s Office, WAT on promotion as Senior Steno in Scale Rs.425-70 (RS) in terms of SO's Letter No.F2/8-82/108/F, dt.7-11-84 is debarred for promotion as Sr. Stenographer for a period of one year from the date of his refusal."

In the light of the above, the said Sri K.V.S. Murthy was promoted only in the year 1986 on adhoc basis and he assumed the higher responsibilities in 1986, but he was regularised with effect from 11-5-1983 for all purposes and w.e.f. 12-7-1981 on proforma basis. The said murthy was promoted on adhoc basis 2 years after the promotion of the applicant. As such extending the benefit to

gri Murthy and denying the same to the applicant is not only arbitrary but is discriminatory too.

d) The Applicant submits that he was informed by the Divisional Personnel Officer by letter dated 19-8-1991 that there was no post available to accommodate him with effect from 17-11-1984. The Applicant submits that this statement is not based on true and correct facts. He further submits that he was promoted only against an existing clear vacancy. The vacancy position is also clearly highlighted by the union in its letter dated 25-11-1991. If the file WPV/190/Pt.IV/Stenos/69 (Maintained in 1987-88) is produced and note sheets 65 to 68, 75, 78 & 79 are perused, it is evident that the statement of the D.P.O. is contrary to the facts. Here is a case of deliberate discrimination.

e) The applicant submits that he was promoted on adhoc basis by an order dated 16-4-1984 (Annexure-A). The Orders of regularisation in respect of the first 4 seniors ~~was~~ Stenographers (Adhoc) was released on 20-11-1987 ~~xxx~~ (Annexure-B). The Orders of regularisation in respect of the other 3 Adhoc Senior Stenographers was released on 20-9-1988 the same is Annexure-C. The application made by the applicant for ~~xxx~~ calling him to the eligibility test dated 14-8-1989 the same is Annexure-D. Communication postponing the suitability date ~~xxx~~ is Annexure-E. Representation dated 18-6-1990 made to the D.P.O. is annexure-F. The applicant was regularised as Senior Stenographer w.e.f. 31-5-1990 by Proceedings dated 13-7-1990 which is Annexure-G. The Applicant made representation dated 27-7-1990 on receipt of the orders under Annexure-G seeking retrospective regularisation to the D.P.O. (Annexure-H). He also made representation dated 24-9-1990 to the D.R.M. which is Annexure-I. Union also made a representation to the D.P.O. on 9-5-1991 ~~xxx~~ for ventilation of the grievances of the applicant the same is Annexure-J.

The Divisional Personnel Officer communicated rejection of the request of the applicant by his communication dt.19-8-91 (Annexure-K). As against Annexure-K an appeal has been made to the Divisional Railway Manager on 30-8-1991 which is Annexure-L. The D.P.O. reiterated his earlier stand acting on behalf of D.R.M. by communication dated 11-10-1991 (Annexure-M). As against the decision communicated under Annexure-M the applicant made further representation to the Chief Personnel Officer dated 26-10-1991 which is annexure-N. The Union also addressed a letter to the D.P.O. on 25-11-1991 (Annexure-O). The applicant made a reminder dated 21-2-1992 to the Chief Personnel Officer (Annexure-P). The D.R.M. addressed a letter to the Union dated 24-3-1992 this is Annexure-Q. The Applicant clarified to the D.R.M. by letter dated 17-6-1992 regarding the availability of vacancies (Annexure-R). Meanwhile the Union again written a letter to the D.R.M. Dated 20-8-1992 which is Annexure-S. The D.R.M. reply to Union on 7-9-1992 reiterating his earlier stand (Annexure-T). Finally the applicant got issued a Registered Lawyers notice dated 14-9-1992 which is Annexure-U. Having waited all along and having exhausted the alternative remedies the applicant approaches this Tribunal by means of this application.

5. Legal Pleas:-

i) The action of the respondents in denying the benefit of retrospective regularisation to the applicant ~~alone~~ alone while extending the same to all other Adhoc Senior Sengraphers including to Sri K.V.S.Murthy who was promoted on adhoc basis subsequent to the applicant, is arbitrary, illegal, irrational and discriminatory.

ii) The stand taken by the Railway that there was no existing vacancies is also false and if the file is produced the contention of the Railways will be disproved.

iii) The inaction of the respondents and denial of the legitimate request of the applicant is not based on sound reasoning and the said denial violates Article-14 & 21 of the Constitution of India.

6. Details of the remedies exhausted:-

As against the denial by the Divisional Personnel Officer by proceedings dated 19-8-1991 the applicant made representation to the next higher authority on 30-8-1991. Having received said representation to the Divisional Personnel Officer communicated reiteration of his stand on 11-10-1991. Having received the said representation the applicant made an appeal to the Chief Personnel Officer on 26-10-1991 followed by a reminder dated 21-2-1992. He also got issued a Registered Lawyers Notice dated 14-9-1992. The respondents have acknowledged the said notice but in vain. Thus the applicant has exhausted the alternative remedies available to him and also waited for the require period with fond hope that the justice would be rendered to him by the Administration.

7. Matters not previously filed or pending before any other court:-

The Applicant declare that he has not previously filed any application, Writ Petition or Suit regarding the matter in respect of which the present Application is filed before any court or any other authority or any other Bench of this Tribunal nor any such application is pending before any court or Tribunal.

8. Relief Sought:-

In view of the circumstances stated above it is therefore just and essential that this Honourable Court may be pleased to direct the respondents 3 & 4 to extend the benefit of regularisation to the applicant w.e.f. 17-11-1984 instead of 31-5-1990 on par with other similarly placed persons by quashing

(12)

-/7/-

the impugned order No.WPV/190/Pt.IV/TPS/Misc., dated 11-10-1991 with all consequential and attendant benefits and pass such other relief or reliefs as this Honourable Tribunal may deem fit just and necessary in the circumstances of the case.

9. Interim Relief:-

It is also just and essential that this Hon'ble Tribunal may be pleased to Fix an early date for the final hearing of the O.A. and pass such other relief or reliefs as this Honourable Tribunal may deem fit just and necessary in the circumstances of the case.

10. Not applicable.

11. Particulars of the Postal Order:-

a) No. of Postal Order: 804 621429

b) Date : 18/11/92

c) Amount : Rs.50/-

d) Branch: PO
Nande.

12. List of enclosures:-

Rs. 50/- A
I.P.O./B.O./D.O. Removed

Vakalat, Material papers, Postal Order, Covers, Pads etc.,

T. Parthasaradhi
SIGNATURE OF THE APPLICANT.

V E R I F I C A T I O N

I, T. Pardha Saradhy, s/o late T. Jagannadha Rao, Hindu, aged 52 years, Senior Stenographer, Dy. Chief Signal & Telecom Engineer's (Construction) Head Quarters, S.E. Railway, Visakhapatnam, R/o Qr.No.31/C, Diesel Colony, Kancharapalem, Visakhapatnam, do hereby verify that the contents of the above paras are true and correct to the best of my knowledge and belief and on ~~best~~ legal advice and that I have not suppressed any material facts.

HYDERABAD.

DATE: 16-11-1992.

T. Parthasaradhi
SIGNATURE OF THE APPLICANT.

Pu-
COUNSEL FOR THE APPLICANT.

8 Annexure (13) "A"
SOUTH EASTERN RAILWAY.

Office of the
Divl. Railway Manager (P) Waltair

OFFICE ORDER No. WPV/190/Pt. IV/90 dtd. 16.11.84.

The following orders are issued with the approval of the competent authority to take immediate effect:

1. Sri S.L. Murthy, Sr. Stenographer in scale Rs. 425-700 (RS) attached to DPO/WAT is transferred in the same capacity, scale, rate of pay to MS's office/WAT in an existing vacancy.
2. Sri A. Rama Rao, Sr. Stenographer in scale Rs. 425-700 (RS) attached to Sr. DME(D)/WAT, is transferred in the same capacity, scale and rate of pay to DPO's office, WAT and attached to DPO vice item No. (1) above.
3. Sri T. Parthasaradhi, Jr. Stenographer in scale Rs. 330-560 (RS) attached to Sr. DME(D)'s office/WAT, is deputed to officiate as Sr. Stenographer in scale Rs. 425-700 (RS) purely on adhoc basis vice item No. (2) above.

Note: (1) The posting orders issued under this office O.O. No. WPV/190/Pt. IV/84 dt. 25.10.84 are hereby cancelled.

(2) Sri K.V.S. Murthy, Jr. Steno in scale Rs. 330-560 (RS) attached to S.O.'s office/WAT, having refused to move on transfer to Sr. DME (D)'s office/WAT, on promotion as Sr. Steno in scale Rs. 425-700 (RS) in terms of SO's letter No. E/8-82/108/P dtd. 7.11.84 is debarred for promotion as Sr. Stenographer for a period of one year from the date of his refusal.

(3) The same should be recorded in the service sheet of the party.

(4) The promotion of Sri T. Parthasaradhi, item No. (3) above is ordered purely on adhoc basis and it will not confer any title/claim ~~em~~ lien for continuance as such or for promotion against future vacancies either permanent/temporary or for seniority.

(5) The date of release/reporting should be intimated to this office.

sd/-
for Divl. Personnel officer.

No. WPV/190/Pt. IV

dtd. 16.11.1984.

(contd...P/2....)

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-: 2 :-

No.WPV/190/Pt.IV

Dtd.16.11.84.

Copy forwarded for information and necessary action to:

- 1) Sr.DAO(Bills/PF)/WAT.
- 2) Sr.DME(D)WAT. (3) DOS(Safety)WAT. (4)DME(P)WAT.
- 5) MS/WAT. (6)Security Officer/WAT.
- 7) OSS, BU-I, BU-II'B', BU-IV & BU-VI, DPO's office/WAT.

sd/-
for Divl.Personnel officer.

/True copy/

"TRUE COPY"

Pu.
Advocate for Petitioner