

(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : AT HYDERABAD

OA 0409/92.

Dt. of Order: 30-11-93.

G.Krishna Rao

.....Applicant

Vs.

1. Union of India, rep. by the  
General Manager, SC Rlys,  
Rail Nilayam, Sec'bad.
2. The Dy.Chief Mechanical Engineer,  
Wagon Repair Shop, Rayanapadu,  
Vijayawada.
3. K.V.S.Prasad

.....Respondents

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Counsel for the Applicant : Shri N.Ram Mohan Rao

Counsel for the Respondents : Shri N.V.Ramana, SC for Rlys  
Shri N.Raghavan for R-3.

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CORAM:

THE HON'BLE SHRI A.B.GORTHI : MEMBER (ADMN)

THE HON'BLE SHRI T.CHANDRASEKHAR REDDY : MEMBER (J)

(Order of the Divn. Bench passed by Hon'ble  
Shri A.B.Gorthi, Member (A) ).

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Aggrieved by the decision of the Respondents to  
fix his seniority in the grade of Chargeman 'B' w.e.f.  
12-8-77, the date of his joining Rayanapadu Wagon Repair

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Workshop, the applicant has filed this application praying that the impugned proceedings dt.24-4-92 be set aside and that his seniority over Respondent No.3 be restored.

2. The applicant was regularly appointed as Chargeman Jamalpur on 20-6-1965. <sup>promoted &</sup> 'C' at Locomotive Workshop. He was ~~posted~~ <sup>promoted</sup> as Chargeman 'B' on 6-4-1966 and Chargeman 'A' on 8-4-76. The post of Chargeman 'A' <sup>then</sup> ~~that~~ carried <sup>the</sup> ~~his~~ pay scale of Rs.550--750. On 19-9-76, he was ordered to be reverted as Chargeman 'B'. He subsequently qualified at the suitability test and was regularly promoted as Chargeman 'A' on 17-11-76. In the meantime, as per his option the applicant was transferred to the Rayanapadu Wagon Repair Workshop ("the Workshop") for short), S.C.Rlys Office Order dt.4-11-76. The transfer was in his "existing pay and grade" and it was subject to the conditions stipulated in S.C.Rlys letter dt.19-6-1976. The applicant joined the workshop on 12-8-77. On the other hand, Sri K.V.S.Prasad (Respondent No.3) who was also in the scale of pay of Rs.550-750, joined the workshop on 6-2-1981 in the lower scale of Rs.425--700. He filed OA 882/90 which was allowed with a direction to the Respondents "to give him the benefit of the grade of Rs.550-750 for the purpose of absorption in ~~his~~ the Guntupalli (Rayanapadu) workshop". Sri K.V.S.Prasad was thus given

22/8/92

(B3)

the grade of Chargeman 'A' ~~from the~~ date of his joining the workshop. On his representation claiming seniority over this applicant, the respondents issued a notice to ~~the~~ ~~this~~ applicant. In that it was contended that the applicant at the time of exercising his option to join the workshop was only a regular Chargeman 'B' and hence he could have been absorbed only as a Chargeman 'B' and not as Chargeman 'A'. His seniority vis-a-vis Shri K.V.S. Prasad (Respondent No.3) was thus purported to be revised. Despite explanation given by him ~~asserting~~ ~~assailing~~ <sup>asserting</sup> his seniority over Respondent No.3, the Respondents issued ~~him~~ <sup>to</sup> impugned proceedings dt.24-4-92.

3. In ~~the~~ <sup>his</sup> counter affidavit, Shri K.V.S. Prasad (Respondent No.3) <sup>stated that</sup> his claim for seniority stood decided in OA 882/90 wherein the applicant was one of the Respondents. The applicant gave his option in response to notification dt.19-6-76 addressed to foreign railways. The stipulation therein was that the grade at the time of option would be maintained. The applicant being then a regular chargeman 'B' could be absorbed in that grade only whereas Respondent 3 was absorbed as Chargeman 'A' in compliance ~~with the~~ judgement in OA 882/90. The counter affidavit from the ~~official~~ Respondents echoed the view taken <sup>by</sup> Respondent No.3.

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4. There can be no dispute that on the date of exercising option, the applicant was only a chargeman 'B' and that his regular promotion as Chargeman 'A' in his previous unit of Jamalpur was granted only on 17-11-76. It is also an admitted fact that the applicant on the date of his joining the Rayanapadu Workshop on 12-8-77 was a regular Chargeman 'A' and was in fact absorbed in the "existing pay and grade", i.e. as a Chargeman 'A' in his pay scale of Rs. 550-750. The question for our consideration is whether the applicant should have been absorbed as a Chargeman 'B' which was his grade at the time of his option or Chargeman 'A' which was the grade he held when he joined the Workshop on 12-8-77. This issue was the subject matter of litigation in the past also.

5. Some employees of SC Rlys who opted to join the workshop in response to the first notification issued on 19-6-74 filed WP 5002/85 which was transferred to this Tribunal (TA 925/86). There the grievance was that in the notification dt. 19-6-74 it was laid down that the employees would be absorbed in the Workshop in the grade held by them at the time of their option. Though they had opted under the said 1974 notification, it was modified by a second notification issued in 1975 wherein it was stipulated that the optees would be absorbed in the workshop in the grade which

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was held by them at the time of relief. Notwithstanding the same, the respondents took an undertaking from the optees that on their absorption they would be given the grade held by them at the time of option. The Respondent's explanation was that as a policy it was decided that an employee who had exercised option pursuant to the notification dt.19-6-74 should not claim seniority <sup>by</sup> virtue of accidental promotion obtained during the interregnum. Rejecting the respondents' contention, the Tribunal allowed TA 925/86 with a direction to the Railway Authorities to fix the seniority of the petitioners therein according to the grade held by them at the time of their being relieved. Claiming similar relief Shri K.V.S.Prasad approached the Tribunal in OA 882/90. It too was allowed with a similar directions to the Railways as was given in TA 925/86, that is, the absorption of the employees <sup>in</sup> the workshop would be in the same grade which was held by ~~them~~ him at the time of relief.

6. So far as the case of the applicant is concerned he initially <sup>belong</sup> to a "foreign" railway i.e. out side S.C.Railways. He opted to be absorbed in the Workshop in response to a notification <sup>of</sup> ~~issued~~ by the Official R Respondents issued on 19-6-76. It was stipulated therein that the optees would be absorbed in the workshop in the

grade held by them at the time of option. Though the applicant was at the time of giving his option a regular Chargeman Gr. 'B' he was on the date of his absorption a regular chargeman 'A'. He was in fact absorbed initially in the workshop in the grade of Chargeman 'A' only.

Keeping in view the judgment in TA 925/87 and OA 882/90

we do not find any justification <sup>to hold</sup> that the applicant should be treated differentially. Merely because the applicant was serving in a foreign Railway at the time of his option, he cannot be denied the benefit that accrued to the other optees from S.C. Railway. It may be noted that even in respect of optees from S.C. Railway, originally it was laid down that their absorption in the Workshop would be in the grade they held at the time of <sup>option</sup> ~~the relief~~.

This was <sup>not</sup> <sub>A</sub> accepted by the Tribunal which directed in both the cases referred to above that the absorption of the optees would be in the grade held by them at the time of relief. In any case, we find that the applicant was promoted as Regular Chargeman 'A' as early as on 7-11-76 in his previous unit, whereas Sri K.V.S. Prasad (Respondent No.3) entered that grade on 12-12-79. In matters of seniority, whenever it is under dispute, it can best be resolved taking into consideration the length of service <sup>in</sup> ~~into~~ grade. The Official Respondents themselves

To

1. The General Manager, S.C.Rlys,  
Railnilayam, Union of India, Secunderabad.
2. The Deputy Chief Mechanical Engineer,  
Wagon Repair Shop, Rayanapadu, Vijauawada.
3. One copy to Mr.N.Rammohan Rao, Advocate, CAT.Hyd.
4. One copy to Mr.N.V.Ramana, SC for Rlys, CAT.Hyd.
5. One copy to Mr.N.Raghavan, Advocate, 113 Jeera Compound, Sec'bad.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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H. 2/3*

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while contesting OA 882/90 justified absorption of the applicant in the workshop in the grade of chargeman 'A'. It will therefore be difficult to appreciate the stand taken by the Respondents in the present case that the absorption of the applicant in the workshop in the grade of Chargeman 'A' was erroneous.

7. Having heard learned counsel for the parties and having perused the record, we are satisfied that the applicant's absorption in the Rayanapadu Workshop in the grade of Chargeman 'A' cannot be said to be either irregular or erroneous. He cannot be differentiated in the matter of absorption compared to the employees of S.C.Railways who opted for and were absorbed in the ~~xxx~~ workshop.

8. In the result the applicant succeeds and we allow the application by quashing the S.C.Railway order No. 612/Mech/RYPs dt.24-4-92. The applicant will be allowed to maintain his seniority as it existed prior to the issuance of the impugned letter dt.24-4-92. No order as to costs.

*T. Chandrasekhar Reddy*  
(T.CHANDRSEKHAR REDDY)  
Member (J)

*A.B. Corthi*  
(A.B.CORTHI)  
Member (A)

Dt. 30 November, 1993.

avl/

*[Signature]*  
Deputy Registrar (C)

*10/11/93*



TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD

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

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER(A)

AND

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

AND

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

Dated: 30-11-1993

ORDER/JUDGMENT:

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

O.A.No.

in

409/92

T.A.No.

( W.P. )

Admitted and Interim directions  
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

1993

Dismissed for default.

Rejected/Ordered.

No order as to costs.