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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD
O.A.NO. 1127/92.

Date of Order: 31-8-95.

Between:

M.K.Bhandeya

Applicant

and

1. Union of India, rep. by its General Manager,
South Central Railways, Rail Nilayam,
Secunderabad.
2. Senior Divisional Personnel Officer,
South Central Railways, Guntakal,
Anantapur District.

Respondents.

For the Applicant :- **Mr.T.Laxminarayana.**

For the Respondents: **Mr. N.R.Devaraj, SC for Rlys.**
Sr./Add.CGSC

CORAM:

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

THE HON'BLE MR.RARANGARAJAN : MEMBER(ADMN)

JUDGMENT

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

Heard Sri T.Laxminarayana, learned counsel for the applicant and Sri N.R.Devaraj, learned Standing Counsel for the respondents.

2. The applicant in this OA is a B.Sc. Graduate. He was appointed as Junior Clerk in the Mechanical Department in the office of Loco Foreman (Diesel), South Central Railway, Guntakal. His next promotion was to the post of Senior Clerk in the scale of Rs.330-560(RS) which was later revised to the scale of Rs.1200-2040(RSRP) with effect from 1.1.1986.

3. The Railway Board issued Circular No. EC-3/81/ UPG/7 dt. 18.6.1981 (Annexure-I) restructuring the cadre of ministerial staff of all departments other than Personnel. As per the said circular $13\frac{1}{3}\%$ posts of Senior Clerks in the scale of Rs.330-560 (RS) will be filled from amongst the Graduate Clerks serving in the lower grades after allowing them age relaxation already in force. It is further indicated in that Railway Board letter quoted above that these vacancies will be filled up by competitive examination to be held by the Railway Service Commission.

of posts in the ministerial cadre of non-personnel

The above letter also indicates the grade-wise distribution of posts in the ministerial cadre of non-personnel from the post of Office Superintendent down to Junior Clerk. The orders of the Railway Board as above will take effect from 1.10.1980.

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~~The pay of the employees~~ appointed to the upgraded posts on the basis of restructuring may be fixed proforma from 1.10.1980 but the actual payment of emoluments in the higher posts shall be allowed only from the date the employee takes over the charge of upgraded post.

4. The selection for filling up the $13\frac{1}{3}\%$ of serving graduate employees ~~quota~~ ~~category of Junior Clerk for promotion to the post of Senior Clerk against the upgraded posts from 1.10.1980~~ ~~has to be conducted by the Railway Recruitment Board. Railway Recruitment Board conducted this selection only in the year 1985. The applicant herein appeared in that examination conducted on 27.1.1985 and he was declared passed in the examination as per the results declared in terms of proceedings dt. 20.8.1985 bearing No.G/P/563/CP of R-2 (Annexure-II filed with the OA). The applicant obtained merit order No.39 and stood at Sl.No.9 as per the above referred proceedings.~~

5. In the meantime, the applicant was promoted to the post of Senior Clerk in the scale of RS.330-560(RS) with effect from 16.5.1984 in his parent department viz. Mechanical Branch, on the basis of his seniority-cum-suitability basis in the normal course and his pay was fixed in the category of Senior Clerk with effect from 6.5.1984. None were appointed to the ~~new~~ post of Senior Clerk through Railway Recruitment Board during intervening period 1.10.1980 to 6.5.1984.

6. The contention of the applicant is that as he was declared selected by the Railway Recruitment Board for serving employees for filling up the graduate quota of Senior Clerks earmarked he should be deemed to have been promoted as Senior Clerk in the Mechanical Branch with effect from 1.10.1980 in terms of Railway Board's letter referred to above and his pay fixed as per that Board's letter taking his entry into the cadre of Senior Clerk with effect from 1.10.1980.

7. As the applicant's seniority was not considered with effect from 1.10.1980 against the restructured posts, he filed this OA for a direction to the respondents herein to give proforma fixation of Senior Clerk in the scale of Rs.330-560 (RS)/Rs.1200-2040(RSRP) with effect from 1.10.1980 in pursuance of Railway Board's letter dt. 18.6.1981 bearing No. EC.III/81/UPG/7 and other consequential benefits as a sequel thereof.

8. The respondents in their counter affidavit do not dispute the fact regarding his initial appointment and his promotion from 6.5.1984 in his turn in Mechanical Department. It is also not disputed that there were no appointments in Mechanical Branch as Senior Clerks through Railway Recruitment Board during the intervening period 1.10.1980 to 6.5.1984. However, the respondents submit that four posts of Senior Clerk had accrued against the Graduate quota earmarked for serving graduates in the Mechanical Branch ~~in view of the restructuring~~ of the ministerial cadre ~~as per~~ ~~intended to be filled by the Railway Board~~ letter dt. 18.6.81. Four (4) posts were filled by first 4 candidates ~~in view of the~~ ~~intended to be filled by the Railway Board~~ ~~as per~~ letter dt. 18.6.81. V.O.Mary George, G.Subramanyam and

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K. Deendayalan from amongst the select list of serving graduates employees as per merit order. The applicant being 5th in the merit order could not be accommodated against that quota in Mechanical department and hence he was posted in Engineering Department wherein a vacant post was then existing. The applicant without joining the Engineering Department to get the benefit of restructuring, made several representations upto the level of Chief Personnel Officer, South Central Railway. Though, it was ordered

~~to retain him in Mech. Branch and by the CPO, S.C.Rly. that the applicant should~~ to give the benefit of carry out promotional transfer to Engg. Department in restructuring in the Mech. order to derive the benefits of restructuring of cadre, Deptt. itself he did not move out and continued in Mechanical Department.

The applicant was finally shown as promoted to the post of Senior Clerk against the post ~~accrued as a result of~~ annual review of ministerial staff in the Mechanical Department as on 1.4.1981 and not against the ~~cadre~~ cadre restructuring ordered as ~~on~~ 1.10.1980, unlike Sri G. Subramanyam and others (Applicants in OA No. 396/89) who were promoted against the posts as a result of 1.10.1980 restructuring. The ~~absorption of the~~ applicant as Senior Clerk in one of the posts that arose from 1.4.1981 in Mechanical Department of Guntakal Division against graduate quota percentage of Senior Clerk duly assigning him seniority below all other regular employees promoted to the scale as a result of annual review of 1.4.1981 was ordered by the Chief Personnel Officer which was conveyed to the applicant in temms of R-2's letter No. G/P. 524/III/3/Vol.V dt. 15.12.1986.

9. The submission of the respondents as above was not ~~by~~ by the applicant by filing a rejoinder. Hence, the factual position given by the

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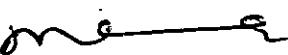
10. The applicant could not be accommodated against in Mechanical Deptt. restructured post as on 1.10.1980/as he was the 5th serving graduate in the select list of Railway Recruitment Board whereas there were only four posts against restructuring scheme in Mechanical Branch of Guntakal Division. Four (4) senior employees as mentioned above had been promoted against those restructured posts and the applicant could not get promotion against resgructured post. Though, he was sent to Engg. department wherein he could have got the benefit of restructured post with effect from 1.10.1980, he did not carry-out the transfer to the Engg. department as Senior Clerk for reasons best known to him. Hence, he refusing to lost that opportunity of getting the benefit by/carry, out the transfer to Engg. Branch. Though he made number of representations to all concerned, he was informed by R-2 by letter dt. 15.12.1986 that he had been accommodated as Senior Clerk against the vacancy that arose/~~xxxx~~ 1.4.81 of the Mechanical Branch of Guntakal division ~~against Engg. Branch~~ and ~~xxxx~~ that his seniority will be fixed below all other regular employees promoted to that scale as a result of annual review of 1.4.1981. This would mean that he will get the seniority as indicated above only and not earlier and in any case not from 1.10.1980, with effect from which date the restructuring was ordered. Hence, we see no irregularity in assigning the seniority as above and denying the seniority from 1.10.1980 is perfectly in order.

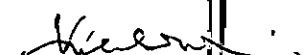
11. The learned counsel for the applicant submitted that in view of the instructions of the Railway Board that vacancies arising on or after 1.10.1980 shall be filled, thereby ~~and~~ with the proportion prescribed herein"/meaning

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applicant that he / is entitled to promotion with effect from 1.10.1980. This argument carries no meaning. By that instruction, the Railway Board meant that percentages prescribed for the category of Clerk from Office Supdt. to Junior Clerk will be adhered to for vacancies arising on or after 1.10.1980 and it in no way means that those promoted on or after 1.10.1980 against the annual review posts should be given the benefit of promotion with effect from 1.10.1980. Probably, the learned counsel made such a submission, though not covered by the order of the Railway Board, just to get the benefit for his client. However, as the instructions are clear, he has no case to get any benefit with effect from 1.10.1980, as he did not come within the number of posts which arose due to restructuring in Mechanical Branch as on 1.10.1980 and also he refused his promotion and transfer to Engineering Branch to get that benefit.

12. In the result, we see no merit in this OA and it is accordingly dismissed. No costs. /


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman


Dated 21 Aug., 1995.

Grh.


Dy. Registrar (Judl).

Copy to :-

1. General Manager, South Central Railways,
Union of India, Secunderabad.
2. Senior Divisional Personnel Officer,
South Central Railway, Guntakal,
Anantapur District.
3. One copy to Mr. T. Laxminarayana, Advocate
H. No. 2-2-185/54/I/D, Bagh Amberpet, Hyderabad-500 013.
One copy to Mr. N. R. Devaraj, Sr. CGSC, CAT, Hyd.
One copy to Library, CAT, Hyd.