

ORIGINAL APPLICATION NO.533/92

DATE OF JUDGEMENT: 3 ^{Feb} ~~JANUARY~~, 1993

Between

Mr Suryabhan Hari

.. Applicant

and

1. Divisional Railway Manager, MG/HYB
South Central Railway, Secunderabad
2. Senior Divisional Personnel Officer(P)
MG/HYB, South Central Railway, Secunderabad

.. Respondents

Counsel for the Applicant :: Mr S.Lakshma Reddy

Counsel for the Respondents :: Mr V.Bhimanna, SC for Rlys

CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

JUDGEMENT

This is an application filed under Section 19 of the Administrative Tribunals Act to direct the respondents to fix the pay of the applicant after giving due weightage of service rendered by him in ^{the post of} Coal Checker and on par with his juniors in the lower khalasi grade, now working in the promoted grades as fitters and pass such other order or orders as may deem fit and proper in the circumstances of the case.

The facts so far necessary to adjudicate this OA, in brief, may be stated as follows:

The applicant was appointed as Yard Khalasi on 22.1.1959. The applicant was promoted in the year 1971 as coal checker on adhoc basis in the grade of Rs.260-400/- on 14.3.71. The applicant continued in the post of coal checker till 29.9.84. On 29.9.84, the applicant was reverted back to the original post of Yard Khalasi, as the post of coal checker which the applicant was holding on adhoc basis, ^{as per the recruitment rule} was filled up by a regular incumbent.

In the line of promotion for yard khalasis,

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the applicant was promoted as Khalasi Helper w.e.f. 1.1.1984 by an order dated 4.3.1986. The applicant accepted the promotion and was working upto December, 1990. There was selection for the post of Steam-man in the year 1990 in the usual line of promotion for Coal checkers but additional line of promotion for Khalasi helpers. The applicant appeared for the post of steam man and got qualified and was promoted as Steam man w.e.f. 14.12.90. The applicant is still working as steam man.

In the year 1985, juniors to the applicant, who were working as Khalasi Helpers appeared for trade test for the post of fitters and were promoted as fitters. The normal line of promotion for the post of Khalasi helper is fitter. It is the case of the applicant, in the trade test that was conducted subsequent to 6.11.86 that he too appeared and there was no action from the respondents and that the result of the said trade test for which the applicant had appeared had not been declared. So, it is the grievance of the applicant as his juniors are working as fitters, that, his pay is liable to be fixed equivalent to that of his juniors, in the promoted grade of fitters as the post of steam man and fitter through are of different trades as are of the same grade. The applicant had also put in a representation for redressal of his grievance as no action had been taken, the present OA is filed for the relief as already indicated above.

Counter is filed by the respondents opposing this OA.

We have heard in detail Mr. Lakshma Reddy, counsel for the applicant and Mr. V. Bhimanna, Standing Counsel for the respondents.

The applicant as already pointed out was appointed yard khalasi in 1959 and was promoted on adhoc basis as mate (coal) checker in the grade of Rs.260-400/- in the year 1971

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was reverted back to his³ substantive post in the year 1984 for want of vacancy. Some of the juniors to the applicant had opted for the post of coal checker which is a selection post and the juniors so volunteered for selection as coal checker were subjected to trade test and the applicant had not volunteered for the post of coal checker on regular basis and so had been reverted to the original post of yard khalasi and the applicant was holding the post of yard khalasi from 29.9.84. The applicant was promoted as Khalasi Helper as ^{indicated} indicated, which is normal avenue of promotion for khalasis w.e.f. 1.1.84. The applicant, having accepted the promotion as Khalasi Helper, was working in the said post till December 1990 at Purna. On 14.12.90, the applicant was promoted as steam man in the scale of Rs.950-1500 for which the applicant volunteered and is working till date.

The grievance of the applicant is that his juniors had been promoted ~~as~~ on adhoc basis as fitters, etc. and that the applicant was not given promotion on adhoc basis as fitter. The applicant had also made a representation to the Chief Personnel Officer in the year 1985. In view of the fact that some of his juniors had been promoted on adhoc basis as fitters etc., in the scale of Rs.260-400/- in different trades ~~as fitters~~ it is the case of the applicant that he should also be promoted on adhoc basis to the post of fitter.

In response to the representation of the applicant, the ^(1st respondent) Divisional Rly Manager/ South Central Railw vide his letter dated 6.11.86 (Annexure II to OA) directed the Chief Personnel Officer, Secunderabad to subject the applicant for trade test in the general category of fitter, if the applicant was willing and consider the case of the applicant also for adhoc promotion if the applicant appeared for trade test.

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It is the case of the applicant that subsequent to the letter of the 1st respondent dated 6.11.1986, that trade test had been conducted and the applicant appeared for the said trade test and that the results of the said trade test had not been announced and hence, the applicant shall be deemed to have passed the said test and so, even though he is working in a different trade as steam man, that the applicant is entitled for refixation of his pay on par with his juniors who were promoted on adhoc basis as fitters, as steam man and fitter, through different trades are of the same grade. It is also the case of the applicant that the pay of his juniors who are working as fitters on adhoc promotion, is higher than his pay which he is drawing in the post of steam man and that his erstwhile juniors pay who worked as coal checkers cannot be higher than his pay and so his pay is liable to be equated with that of his juniors.

As could be seen, the applicant had worked as coal checker from 19.3.71 to 25.9.84 and was not followed by regular absorption. The juniors to the applicant who were working on adhoc basis as coal checkers had been absorbed on regular basis in the post of coal checker and subsequently had been promoted as fitters on adhoc basis. The juniors to the applicant had been promoted to skilled grade in different grades like fitters, etc, after subjecting them to trade test in the general category of coal checkers. According to the respondents, the applicant had not appeared for the trade test and hence, the applicant was not considered for promotion to the post of fitter on adhoc basis. But the contention of the applicant is that he had appeared for the trade test after 6.11.86 and that the result of the trade test had not been disclosed to the applicant. In para 3 of the OA, it is pleaded by the applicant as under:

"Thereafter, the Chief Personnel Officer has called for remarks from the Divisional Railway Manager and the Divisional Railway Manager, in turn through his letter dated 6.11.86 has stated that the applicant will be considered for fitter trade after obtaining

option and conducting trade test. Thereafter, trade test was conducted and the result was not disclosed."

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Unless a person working in the lower grade, passes a trade test, he cannot be considered for the post of fitter even on adhoc basis. The respondents are ~~affirming~~ denying that the applicant ^{appeared} for the trade test. They have also filed a letter of AME/P/PAU No.PRE 25/I dated 24.2.87, addressed to APO(M)/(MG)/HYB wherein it is specifically stated that the applicant was not willing to appear for any trade test and he was willing to work as Fuel Checker only and he was not willing to give any letter to that effect. So, from the said letter, it becomes amply evident that the applicant had not appeared for the trade test. So, as the applicant had not appeared for the trade test, he has not become eligible to be considered for promotion as fitter on adhoc basis. Even though it is pleaded by the applicant that he had appeared for the trade test and in view of the denial of the respondents that the applicant had never appeared for trade test, the applicant is put to strict proof to prove the fact that he had appeared for the trade test. It is not pleaded in the OA that consequent to the letter of DRM SCRLY dated 6.11.86 on which date the applicant appeared for the said trade test. Heavy burden is cast on the applicant to prove that he had appeared for the said test, ⁱⁿ ~~xxx~~ view of the categorical denial of the respondents that the applicant had ~~at~~ no time appeared for the said trade test. So, as no material is placed by the applicant before this Tribunal to show ^{and in view of the letter dt.24.2.87 referred to} that he appeared for the trade test, the only inference that ~~abc~~ has got to be drawn is, that the applicant never appeared for the trade test, even though an opportunity had been given to him to appear for the ~~xxx~~ trade test. So as the applicant had not appeared for the trade test, it is not open for the applicant to complain that he ^{is} was eligible to be considered for promotion to the post of fitter on adhoc basis. ^{and the}

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applicant cannot make any grievance out of the promotion given to his juniors as fitters when the applicant was working as coal checker ~~and~~ as his juniors had passed the trade test and thus acquired necessary qualification for promotion to the post of fitters. Whereas, the applicant has not passed the trade test and has not become eligible to be considered for the post of fitter. Hence, it is not open for the applicant to equate himself with those of his juniors who had passed the said test and had become eligible for the post of fitters and were promoted as such. Hence, this OA is liable to be dismissed.

It is faintly argued on behalf of the applicant that even though the applicant had been promoted as steam man in the year 1990, his pay had not been fixed giving due weightage to his services as coal checker and on par with his juniors that had worked as coal checkers and who are ~~in~~ now working as skilled grade fitters. The juniors to the applicant had been absorbed as coal checkers on regular basis whereas the applicant had been reverted as yard khalasi as early as 29.9.84. If the applicant was aggrieved as against the reversion order dated 29.9.84 from the post of coal checker to that of yard khalasi, the applicant should have moved ~~to~~ the competent forum for redressal of his grievance from reverting him to the post ~~of~~ yard khalasi and while working as yard khalasi, ^{applicant} ~~he~~ had been promoted as khalasi helper w.e.f. 1.1.84 as per orders dated 4.3.86. The applicant accepted the promotion of khalasi helper and had worked upto 1990. It is now too late for the applicant to agitate ^{with regard to} his reversion from the post of coal checker to that of yard khalasi. So, as juniors to the applicant, admittedly had been appointed on regular basis as coal checkers, and as the applicant had been reverted from the said post of coal-checker to yard khalasi, it is not open for the applicant to plead discrimination as ~~as~~ the applicant was not on par with his juniors as he had not qualified himself ~~with~~ for regular absorption as coal checker and had to face reversion for his ineligibility to hold the

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post of coal checker on regular basis. The learned counsel appearing for the applicant brought our attention to para 228 of the Railway Establishment Manual which reads as follows:

"Sometimes, due to administrative errors, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons....."

On the basis of the said para it is contended that promotions to the juniors of the applicant had been given erroneously due to administrative lapses and in view of this, that the applicant is to be treated on par in the matter of pay with the juniors now working as fitters in different trade. Para 228 contemplates erroneous promotions. This is not a case where juniors to the applicant had been promoted as fitters erroneously. They were fully qualified to hold the post of fitter, whereas, the applicant had not qualified to hold the post of fitter as he had not passed the trade test. So, the contention of the learned counsel that ~~xxx~~ juniors to the applicant as having been promoted erroneously cannot be accepted and para 228 of the Railway Establishment Manual has absolutely no application to the facts of this case.

It is contended by the learned counsel for the applicant that steam man and fitter though of different trades, are of the same grade, in view of this position that the pay of the applicant is liable to be equated with that of fitters, who were his erstwhile juniors in the post of coal checker. The juniors to the applicant by virtue of their passing trade test and early promotion as fitters, had earned certain increment and are drawing higher pay. The applicant, as could be seen had been promoted as steam man only in the year 1991. Admittedly, the ~~fitters~~ ^{persons to post of} fitters, whom the applicant claims to be his juniors in the post of coal checkers had been promoted much earlier than 1991. So, in view of the promotions

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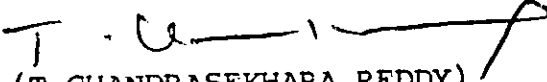
to the posts of earned fitters much earlier than the applicant was promoted to the post of steam man the applicant does not have a right to ask for equating his pay with those fitters who were his juniors in the cadre of coal-checkers.

It is maintained by the learned counsel for the applicant that prescribed procedure had not been followed in intimating the applicant that the trade test would be conducted and so there is a denial of opportunity to the applicant by the respondents to ^{appear} ~~often~~ for the said trade test. ^{After having pleaded} that the applicant had appeared for trade test and the results were not announced, it is not open for the applicant to deviate from his case and try to blame the respondents that he had not been given an opportunity to appear for the trade test and we do not see any denial of opportunity to the applicant in the matter of promotions and the applicant having been subjected to differential treatment from that of his juniors. So, none of the contentions raised on behalf of the applicant appeal to us.

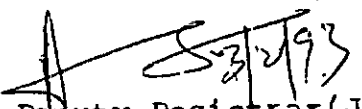
It is faintly contended that the applicant is deemed to have passed the trade test as the applicant had not been given an opportunity inspite of the directions of the Divisional Railway Manager to the CPO to subject the applicant to trade test. The very case of the applicant is that he appeared for the trade test even though he had not appeared ~~as contended by the respondents~~. We are unable to understand if the applicant had appeared for trade test, why the respondents should deny the same. From the denial of the respondents and from the letter dated 24.2.1987, we do not have any slightest doubt to come to the conclusion that the applicant for the reasons best known to him never wanted to appear for the trade test. Even though the applicant had not appeared for the trade test the applicant had the ^{audacity} to ~~pleaded~~ ^{he} that the applicant had appeared for the trade test and the results were not announced. It is quite evident that the applicant had not come forth with true facts before this Tribunal.

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and so the applicane becomes disentitled to any relief. From the facts and circumstances of this case, the applicant is not at all entitled for any relief. So, we have no hesitation in dismissing this O.A. as it ~~has~~ has no merits and is accordingly dismissed leaving the parties to bear their own costs.


(T. CHANDRASEKHARA REDDY)
Member (Judl.)

Dated: 3 ^{Feb} January, 1993


Deputy Registrar (J)

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To

1. The Divisional Railway Manager,
MG/HYB S.C.Rly, Secunderabad.
2. The Senior Divisional Personnel Officer(P)
MG/HYB, S.C.Rly, Secunderabad.
3. One copy to Mr. S. Lakshma Reddy, Advocate, CAT. Hyd.
4. One copy to Mr. V. Bhimanna, SC for Rlys, CAT. Hyd.
5. One spare copy.

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