

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD
O.A.NO. 570/92.

Date of Order: 3-4-95.

Between:

M.Ramachandra Rao.

.. Applicant.

and

1. The General Manager, S.E.Rly,
Union of India, Garden Reach,
Calcutta.
2. The Chief Personnel Officer,
S.E.Railway, Garden Reach,
Calcutta-43.
3. The Divisional Personnel Officer,
S.E.Railway, Waltair.

.. Respondents.

For the Applicant: Mr.P.B.Vijayakumar, Advocate.

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

CORAM:

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

THE HON'BLE MR.R.RANGARAJANA MEMBER (ADMN)

O.A.No. 570/92

Dt. of decision: 3-6-1995.

JUDGEMENT

{ As per Hon'ble Sri R. Rangarajan, Member (A) }

Heard Sri P.B. Vijaya Kumar, learned counsel for the applicant and Sri V. Bhimanna, learned counsel for the respondents.

2. The applicant joined as a Class IV employee in Waltair Division of S.E.Railway. He was promoted as Grade III Fitter on 12.1.69. He was promoted as Grade II Fitter on 1.8.78 and thereafter as Grade I Fitter on 17.7.82. He retired from service as a Gr.I Fitter on 31.5.89 on superannuation.

3. The applicant nurtures two grievances. They are:- (1) He was not granted loyal increment in terms of the Circular No.WP/SEC/ST/74/EA, dt. 24.8.74 (Annexure R-1) as he had performed duties during the strike period ^{for} 8.5.74 to 28.5.74.

(2) He was not promoted in time as Gr.III Fitter in the year 1968. Before he could be promoted to Gr.III on 12.1.69, 11 (eleven) more employees from Steamshed were transferred to the Fitter category in Carriage and Wagon Depot and they were shown senior to him. Because of the transfer of eleven employees, he was promoted as Gr.I Fitter only on 1.9.80. Above him in seniority, he would have been promoted as Gr.I Fitter on 1.9.80.

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Because of the above mentioned two grievances, he alleges that he was subjected to financial loss in the amount of pension to be drawn by him ^{and} ~~the~~ the amount of DCRG received by him at the time of retirement.

4. Though he had represented in connection with the above, he did not get any favourable reply. Hence he has filed this O.A. to refix his pension ^{duly} ~~duty~~ regulating his pay in a suitable manner.

5. The O.A. has been filed for dual relief as can be seen from the grievances enumerated above. Though the respondents state in the counter affidavit that this O.A. is not maintainable as the applicant has asked for dual relief which have no connection to each other, ~~no such~~ taken by the respondents while the case was posted for admission, as can be seen from the order sheet. The application was admitted on 15.10.92. In view of the fact that this O.A. had already been admitted for dual relief, the contentions in regard to both the grievances are considered in this O.A.

6. The applicant contends that he is entitled for grant of advance increment as he worked as a loyal employee during the strike period from 8.5.74 to 28.5.74 in terms of Circular, dt. 24.8.74. He admits that he was not taken into consideration only on 8.11.79 for payment of advance increment as he had served loyally during the strike period and sent reminders on 26.12.80, 22.9.83 and

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6.2.84. But his claim was rejected by R-3 by letter dt.23.7.84 (Annexure-VI) stating that advanced increments claims received before 30.4.76 were only entertained. The applicant further urged that the above said decision is arbitrary and illegal.

7. Circular for exercise of option by loyal staff who worked during May, 1974 strike was issued by R-3 on 24.8.74 enclosing thereto the proforma to be filled by the concerned staff who worked during the strike period. This was circulated to all concerned by R-3 as can be seen from the circular, dt. 24.8.74. It is not known why the applicant had not submitted the option form in time. It cannot be said that the circular was not known to the applicant as wide publicity was reported to have been given to the circular and advance increment was also granted to a number of employees. The first representation for the grant of this increment was, dt. 8.11.79 as admitted by the applicant himself. As the last date of submission of such applications for grant of advance increment was current only upto 30.4.76 in terms of Railway Board's letter, dt. 6.4.76 (Annexure R-II) the representation of applicant, dt. 8.11.79 cannot be entertained, submits the learned standing counsel for the respondents. There is force in this submission as the last date of submission of application for grant of advance increment cannot be kept open indefinitely.

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8. Even presuming that such advance increment was granted to him, the respondents in their counter affidavit state that there will be no change in his pension as there will be no change in his pay from 1.8.78, the date on which he was promoted as Fitter Gr.II in the scale of Rs.330-380. The calculation as worked out by the respondent is at Annexure-R.III. As the applicant has not filed any rejoinder denying this averment as contained in Annexure R-III, it has to be held that he will not get any pensionary benefit even if any advance increment as a loyal worker was granted to him. Probably, he may be entitled for some incremental arrears due to the grant of this advance increment. As the payment of arrears if any relates back to the period in 1974 to 1978, the claim for arrears if any is a belated one and such claims for arrears has to be rejected because of delay.

9. The second grievance ~~is~~ relates to his non-promotion ^{to} Gr.III Fitter in the year 1968. As per the averment of the applicant, he was called for trade tests on 13.1.68 for promotion to the post of Gr.III Fitter from Class IV. It is further submitted by him that as he was not successful in the trade test held on 13.1.68, he should have been called for Trade Test exactly after a lapse of six months from the date of the first test i.e. six months from the first trade test held on 13.1.68. In the counter affidavit it is stated that no trade test was conducted between 13.1.68

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and 12.1.69 due to administrative reasons. This averment of the respondents was also not denied by the applicant. Hence it has to be presumed that there was no trade tests held on 13.1.68 for promoting him to Gr.III and he was promoted only on 12.1.69 in the usual course. There is no rule to promote an employee from the date of occurrence of the vacancy. Even if there is a vacancy, it is upto the administration to decide when the posts have to be filled up. As no proven malafide intention has been attributed for delay in promoting him, it has to be stated that the delay if at all any in his promotion is due to administrative reasons and he cannot now claim any anti-date relief prior to 12.1.69 for his promotion to Fitter Gr.III.

10. The applicant submits that his promotion to Gr.II and Gr.I was retarded because of absorption of eleven candidates from the Steam-shed who were shown to senior to him. In the reply affidavit, it is stated that the eleven candidates were absorbed in the C & W Department on administrative interest giving them protection of seniority from the date they were appointed and accordingly their seniority was interpolated in Gr.II cadre of C & W Department. It is further stated in the counter that the eleven candidates were promoted to Fitter Gr.I according to their turn as per seniority.

11. Railways has the right to absorb employees from one department to another department, if circumstances warrant. Such administrative transfers are O.K.

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To

1. The General Manager, S.E.Rly, Union of India,
Garden Reach, Calcutta.
2. The Chief Personnel Officer,
S.E.Rly, Garden Reach, Calcutta-43.
3. The Divisional Personnel Officer,
S.E.Rly, Waltair.
4. One copy to Mr. P.B. Vijayakumar, Advocate, CAT.Hyd.
5. One copy to Mr. V. Enimanna, SC for Rlys. CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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done in the administrative interest. Such transfer-ees carry with them the right to get seniority as per the rules of transfer on administrative ground. If any one is affected by such transfer, such affected employees should immediately protest against such transfer by submitting representation. If no such representation is submitted in time, the same cannot be challenged after lapse of long period. While submitting such representation the affected employee should also bring to the notice of the administration why such transfer is not warranted in his opinion. It is seen from Annexure-III that his representation in this connection was addressed only on 27.8.86. He was replied by Annexure-R.III letter, dt. 6.1.87 that his seniority had been fixed. Had he been aggrieved by this reply, he should have approached this Tribunal within one year from the receipt of the letter dt. 6.1.87. But this O.A. was filed after a period of five years. Hence his claim for advancing his

claim to be dismissed on account of laches. At this late stage when he had already retired way back in 1989, the settled seniority position cannot be re-opened.

12. In the result, this O.A. merits no consideration and hence dismissed. No costs.

(R. Rangarajan)
Member(A)

(V. Neeladri Rao)
Vice Chairman

Dt. 9/4/95

kmv

Deputy Registrar

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

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

AND

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

DATED - 3-4-1995.

ORDER/JUDGMENT:

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

O.A.No.

in

570/92

T.A.No.

(W.P.)

issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

no spare copy

