

(36)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

OA.807/92

date of decision : 28-4-93

Between

1. A. Elango
2. D. Shanmugam
3. A.C. Prohit
4. D. Balakrishnan
5. P. Sundaram
6. C.H. Chinnabbi

: Applicants

and

1. The Chief Personnel Officer  
South Central Railway  
Secunderabad

2. Dy. Chief Mechanical Engineer  
South Central Railway  
Carriage repair workshop  
Tirupathi

: Respondents

Counsel for the Applicant

: V. Krishna Rao  
Advocate

Counsel for the Respondent

: N.R. Devaraj, Standing  
Counsel for Railways

CORAM :

HON. MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON. MR. P.T. THIRUVENGADAM, MEMBER (ADMINISTRATION)

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, Vice-Chairman)

This OA was filed praying for a direction to the respondents to give proforma promotion with fixation of pay and arrears and other consequential benefits which are due to them from the day they are due for promotion.

2. Heard Sri V. Krishna Rao, learned counsel for the applicants and Sri N.R. Devaraj, learned counsel for the respondents.

3. The facts which give rise to this OA are briefly as under :

Carriage Repair Workshop for repairing the broadgauge passenger coaches within the South Central Railway was established

and he promoted on adhoc basis. It is stated that when the volunteers who opted in pursuance to the notification dated 8-12-1981 had not come to this Carriage Repair Workshop in the order of their seniority, as and when the vacancies had arisen in the higher posts, the senior-most available in this Carriage Repair Workshop was promoted on adhoc basis. Such a promotion was treated as adhoc for admittedly some of the volunteers whose option were accepted and who were not relieved earlier are seniors to those who were relieved earlier. Then when the seniors joined this workshop, they claimed that they too should be promoted and their notional promotion should be given from the date on which their juniors were promoted. When the said claim of such employees was not accepted by the concerned authorities, some of them had formed 03.542/80 and other OAs in this Bench of CAT. OA.542/80 was discussed on 27-6-1991 by giving the following direction:

"They should therefore :

(a) treat the applicant who was promoted later on in the Carriage Repair Workshop at Tirupatt as notional promotion with effect from the dates when the juniors had been promoted. His pay should be fixed on this notional promotion. However, since he did not actually discharge the higher duties, he will not be entitled to arrears of pay difference.

and  
(b) if his juniors are continuing on adhoc promotion while he is yet to be promoted, his actual promotion may be effected immediately. If the respondents do not wish to revert any junior for this reason, they are free to create a supplementary post."

On the basis of the applicants herein for some relief was

an application was filed on 15-9-1992.

2. The volunteers had come from various units. Their seniority had to be fixed as per the conditions in the notification dated 8-12-1981 and the same condition in the notification dated 8-12-1981. As the date of joining of the volunteers in this Carriage Repair Workshop are not on the basis of their seniority and some of the juniors had joined earlier to the seniors, when vacancies had arisen in the higher posts, only those who were promoted on adhoc basis only by the

can be promoted on adhoc basis. It is stated that ~~when~~ the volunteers who opted in pursuance of the notification dated 8-12-1981 had not come to this Carriage Repair Workshop in the order of their seniority. As and when the vacancies had arisen in the higher posts, the seniormost available in this Carriage Repair Workshop was promoted on adhoc basis. Such a promotion was treated as adhoc for admittedly some of the volunteers whose options were accepted and who were not relieved earlier are seniors to those who were relieved earlier. Then when the seniors joined this workshop, they claimed that they too should be promoted and their notional promotion should be given from the date on which their juniors were promoted. When the said claim of such employees was not acceded to by the concerned authorities, some of them had preferred OA.542/90 and other OAs in this Bench of CAT. OA.542/90 was disposed of on 27-6-1991 by giving the following direction:

"They should therefore :

(a) treat the applicant who was promoted later on in the Carriage Repair Workshop at Tirupati as notionally promoted with effect from the dates when the juniors had been promoted. His pay should be fixed on this notional promotion. However, since he did not actually discharge the higher duties, he will not be entitled to arrears of pay difference,

and

(b) if his juniors are continuing on adhoc promotion while he is yet to be promoted, his actual promotion may be effected immediately. If the respondents do not wish to revert any junior for this reason, they are free to create a supernumerary post."

When the ~~claim~~ <sup>negotiated</sup> of the applicants herein for ~~same~~ <sup>engaged</sup> reliefs was ~~engaged~~ this application was filed on 15-9-1992.

9. The volunteers had come from various units. Their interse seniority had to be fixed as per the condition vii in the notification dated 8-1-1987 and the ~~similar~~ <sup>as</sup> condition in notification dated 8-12-1981. As the dates of joining of these volunteers in this Carriage Repair Workshop are not on the basis of their seniority and <sup>and</sup> some of the juniors had joined earlier to the seniors, <sup>and</sup> when vacancies had arisen in the higher posts, the same ~~could have been~~ <sup>were</sup> filled up ~~only~~ by promoting

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the senior most available employees in this workshop. Thus the case of junior working in the higher post while the senior was absorbed in the lower post had arisen because of two circumstances :

- i) The absorption in this Carriage Repair Workshop is in the category in which the employee worked as on 15-11-1982 even though he might be working in higher cadre by the date on which he joined in this repair workshop, and
- ii) the fortuitous circumstance of a junior in one unit having been relieved earlier than the senior in another unit.

Anyhow, the junior who was promoted on adhoc basis was not reverted as and when the senior volunteer joined. It is stated that it was not so done due to administrative difficulties. One of the reasons stated is that as and when a volunteer joins it might not be readily known as to whether the volunteer who joined is senior or junior to the employee who is working in the higher cadre for these two may not be working in the same unit before they joined service in this Carriage Repair Workshop.

10. Further, the above situation had also arisen since after more than five years after the first notification, such option was extended even to some categories of the employees in Diesel Loco Sheds and even volunteers who opted as per notification dated 8-1-1987 they were absorbed in the category in which they worked on 15-11-1982. Thus, many of the seniors to those who joined in pursuance of notification dated 8-12-81, joined later. Then also, the earlier juniors who were promoted on adhoc basis were not reverted as and when the senior who opted as per notification dated 8-1-87 joined. It is stated

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that the question of finalisation of seniority list arises only after all the volunteers joined and after they so joined, the seniority lists were prepared and avenue charts were prescribed and steps were taken for regular promotion.

11. The facts stated as above will only explain the difficulties of the management in periodically revising the seniority lists as and when the volunteers joined or the difficulty in reverting one who gained experience in this workshop. But that is not a ground to deprive the applicants of their rights. One of the conditions is that they had to be absorbed only in the cadre in which they worked on 15-11-82 and not in the cadre in which they worked when they joined in this workshop or not even in the cadre in which they were working by the time they exercised their option in regard to those volunteers who opted in pursuance of the notification dated 8-1-1987. Such an option could have been so exercised, as they were being assured as per condition vii that on being absorbed in this workshop they would have the relative seniority on the basis of their length of service in the cadre in which they were working on 15-11-82 in their parent units. Thus, one disadvantage is being set off by the advantage in view these two factors i.e., the category in which they worked upto 15-11-1982, and the length of service being taken into consideration in fixing the interse seniority in the repair workshop at Tirupathi. But one may take into consideration the pros and cons before giving option when such volunteers were absorbed in the category in which they were working on 15-11-1982 which is to their disadvantage, they cannot be denied the benefit of interse seniority which is advantageous to such volunteers atleast

27/11/82

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from the date they joined in the repair workshop for fixing their pay on joining the workshop at Tirupathi. The question of seniority has a bearing for the purpose of consideration for promotion also. So it is quite but natural that when they are being absorbed atleast in the case of some employees in the lower cadre, it is proper to give the notional promotion to the volunteers who joined in this workshop if by that date their juniors were already promoted in the Carriage Repair Workshop at Tirupathi. It is evidently on that basis OA No. 542/90 on the file of this Bench was disposed of by giving the directions as referred to therein.

12. It is again necessary to refer to Direction (a) in the order dated 27-6-1991 in OA 542/90 in view of the contention raised by the respondents and that direction runs as follows:-

"(a) treat the applicant who was promoted later on in the Carriage Repair Workshop at Tirupathi as notionally promoted with effect from the dates when the juniors had been promoted. His pay should be fixed on this notional promotion. However, since he did not actually discharge the higher duties, he will not be entitled to arrears of pay difference, and ....."

By referring to that direction, Shri N.R.Devaraj urged that there could be cases of granting notional promotion to an employee as on a date long prior to the date on which that employee joined in this workshop at Tirupathi. We cannot say that such a thing would not have happened. Hence, it has to be stated that the said direction is to the effect that notional promotion has to be given, wherever due as per

contd....

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which the applicant joined in this workshop if by then the junior was promoted. It would not make any difference for the applicants therein by reading the said direction to the above effect as the arrears were not ordered.

13. It is next contended for the respondents that this OA is barred by limitation. In support of the said contention Judgment of the Supreme Court, SLJ 1992, Vol. II pp. 103 was referred to. Observations in paras 6 and 7 therein which are relied upon for the respondents herein are in a case of claim for seniority at a very belated stage. But this Bench had consistently taken a view that when it is a case of claim in regard to fixation of pay from a particular date, the same cannot be held as barred by limitation even if that date is more than one year earlier to the date of filing of the OA, for it is a case of continuing right and in such a case if the arrears are going to be ordered, they have to be ordered for a period commencing from one year prior to the filing of the OA. Hence, the contention in regard to bar of limitation fails.

14. There is also no force in the contention for the respondents that after the applicants were regularly promoted they cannot claim notional promotion from the date on which their junior was promoted on adhoc basis. We already observed that in view of the seniority of the applicants and as they lost a valuable right as per the terms and conditions whereby they had to be absorbed only in the category in which they were working on 15-1-1982 and not in the category in which they were working by the date on which they exercised the option, seniority has to be followed to the extent possible even in adhoc promotion. So, it is just and proper to provide notional promotion to the applicants as on the dates on which they joined in the repair workshop if by then their juniors were

9/11/82

To

1. The Chief Personnel Officer,  
S.C.Rly, Secunderabad
2. The Deputy Chief Mechanical Engineer,  
S.C.Rly, Carriage Repair Workshop, Tirupathi.
3. One copy to Mr.V.Krishna Rao, Advocate, CAT.Hyd.
4. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
5. Copy to Library, CAT.Hyd.
6. One spare copy.

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P.K.  
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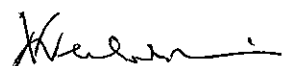
promoted in this workshop or even where their juniors were promoted out of turn, after the applicants joining the unit. There might be a case where the juniors might have got more than one promotion by the time the volunteers joined in this repair workshop. In such a case they had to be given notional promotion in the cadre in which his junior was working.

15. As the arrears of pay difference were not granted in OA 542/90, they are not granted in this case also.

16. The applicants 1 and 2 joined the Repair Workshop at Tirupathi on 28.9.1987 and the applicants 3 to 6 joined the said Workshop on 24.3.1986, 7.2.1986, 7.2.1986 and 24.3.1986 respectively. Shri A.Nagarajan, junior to the applicant was promoted to Grade-II on 30.8.1984 and later on he was promoted to Grade-I on 28.5.1986. The applicants 1 and 2 had to be given notional promotion in Grade-II and Grade-I on the same date ie., <sup>28.9.1987</sup> ~~28.5.1986~~. The notional promotion in Grade-II in regard to the applicants 3 to 6 had to be given on 24.3.1986, 7.2.1986, 7.2.1986 and 24.3.86 respectively and all of them had to be given notional promotion in Grade-I on 28.5.1986.

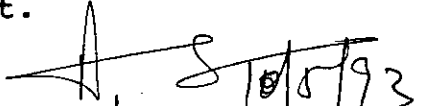
17. In the result, the OA is dismissed in regard to the arrears of difference of pay and it is ordered in regard to the notional promotion as referred to above. No costs.

P. J. Thiruvengadam  
(P.T. THIRUVENGADAM)  
Member (Admn.)

  
(V. NEELADRI RAO)  
Vice Chairman

Dated: April 28, 1993  
Dictated in the Open Court.

sk/vsn

  
Deputy Registrar (J)

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TYPED BY \_\_\_\_\_ COMPARED BY \_\_\_\_\_  
CHECKED BY (10) 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. *P. T. Vengal* ~~R. BALASUBRAMANIAN~~ :  
MEMBER (AIMN)

AND

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

DATED: 28-4-1993

~~ORDER~~/JUDGMENT

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

in

O.A.No.

807/92

T.A.No.

(W.P.No

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Admitted and Interim directions  
issued.

Allowed.

Disposed of with directions

Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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