

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL-APPLICATION-NO.686-of-1993

DATE-OF-ORDER: 3rd March, -1997

BETWEEN:

1. K.Mohan Rao,
2. S.Prabhakar Rao,
3. Smt.G.Divyavathi,
4. M.Jagadishwar Rao,
5. Smt.A.Shakuntala,
6. G.E.Narayana,
7. K.Suryanarayana,
8. V.Rama Rao,
9. D.S.Prakasa Rao,
10. S.A.Sattar,
11. N.V.Panduranga Rao,
12. V.Gurumoorthy,
13. A.Parvathiswara Rao,
14. Smt.G.Lokapavani,
15. V.B.Ramsagar,
16. A.L.Dasarath,
17. C.Viswanatham,
18. Smt.R.Jhansi,
19. Smt.C.G.Suryaprabha,
20. Smt.K.Sarada,
22. BVPR Vittal Rao,
23. Smt.M.S.Saraswathi,
24. Ch.V.S.Venugopal,
25. Smt.R.Manikyeswari,
26. Sri M.Chetan Das,
27. G.S.Govardhana Rao,
28. P.Saikrishna,
29. D.Santanam,
30. T.Balakotaiah,
31. Smt.T.Jayamani Rao,
32. T.Santhana Krishna,
33. T.Narayana Rao.

.. APPLICANTS

AND

1. Union of India, represented by
the Divisional Railway Manager,
South Central Railway,
Secunderabad,
2. The Sr.Divisional Engineer (Coord),
S.C.Railway, Secunderabad,
3. The Divisional Railway Manager (Personnel),
S.C.Railway, Secunderabad,
4. Mr.V.S.Arunachalam,
Divisional Secretary,
S.C.Rly. Mazdoor Union Office,
Hyderabad Division,
Secunderabad.

.. RESPONDENTS

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COUNSEL FOR THE APPLICANT: Mr.N.RAGHAVAN

COUNSEL FOR THE RESPONDENTS: Mr.N.V.RAMANA, Addl.CGSC
Mr.N.Ram Mohan Rao for R-4

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

ORDER

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Shri N.Raghavan, learned counsel for the applicant, Shri V.Rajeswara Rao for Shri N.V.Ramana, learned counsel for the official respondents and Shri N.Ram Mohan Rao, learned counsel for R-4.

3. There are 33 applicants in this OA. They are working as Office Superintendent Grade-I, Office Superintendent Gr.II, Head Clerk and Sr.Clerk in the clerical seniority unit of Senior Divisional Engineer, Hyderabad Division, Open Line Engineering Department of Hyderabad, South Central Railway. An office order bearing S.O.O.No.168/Admn./89 (letter No.YP/121/Admn./Engg) dated 17.11.1989 (Page 25 of the OA) was issued posting R-4, who was rendered surplus from the post of Head Signaller, as Head Clerk in the scale of pay of Rs.1400-2300 in Sr.D.E.N./Co-ordination/M/M.G/Hyderabad against a post of Head Clerk transferred from AEN, Jalna temporarily with immedite effect. As per this office order, the transferred post from Jalna will be retransferred to Jalna from the date of relief of R-4 on deputation to the Union. It is stated that the applicants were not aware of the posting of R-4 as he had never worked in the Engineering Branch after

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his induction in that cadre as Head Clerk. A seniority list of the Engineering Branch of Hyderabad Division was issued in November 1992 wherein it was shown that R-4 was absorbed as Head clerk in the Engineering Branch. On coming to know of the induction of R-4 in Engineering Branch, the applicants herein submitted memorandum to R-1 protesting against the absorption of R-4 in their seniority unit by their representation dated 11.12.92 (Page 40 of the OA). Another representation dated 23.4.93 (Page 44 of the OA) was also submitted to R-1. The main contention of the applicants in that representation was that by inducting R4, the further promotional opportunities of the Engineering Branch officials to O.S. Grade.II is reduced since the number of posts in that category is limited. Their further request in that representation ^{was} that R-4 should be posted in the Operating Branch as he was an official of the Operation Department from where he was rendered surplus. But, that representation was not disposed off by R-1 in their favour. The reply given to their representation is at page 31 of the OA. It is stated in their reply that the competent authority keeping in view the guidelines communicated in Para 3.1 of Board's letter NO.E(NG)/II/84/RE-1/10 (Serial No.128/89) dated 21.4.89 had posted R-4 in the Engineering Branch and that no irregularity was committed in that posting.

- praying -

3. Aggrieved by the above reply, this OA is filed to set aside the Office Order NO.168/Admn/89 dated 17.11.89 (Page 25 of the OA) of posting of R-4 in Engineering Branch and for a consequential direction to repatriate R-4 back to his parent department or any other department.

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4. Before analysing the contentions of the applicants in resisting the posting of R-4 in the Engineering Branch, the question of limitation raised by the official respondents in filing this OA is to be answered.

5. The official respondents submit that R-4 was posted in Engineering Branch by order dated 17.11.89 and this OA was filed on 7.5.93 i.e, after a lapse of about 4 years. Thus the filing of this OA is barred by limitation and the case has to be dismissed on that score alone.

6. The applicants submit that they came to know of posting of R-4 in the Engineering Branch as Head Clerk in the Hyderabad Division only when the seniority list of the Engineering unit was published in November 1992. Immediately thereafter, they represented their case to R-1 and that their request to cancel the admission of R-4 in the Engineering Branch was refused by the reply dated 11.11.1992. Immediately they filed this OA on 7.5.93. The posting of R-4 in Engineering Branch was kept as a secret and as R-4 had not worked on the Engineering Branch even on a single day, they were not aware of his existence in the department and he went on deputation immediately thereafter. Hence this OA cannot be dismissed ^{on the point of} ~~due to~~ limitation.

7. R-4 in his counter affidavit dated 3.1.97 submits that his name was entered in the staff attendance register on his entry into the department on 20.11.89. One Shri Sai Krishna, the applicant ^{at SL} / No.28 in this OA was aware of this

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fact as he was then working as a Chief Clerk Gr.II. The copy of the order absorbing him in the Engineering Branch was also circulated to the recognised unions and that the active participants of the rival Union who belong to the seniority cadre of Engineering Branch viz. S/Shri Mohan Rao, First Applicant in this OA, Parvatheswara Rao, 13th applicant in this OA were all aware of this fact. Hence R4 also pleads that the applicants herein approached this Tribunal belatedly.

8. Even if an official is taken in a seniority unit, his induction, if to be resisted should be on the basis of certain valid documents published for the consumption of the employees of that unit. Entering the name in the attendance register may not be strictly called as a document which is circulated to all. The authentic document by which all the employees of that seniority unit will come to know of any fresh induction is from the seniority list. For a Govt. servant, seniority list is a very important document. Everyone will like to peruse that document when published and at regular intervals to know their seniority position and to ascertain the chances of their promotion to the higher cadre. Hence when the applicants submit that they came to know of the admission of R-4 in their seniority unit by the publication of the seniority list in November 1992 and on that basis, they submitted their representation to the authorities, it cannot be said that they took belated action to resist the entry of R-4 in their cadre. When they did not get any favourable reply to their representation they immediately approached the Tribunal by filing this OA in May 1993.

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Hence it has to be held that they filed this OA in time and that the OA cannot be dismissed at the threshold itself on ^{point} ~~the~~ account of limitation.

9. The other main contentions of the applicants are analysed as under:-

(i) The first contention of the applicants is that R-4 was not made surplus from the cadre of Head Signaller. He managed to get himself rendered surplus from the category of Head Signaller. The above fact is evident as that post of Head Signaller, Kacheguda, from where he was rendered surplus was filled by promoting one Shri Reddy who was Sr. Signaller in the Signaller's category. Thus rendering R-4 surplus is irregular and hence he should be posted back to his parent cadre or posted elsewhere.

From the above contention the question arises whether rendering R-4 surplus from the category of Head Signaller is in order or not. It is also to be seen whether posting of Mr. Reddy as Head Signaller, Kacheguda by Office Order No.34/ET.III/90 (Letter No.YP/535/P.11/3/MS) dated 3.7.90 (Page 26 of the OA) ^{was} ~~is~~ warranted by circumstances for operational purposes.

By Office Memorandum No.YP/535/P.11/3/Signallers dated 8.6.88 (Annexure I to the reply affidavit filed by the official respondents), 14 posts in the Signalling cadre of Hyderabad M.G.Division was rendered surplus out of the total cadre strength of 22 posts. Out of 14 posts rendered surplus, 3 posts were in the category of Head Signaller in

the grade of Rs.1400-2300. By that surrender the category of Head Signaller had shrunk from the cadre strength of 5 to 2. So, the next point to be seen is whether R-4 is to be rendered surplus because of the shrinkage ^m~~of~~ that cadre. The seniority list of Head Signallers is enclosed as Annexure II to the additional affidavit filed by the official respondents. As per that seniority list as on 1.9.88 there were five officials who were holding that post of head signaller. R-4 happened to be the junior most in that list. Hence he was correctly made surplus being the junior most Head Signaller. Surplussing of R-4 from the category of Head Signaller of Hyderabad M.G. Division cannot thus be faulted.


It is stated that the remaining two posts of Head Signaller were distributed one at Kacheguda and the other at PAU (Memorandum No.YP/535/P.11/3/Signallers) dated 8.6.88 (Annexure I to the additional affidavit of official respondents). It is stated that one Shri S.G.Brahme, Head Signaller died on 28.4.90. In the exigencies of service it was found essential to fill up the post of Head Signaller by promoting Shri Reddy who was the senior-most Senior Signaller. The post of Head Signaller was made surplus in June 1988. Shri Brahme died in April 1990 and Shri Reddy was promoted on 3.7.90. From the above sequence, it can be easily said that the post of Head Signaller vacated by R-4 was not filled immediately and the filling up of the post at Kacheguda was necessitated due to exigencies of service and that filling of the post had nothing to do with the release of R-4 from the post of Head Signaller. Hence it has to be understood that R-4 was rendered surplus due to



shrinkage of cadre and absorbed in Engineering Branch and Shri Reddy was posted due to the death of Shri Brahme since maintaining a cadre strength of two Head Signaller was deemed essential for purpose of maintaining the operations.

(ii) The next contention is that to facilitate absorption of R-4 in Hyderabad Division a post of Head Clerk was transferred from the office of the AEN, Jalna and that action of the respondent^{nts} clearly indicates that a favoured treatment was given to R-4. This posting of R-4 transferring a post is a pointer that R-4 manoeuvred with the connivance of the officer's of Hyderabad Division to get himself posted in the Engineering Branch.

10. The point for consideration is whether any out of the way favour was shown to the ^{Respondent No 4} applicant by his posting in Engineering Branch. Though it is stated in the Office Order dated 17.1.89 that a Head Signaller post from Jalna was transferred temporarily and R-4 was posted and retransferred back when R-4 went on deputation, The above statement is found to be incorrect as revealed from the records. In Page N-27 of file No.YP/121/Admn./HC/Eng/HYB it is stated that the concurrence was obtained from the accounts to create one work charged post of Head Clerk in the scale of Rs.1400-2300 for a period of two months and that work charged post was sanctioned by Sr.DEN (Coordination) Hyderabad under the powers delegated in the Schedule of Powers of J.A.Gr.Officer to create a work charged post. Hence the post at Jalna was not transferred to accommodate R-4. The whole misunderstanding would have been cleared had R-3 issued a correction slip to the office




order dated 17.11.89 stating that R-4 was posted against the workcharged post ^a newly created post. That lapse had contributed to the misunderstanding. R-4 was posted against the workcharged post and he was sent on deputation from that post. Hence no undue favours were shown to accommodate R-4 as no post was transferred from Jalna to Hyderabad.

(iii) The next contention is that R-4 being a Union official influenced in the absorption of surplus staff in the ministerial cadre. There are no rules or regulations for absorbing surplus staff in the ministerial cadre and surplus employees of the Signaller's category should have been accommodated in their parent department.

The respondents submit that they have followed the Railway Board's instructions in this connection which was circulated as Serial Circular 128 of 89. This Serial Circular is enclosed as Annexure-3 to the additional affidavit of the official respondents. It is further stated for the respondents that in accordance with that serial circular, "that if only small number of staff are being rendered surplus and they have to be transferred to various units of other department against vacancies of duly sanctioned post, they can be suitably adjusted in those units with full seniority and merging their seniority in respective units". In view of the above instructions of the Railway Board, R-4 was accommodated in the vacancy in the Engineering Branch with full seniority and that posting cannot be questioned. It is also their submission that the recognised unions had also agreed for extending the benefit

of opting and absorption in the ministerial category also by Signallers rendered surplus on Hyderabad Division as per the minutes of the Joint meeting held on 13.11.89.

The absorption of surplus staff is a difficult task as no unit will like to absorb the surplus staff with full seniority. Even accepting the bottom seniority in a unit even if opted by the surplus employees will be a difficult proposition as the skills required to discharge the duties of the new post is to be ensured. Thus the absorption of surplus staff is to be done with case on the circumstances prevailing at the time of absorption. No hard and fast rules can be laid in this connection. All the instructions issued by the Railway Board are only guidelines and are not mandatory. The local unit has to use its ingenuity to absorb the surplus staff in other units amicably and without any illwill and rancour. For this, the assistance from the recognised Unions should also be taken. On a number of occasions, some sort of give and take policy is to be adopted. Hence there can be no question of any disregard of ^{the} rules. Even if the surplus official is a union office bearer, he cannot exert any undue influence to get posted to a post of his choice. Hence, we cannot find any fault if the administration decided to post R-4 in Engineering Branch as there was a vacancy at that time in that branch. We do not also subscribe to the view that R-4 being an office bearer of the recognised union had managed to get himself posted as Head Clerk of the Hyderabad Engineering Unit.

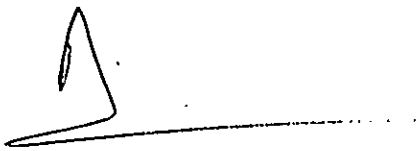


(iv) The last contention of the applicants is an important one. They submit that R-4 is an operating branch official and made surplus from that branch. Hence, he should have been accommodated in operating branch either in the open line or ministerial cadre and he should not have been posted in the Ministerial cadre of the Engineering Branch.

The respondents in their reply submit that there was a post of Head Clerk available in the Engineering department at that time and R-4 was accommodated against that post. The accommodation as above is not a deliberate action but on the basis of availability of vacancies and other connected factors.

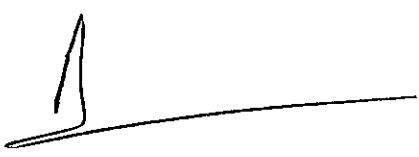
10. As stated in the earlier paragraphs the administration thought of posting R-4 by transferring one post of Head Clerk from Jalna which was vacant at that time. But subsequently, a workcharged post was created and R-4 was accommodated in that post in Hyderabad Engineering Unit. Whether it was possible at that time to accommodate R-4 in any of the wings of operating/commercial branch of Hyderabad Division either in the office or in the out door units is to be considered next.

11. The above question is not clearly answered in the various affidavits of the official respondents. Hence, we called for the records wherein the various steps taken to accommodate R-4 on rendering him surplus has been indicated. The official respondents produced the file



No.Y/P/535/P-III/Signs/Surrender. R-4 in his letter dated 20.7.88 has requested for absorption in the category of Goods Guard subject to his seniority being protected. Alternatively, he has also given his willingness to be posted as Conductor if he is found medically unfit for posting as Goods Guard. A third option has also been given by him to post him in the scale of pay of Rs.1400-2300 as Head Clerk including the Personnel Branch, Welfare Inspector and Complaint Inspector (Ex-cadre posts). In the noting pages N-36 and N-37 of that file it is indicated that R-4 cannot be posted as Goods Guard as he is not medically fit for that post. As he declined to go as ECRC as that cadre is controlled by the B.G.Division, he was not considered for absorption as ECRC also. It is also seen from that noting that the Mazdoor Union ^{was} is requesting for absorbing R-4 as Head Clerk in the Engineering Department. But the same Union is also opposing absorption of surplus staff being absorbed in other than operating and commercial branch. Hence there is a contradiction in the stand taken by the Union. The noting also indicates that CPO, Secunderabad had clarified for absorption of surplus staff in commercial department subject to following the extant rules for inter-departmental transfers. The noting also indicates that both the Unions ~~have~~ ^{had} agreed for the absorption of the surplus staff in the ministerial cadre as per the minutes of its meeting held on 13.11.89. Thus various suggestions were thrown for absorption of surplus staff including absorption of R-4.

12. The Divisional Operating Superintendent has suggested absorption of R-4 as Head Clerk. R-1 finally



decided on the basis of various suggestions made as above, not to allow Signallers to opt for ministerial category. However as a one time exception, R-4 was allowed to be absorbed as Head Clerk in the Engineering Branch by transferring the post from Jalna. However as stated earlier, R-4 was absorbed as Head Clerk in the Engineering Branch of Hyderabad Division in the newly created workcharged post.

13. From the above analysis, it is clear that no attempt was made to absorb R-4 in the ministerial category of Operating/Comercial branch. Though it was thought that he can be posted as ECRC, the same had not materialised as R-4 was unwilling to join as ECRC as that cadre was controlled by B.G.Dvision. Finally, he was accommodated as Head Clerk in the Engineering Branch.

14. At the outset, it has to be observed that R-4 cannot choose his place of posting. When it was possible to post him as ECRC, he should have been accommodated in that post, even if he is unwilling. That would have avoided any controversy as that post was in the commercial branch. The official respondents for reasons best known to them accepted the unwillingness of R-4 to be posted as ECRC. This in our opinion is not a judicious decision.

15. Before absorbing R-4 as Head Clerk in the Engeneering Branch, they could have examined the possibility of accommodating him in the ministerial cadre of operating branch. But no effortg appeared to have been taken to assess the availability of vacancies in the



Ministerial cadre of the operating department to absorb R4. We have asked for the vacancy position in the ministerial category in the different departments including operating branch at the time when R-4 was absorbed in the Engineering branch. R-3 in his note dated 18.2.97 expressed his inability to give the vacancy position of the ministerial cadre of various departments in the year 1988 at this distance date. Hence the availability of vacancy in the ministerial cadre of the departments other than Engineering branch could not be ascertained to see whether R-4 could have been accommodated in any other branch other than the Engineering branch. Hence absorption of R-4 in the Engineering branch had become a fait accompli and cannot be revised. Under these circumstances it has to be seen whether any relief can be given to the applicants herein now.

16. R-4 having been absorbed in the Engineering branch over a decade back cannot ^{now} be asked to go back to operating branch or as ECRC as that will create more problem than solving the present issue. The main grouse of the applicants in this OA is that the absorption of R-4 had affected their promotional chances to O.S. Gr.II. There are 33 applicants in this OA. Out of the 33, 13 had already retired and two are in the grade of OS.Gr.I. Hence the grievance is limited only to 18 out of the 33 applicants herein. Out of the 18 applicants who are presently working as Head Clerk, 5 are senior to the ^{Respondent No 4} applicants. Hence, the 5 will not be affected for promotion to the post of O.S.Gr.II due to the absorption of R-4. Thus, the grievance of the rest 11 applicants will remain.

It is stated that even the O.S. Gr.II and Gr.I have joined as applicants in this OA to protect the cadre as a whole. We do not subscribe to that view. Only the affected parties' interests have to be protected. It is also not possible to protect the interests of the rest of the 11 applicants herein for all time to come. To the limited extent of improving their chance to get promoted to O.S. Gr.II ways and means have to be found. Out of the 11 affected applicants, it is ascertained that the junior most is one Smt. R.Manikyeswari, applicant at Sr.No.25 of the application. If her chances of promotion in due time in the open line Engineering cadre is ensured, as if R-4 is not admitted in that cadre, then the applicants cannot have much of a grievance. Only to that extent, the interests of the applicants can be protected. To achieve the above objective, if R-4 is posted as Chief Clerk when his turn comes in a post other than the open line Engineering cadre post of Hyderabad Division till Smt. Manikyeswari is also promoted as Chief Clerk in the Engineering cadre, then the issue may be deemed to have been solved equitably.

17. R-4 was initially accommodated as Head Clerk against a workcharged post on 20.11.89 and he was sent on deputation from 21.11.89. He was repatriated back as Head Clerk under Sr.Den (Coordination), Hyderabad on 30.6.93. When his turn comes for promotion as O.S. Gr.II, the respondent authorities should strive hard to create a workcharged post of O.S. Gr.II and accommodate him in that post, though he will keep his lien in the open line Engineering cadre, as was done at the time of his absorption in Engineering branch in 1989. The above will




ensure that the applicants who are junior to him in this OA will get their promotion as Chief Clerk in the open line engineering cadre without any set back in the normal course.

18. It may be argued that it will be difficult to create a workcharged Chief Clerk post to accommodate R-4 till Smt. Manikyeswari is promoted as O.S.Gr.II. The construction organisation is a huge one spending very huge sums on construction activities. Similarly the open line organisation also undertakes work within the division. Hence creation of a workcharged post for certain length of time either in the construction or open line wing ^{may} ~~should~~ not pose much of a problem. The Divisional authorities should strive to create that workcharged post. Alternatively, R-4 may also be accommodated in the Ex-cadre post of Complaints Inspector or similar such post^y which is equivalent to that of OS Gr.II. If Smt. Manikyeswari fails to qualify in the first instance in the selection for O.S. Gr.II, then R-4 can be brought to the open line engineering cadre without waiting for Smt. Manikyeswari being promoted to OS Gr.II.


19. In the view of foregoing, the following direction is given:-


R-4, when his turn comes for promotion to the post of Office Superintendent Grade-II and found fit for that promotion, ^{- then he -} should be posted in that grade in the workcharged post or in any other equivalent ex-cadre post keeping his lien in Hyderabad Engineering Division Open Line cadre. He



can be brought back to the Hyderabad Engineering Open Line Cadre as Office Superintendent Grade-II immediately after Smt. Manikyeswari is promoted as Office Superintendent Grade-II. If, Smt. Manikyeswari fails to qualify in the first instance for promotion to the post of Office Superintendent Grade-II, then R-4 can be brought back to Hyderabad Engineering Open Line cadre without waiting for Smt. Manikyeswari being promoted as Office Superintendent Grade-II.

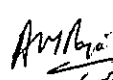
20. The O.A. is ordered accordingly. No order as to costs.


(B.S. JAY PARAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)

3/3/97

DATED: 3.3.97, 1997


6-3-97
Dn(O).

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