

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 832 of 1993

DATE OF ORDER: 20th November, 1996

BETWEEN:

1. N.Ramachandra Rao,
2. R.Gangadharam,
3. N.Lakshmana Char,
4. B.D.Rozario,
5. G.Rama Murthy,
6. P.Raghuram,
7. SSN Iyer,
8. K.Rajani Kumari,
9. Nafeeza Shareef,
10. KSR Murthy,
11. G.Saraswathi,
13. PM Jigatur,
14. J.Lakshmi,
15. P.Sudhakar,
16. D.Venugopal,
17. V.Venugopal,
18. Thomas Joseph,
19. KV Raphel,
20. SC Pal,
21. M.P.Prem Kumar,
22. YV Prasada Rao,
23. M.Srinivas Rao,
25. MP Kamalakar,
26. T.Raja Rao,
27. KS Anwarjan,
28. SY Basha,
29. EA Vijaya Kumar,
30. TSR Anjaneyulu,
31. GV Rama Rao,
32. K.Sankaram,
33. M.Radhakrishna,
34. MR Koteswara Rao,
35. D.A.Rama Sarma,
36. Ch.Pratap Reddy,
37. TR Subramanyam,
38. LM Gregory,
39. P.Appa Rao,
40. VC Wesley,
41. R.Ramachandram,
42. BSM John,
43. E.Jagannatham,
44. A.Unnikrishnan,
45. RR Satyanarayana.

.. Applicants

AND

1. The Secretary, Railway Board,
New Delhi,

(Signature)

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7. The applicants submitted representations for implementing the orders in the TA to them also as can be seen from the individual representations enclosed from pages 22 onwards of the affidavit. But it is stated that those representations are yet to be disposed of.

8. As stated earlier, the decision of this Tribunal in TA 65/87 is equally applicable to the applicants in this OA. But before granting them the benefit, two important issues arise which are necessary to be considered for granting the benefit of the decision in the TA 65/87 for the applicants herein. The issues are:

(i) Whether the applicants who are eligible for promotion in view of their juniors already promoted due to restructuring orders are entitled to be promoted even if the percentage fixed for each category is exceeded;

(ii) Eligibility of the applicants to get arrears if they are promoted to the higher grade on par with their juniors.

9. The above two issues are considered and answered as below:-

(i) The applicants in this OA who are already promoted to the cadre in which their juniors are also working from an earlier date may be given deemed promotion

4. This OA is filed praying for direction to the respondents to implement the order of this Tribunal dated 7.9.89 in TA 65/87 in the case of the applicants also as they are similarly placed like the applicants in the above referred TA.

5. The facts of the case in TA 65/87 have been given in Paras 2,3 and 4 of the order of this Tribunal in that TA. A comparison of those facts with that of the facts mentioned in this OA affidavit indicates that the facts are ~~the~~ ^{similar to} same. Further, the prayer in this OA is also ~~same as~~ ^{made} the prayer ~~in~~ ^{as} TA 65/87. In view of the above, we are of the opinion that this OA is covered by the orders of this Tribunal in TA 65/87 decided on 7.9.89.

6. A reply dated 11.1.94 has been filed in this OA. A perusal of the reply reveals that the case of the applicants was not considered as the benefit of the decision in the above referred TA ~~can~~ ^{cannot} be extended to the applicants in this OA since the order in the TA ~~was~~ ^{as} applicable only to the applicants therein. The reply does not talk about the reason ^{as to} why the orders in the TA cannot be implemented in the present case especially when the applicants are similarly situated and it is stated that they are seniors to the applicants in the TA. We are of the opinion that whenever juniors are promoted, seniors cannot be left out even if the order is not specific to the extent of promoting the seniors also who are not parties in the TA.

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arise will not upset the percentage fixed in that promotional category.

(iii) The applicants pray for implementation of the orders with effect from 1.10.80. But they have not filed any representation or approached appropriate judicial forum if their representations are not considered in time by filing WP/OA. The Writ Petition filed in the A.P.High Court bearing No.5125/84 was transferred to this Tribunal and renumbered as TA 65/87. The applicants in this OA have not joined along with the applicants in T.A. When they ~~were~~ were not considered for promotion as per the restructuring orders, they filed this OA only on 12.7.93 after the TA 65/87 was decided. Even after the TA was disposed of on 7.9.89, the applicants approached this Tribunal only four years thereafter. Hence we do not consider that the applicants are fit to be given arrears from the date their juniors were promoted or in accordance with the directions in the TA. However, their notional fixation of pay has to be done on par with the juniors from the deemed date of promotion and the arrears, if any, that accrues on that basis should be paid to them only from the date of filing of this OA i.e, from 12.7.93.

10. In the result, the following direction is given:-

(i) If the juniors (promoted on the basis of the restructuring cadre) to the applicants in this OA are working in the same grade from a date earlier to the date

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from the date their juniors were promoted to that grade on the basis of restructuring orders. By giving this deemed promotion, the percentage of posts fixed for that grade is not disturbed. The only disturbance will be preponement of the date of promotion of the applicants on par with their juniors. Thus, the proponement in the same grade will not cause any problem for retaining the percentage fixed for that grade. However, it is to be added that the preponement of promotion is to be given only to those applicants who were promoted to that grade while considering them for promotion in the first instance itself and not passed over for promotion in the first instance.

(ii) Some of the applicants, in this OA may have to be promoted to the higher grade as their juniors, in view of the directions in the above referred TA, would have been promoted to the higher grade on the basis of the restructuring orders. In that case, if the applicants are promoted to the higher grade straightway after assessing ^{and similarly} their fitness for promotion, then the number of posts in that higher grade will be more and that will upset the percentage fixed for that grade. Hence the promotion which straightway upset the percentage of posts fixed for that grade is not desirable. The only solution appears to us is that the applicants who are seniors and whose juniors are already working in higher grade are to be promoted when the next vacancy arises provided they pass the necessary fitness test in accordance with the rules in the first instance itself. Thus promoting them as and when vacancies

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of promotion of the applicants then the date of promotion of the applicants to the same grade should be deemed to have been preponed to that of their juniors in that grade provided the applicants have been promoted to that grade in the first instance itself after assessing their fitness ^{and suitability} on the basis of the relevant recruitment rules.

(ii) If the juniors (promoted on the basis of the restructuring cadre) to the applicants are in the higher grade, then the applicants should also be promoted to that grade when the next vacancy arises in that grade provided they pass the fitness test in accordance with the relevant recruitment rules in the first instance itself. If the applicants are promoted to the higher grade as above then their deemed date of promotion to that grade should be ~~on the date of their immediate juniors in that grade.~~

(iii) The notional pay fixation of the applicants has to be done in the appropriate grade from the date of their deemed promotion on par with their juniors (i.e., from the date their juniors were promoted to that grade). However, the applicants are entitled for arrears only from 12.7.93 i.e., the date of filing of this OA if the deemed date of promotion is earlier to 12.7.93.

11. The OA is ordered accordingly. No order as to costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

Pushpa Ram

न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक विधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपाठ
HYDERABAD BENCH