

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

C.A.No. 836/93.
~~XXXXXX.~~

DATE OF DECISION: 06-11-96.

Addanki Subba Rao & Others.

PETITIONER(S)

Mr.T.Panduranga Chari for
Mr.G.Ramaghandra Rao

ADVOCATE FOR THE PETITIONER(S)

VERSUS

1.The UOI, Rep.by the General Manager, RESPONDENT (S)
SC Rly, Rail Nilayam, Sec'bad and 2 Others.

Mr.V.Rajeswara Rao for Mr.N.V.Ramana, ADVOCATE FOR THE
Addl.CGSC. RESPONDENT (S)

SHRI R.RANGARAJAN : MEMBER (ADMN.)

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

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgement ?
4. Whether the Judgement is to be circulated to the other Benches ?

Judgement delivered by Hon'ble SHRI R.RANGARAJAN : MEMBER (ADMN.)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 836/93.

Dt. of Decision : 06-11-96.

1. Addanki Subba Rao
2. A.Sherfuddin

.. Applicants.

1. The Union of India, Rep.by
General Manager, SC Rly,
Rail Nilayam, Sec'bad.
2. The Divl.Railway Manager,
SC Rly, Vijayawada Division,
Vijayawada.
3. The Sr.Divl.Electrical Engineer
(Traction Rolling Staff),
SC Rly, Vijayawada.

.. Respondents.

Counsel for the Applicants : Mr.T.Panduganga Chary for
Mr. G.Ramachandra Rao

Counsel for the Respondents : Mr. V.Rajeswara Rao for
Mr.N.V.Ramana, Addl.CGSC.

CORAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

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

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ORDER

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

Heard Mr. T.Panduranga Chary for Mr.G.Ramachandra Rao, learned counsel for the applicants and Mr.V.Rajeswara Rao for Mr.N.V.Ramana, learned counsel for the respondents.

2. There are two applicants in this OA. They are working as ELF Grade-III (Skilled Gr-III) w.e.f., 8-3-82. Later on they ^{were} ~~are~~ promoted as ELF Gr-II (Skilled Gr-II) w.e.f., 9-7-84 vide office order O.O.No.PEC/106/84 dated 09-07-84. They ^{were} ~~are~~ subjected to suitability test for promotion to ELF GR-I (Skilled Gr-I) in the scale of pay of Rs. 380-560/- (RS). But they were not found suitable for promotion vide memorandum No.B/P.671/II/TRS/Vol.3 dated 27-06-86. In view their of unsuccessful attempt for promotion to ELF Gr-I their juniors were promoted to the Grade of Skilled Grade-I w.e.f., 30-6-86. Thus it is stated that the applicants had become juniors to their erstwhile juniors in the category of Skilled Gr-I.

3. The Railway Board had issued upgradation orders vide letter No.E(P&A)1-82/JC/1, dated 10-07-85 (Annexure-R-1). As per that circular the applicants were entitled to get promoted to the post of Skilled Fitter Gr-II and ^S Skilled Fitter Gr-I subject to certain conditions stipulated in that order. They were promoted as Skilled Fitter Gr-II in the scale of pay of Rs.330-480/- (RS) w.e.f., 1-1-84 vide memorandum No.^B P.536/II/TRS/2 dated 21-12-92. The preponing of their date of promotion to the cadre of Skilled Fitter Gr-II from 9-7-84 to 1-1-84 is stated to be done without subjecting them to any trade test. In terms of the Railway Boards letter No.PC/III/84/UPG/19 dated 25-6-85 the applicants have to undergo suitability test/
to the Highly Skilled
trade test for promotion/Fitter Gr-I. As they had already

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failed in this examination earlier ~~but~~ they ~~xxx~~ were promoted to that grade when they were found fit w.e.f., 21-4-87. Thus the respondents contend that the applicants ^{were} ~~25~~ promoted strictly in accordance with rules and hence ^{they} ~~25~~ cannot claim any seniority or other monetary benefits on par with their juniors, who were promoted earlier to them to the post of Skilled Fitter Gr-I.

4. The applicants in this OA submit that they should have been promoted to the Highly Skilled Fitter Gr-I w.e.f., 1-1-84 in terms of the restructuring orders of the Railway Board without subjecting ~~xxx~~ them to any trade test for promotion to the Highly Skilled Gr-I as this is the first promotion for them in terms of the above said restructuring order. The applicants further submit that when it was informed by the memorandum No. B/P.536/II/TRS/2. dated 21-12-92 (Annexure-5) showing them juniors to some of their erstwhile juniors in the grade of Highly Skilled Grade-II Fitter and their pay was also less than those reported juniors they approached ^{this} ~~25~~ Tribunal by filing this OA.

5. This OA is filed praying for a direction to the respondents to fix their seniority, pay and grade ~~of the~~ ~~xxxxxxx~~ w.e.f., 1-1-84 on par with their juniors in the upgraded posts of Electrical Loco-Fitters, Highly Skilled Gr-II and Highly Skilled Gr-I with all consequential benefits.

6. The issue of restructuring of the cadre of the Fitters by the Railway Board ^{vide} memorandum dated 10-07-85 is not disputed. It is also admitted by the respondents in the reply that the first promotion on the basis of the ~~xxxxxxxxxx~~ restructuring orders of the Railway Board should be effected without subjecting the employees to any test whether trade test or any other selection/suitability test. However if an employee is entitled for two promotions on the basis of ¹⁰⁻⁷⁻⁸⁵ ~~the order dt. 10-7-85~~ the second promotion should be done in accordance with the normal

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proceedure i.e., if the second promotion is a selection one the employee should be subjected to the selection. The respondents further submit that the above is clarified by the Railway Board vide letter No.PC/III/84/UPG/19 dated 25-6-85.

7. The controversy in this case is whether the applicants were entitled for promotion to the cadre of Highly Skilled Fitter Gr-I w.e.f., 1-1-84 on the basis of restructuring orders of the Railway Board without subjecting them to trade test. The respondents submit that the applicants were promoted w.e.f., 9-7-84 to the post of Highly Skilled Gr-I¹ much later than 1-1-84 on the basis of the suitability assessed. As per the restructuring orders as they were entitled for promotion w.e.f., 1-1-84 to that grade, ^{hence} their date of promotion to the post of Highly Skilled Gr-II was preponed to 1-1-84 from 9-7-84. Thus the respondents submit that the applicants were promoted to the first post on the basis of the restructuring order w.e.f., 1-1-84 without subjecting them to trade test. Their next promotion is to the grade of highly skilled Gr-I to which they were also entitled w.e.f., 1-1-84 as per the restructuring orders due to their seniority position in Gr-II. But that entitlement is subject to the condition that they pass the necessary suitability test/trade test as directed by the Railway Board in the letters No.PC/III/84/UPG/19 dated 25-06-85. As the applicants had already failed in the first instance for promotion to the post of highly skilled Gr-I they were not given promotion w.e.f., 1-1-84 but were given promotion in their turn after they passed the necessary suitability test/trade test for the promotion to the grade of Highly Skilled Gr-I w.e.f., 21-4-87. In view of the above appreciation, the applicants are not entitled for any benefit as prayed for in this OA.

For

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8. There is no controversy in regard to the entitlement of promotions of the applicants herein on the basis of the restructuring orders of the Railway Board. The only point for consideration in this OA is whether the preponement of promotion of the applicants to Highly Skilled Gr-II w.e.f., 1-1-84 from 9-7-84 can be considered as the first promotion to them in terms of the restructuring orders. If that preponement is considered as the first promotion then the applicants have to be subjected to a trade test ~~xxxx~~ for promotion to Highly Skilled Gr-I Fitter to be effected from 1-1-84. Hence, the controversy narrows down to ^{the} ~~be~~ examination whether the preponement of promotion of the applicants to the cadre of Highly Skilled Gr-II w.e.f., 1-1-84 is the first promotion or not.

9. The applicants on their own merit were promoted to the post of Highly Skilled Gr-II after subjecting them to trade test w.e.f., 9-7-84. Their promotion to that grade was only preponed w.e.f., 1-1-84 in view of the restructuring orders of the Railway Board. Hence, it cannot be said that their preponement of promotion to the post of Highly Skilled Gr-II is done strictly in accordance with the restructuring orders. The preponement was necessitated because of the orders of the Railway Board. Such preponement should not be construed as a first promotion in the strict sense of the term. It is their good luck that the restructuring order came in their way for getting promotion to the Highly Skilled Gr-II earlier. Hence, we are of the opinion that the preponement of the promotion of the applicants to the post of Highly Skilled Gr-II w.e.f., 1-1-84 should not be treated as a first promotion to the applicants in terms of the restructuring orders of the Railway Board. In view of that appreciation it has to be held that their first promotion in terms of the restructuring orders of the Railway Board is only to the grade of Highly Skilled Gr-I. In view of

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the Railway Boards letter dated 25-6-85, none of the employee who gets the first promotion in terms of the restructuring orders of the Railway Boards should be subjected to any trade test/suitability test. Hence, the applicants have to be promoted to the cadre of Highly Skilled Gr-I w.e.f., 1-1-84 without subjecting them to any trade test. The failure on their part to qualify for the trade test of Highly Skilled Gr-I in the trade test conducted by proceedings dated 27-6-84 should not be taken into account to debar them for promotion w.e.f., 1-1-84 in terms of the restructuring orders of the Railway Board. Hence, we are of the opinion that the request of the applicants for their promotion to the post of Highly Skilled Gr-I w.e.f., 1-1-84 in terms of the restructuring orders of the Railway Board is in order and rejection of their request by respondents to show them of having ^{been} promoted to Gr-I w.e.f., 1-1-84 cannot be upheld. As they entitled for promotion to Gr-I from 1-1-84, they are also entitled for fixation of pay and allowances and seniority on that basis.

10. The next question arises in regard to payment of arrears ~~of~~ to the applicants on their pay fixation in the cadre of Highly Skilled Gr-I Fitter w.e.f., 1-1-84. It is seen from the application that the applicants have submitted their representations in that connection only on 4-1-93 about 6 to 7 years later than the issue of the restructuring orders. Though the applicants submit that their seniority and pay fixation was known to them only by order No.B/P.536/II/TRS/2. dated 21-12-92 (Annexure-5), we do not feel that this simplistic view cannot be taken. The applicants are well aware even way back in 1987 that their promotion to the post of highly skilled Gr-I was not effected w.e.f., 1-1-84. They must be knowing that their juniors have been given promotion w.e.f., 1-1-84. When such an order was not issued in their favour when their juniors were promoted to the post of highly skilled Gr-I w.e.f., 1-1-84 they should have woken up and approached the authorities to issue an order

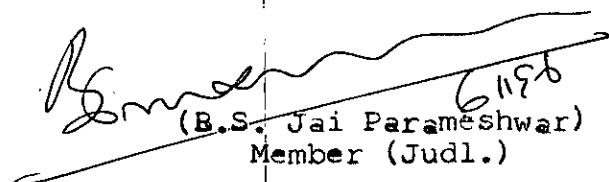
promoting them also to highly skilled Gr-I w.e.f., 1-1-84. But for reasons best known to them they kept quiet and filed the first application only on 4-1-93. Thus we are of the opinion that the first representation to the authorities is a very belated one. They also approached Tribunal ^{on} on 13-7-93. Hence, the applicants cannot claim full arrears of the fixation of their pay in the grade of highly skilled Fitter Gr-I w.e.f., 1-1-84.


11. This Tribunal is consistently holding the view that the fixation of pay and drawing of increment thereon is a continuous one. If there is delay in approaching the Tribunal if the pay fixation is not done in accordance with the rules, then such of the applicants ~~are entitled only limited payment~~ of arrears i.e., only from one year prior to filing of the OA in cases of continuing cause. In this case notional pay of the applicants have to be fixed w.e.f., 1-1-84 in the grade of Highly Skilled Gr-I Fitter and increment to be granted to them thereafter on that notional fixation. As they filed this application belatedly the applicants are entitled for arrears on that basis only one year prior to filing of this OA as per the law laid down by this Tribunal.

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

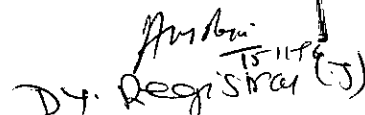
The applicants should be deemed to have been promoted to the post of Highly Skilled Gr-I Fitter w.e.f., 1-1-84. On that basis their notional pay and seniority have to be fixed. The applicants are entitled for arrears of pay and allowances on that basis only w.e.f., 13-7-92 (This OA was filed on 12-7-93).

13. The OA is ordered accordingly. No costs.


(B.S. Jai Parameshwar)
Member (Judl.)


(R. Rangarajan)
Member (Admn.)

Dated : The 6th Nov. 1996.
(Dictated in the Open Court)


Dy. Registrar (J)