

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 893/93.

Dt. of Decision : 29.4.94.

Mr. P. Chinnaiah

.. Applicant.

Vs

1. Union of India rep. by
General Manager, SC Rly,
Rail Nilayam
Secunderabad.
2. Chief Personnel Officer,
SC Rly, Rail Nilayam,
Secunderabad.

.. Respondents.



Counsel for the Applicant : Mr. G. Ramachandra Rao

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

CORAM:

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

THE HON'BLE SHRI R. KANGARAJAN : MEMBER (DMN.)

This fact has been rightly accepted by the respondents themselves as can be seen from para-4 of the reply affidavit. Shri Gangadharan has also been given a show-cause notice to bring down his seniority and cancellation of his accelerated promotion (Annexure R-1). Hence, there is no need to go into the contention whether Sri Gangadharan is junior or not to the applicant.

8. As the applicant is senior to Sri Gangadharan, he has to be promoted in the place of Sri Gangadharan from the date Sri Gangadharan was promoted as Chief Clerk and Office Superintendent against the roster points. It is stated in the reply affidavit that as the show-cause notice issued to Sri Gangadharan pointing out to his erroneous promotion and to rectify the same vide letter at Annexure R-1, is still pending, it is not possible to decide the case of the applicant till the final disposal of the case of Sri Gangadharan. It is not necessary to wait for the disposal of the show-cause notice issued to Sri Gangadharan to give the benefit of promotion as Chief Clerk and Office Superintendent to the applicant from the date, Sri Gangadharan ^{was} promoted as Chief Clerk and Office Superintendent as it is an admitted fact that Sri Gangadharan had been erroneously promoted against the S.C. point instead of the applicant. Hence, it can be conveniently presumed that the applicant has to be promoted as Chief Clerk from 27.2.1979 and as Office Supdt. from 1-7-1981.

9. The next issue that arises in this case is the fixation of pay and drawing of arrears of the applicant due to his promotion from 27.2.1979 and 1.7.1981 as Chief Clerk

Office Superintendent on 1-7-1981. After this OA was filed, show-cause notice dated 12-7-1993 vide Annexure R-1 was issued to Sri Gangadharan as to why his empanelment as Chief Clerk during 1979 and further promotion as Office Superintendent-I with effect from 1-7-1981 should not be cancelled.

5. As the applicant was having a lien in the parent unit when he was working in the post of Complaints Inspector, an Ex-cadre post, his case for promotions in the parent unit has to be considered as and when his turn comes. When the case of the applicant was not considered for promotion in the parent unit, he made representation in 1985 and then his case for promotion to the post of Chief Clerk was considered in 1985 and when he was selected for promotion he was given promotion to the post of Chief Clerk with effect from 1-10-1980 and on that basis when his turn for promotion to Office Superintendent had come, he was selected and promoted as Office Superintendent in 1988 and because of that promotion he was repatriated to the parent unit on 12-5-1988, the date on which he assumed charge as Office Superintendent.

6. It is now contended for the applicant that when Sri Gangadharan was admittedly junior to the applicant in S.C. community and when Sri Gangadharan was promoted as Chief Clerk and Office Superintendent with effect from 27-2-1979, and 1-7-1981 respectively, the applicant should be given promotion to the above posts from the above two dates respectively with all attendant benefits.

7. It is now an established fact that Sri Gangadharan is admittedly junior in S.C. community list to the applicant.

how he missed to notice the issue of the seniority list. In Government services, it is a known feature that the employees keep a constant vigil to protect their rights in regard to their seniority and promotion irrespective of the fact whether they are in the Gazetted or non-Gazetted cadre and irrespective of their grade. Hence, it does not stand to reason that the applicant came to know of his seniority position only when he saw the seniority list of the Office Superintendents dt. 25.10.1991 and he represented against the same on 12.11.1991. Law does not lend ^{its} ~~its~~ arms to those who are not vigilant.

11. Be that as it may, it is a fact that he was posted as Complaints Inspector in the grade of Rs.455-700 even before he was promoted as Head Clerk. This post of Complaints Inspector was subsequently upgraded to the grade of Rs.550-750 with effect from 28.12.1974 which grade is equivalent to that of the Chief Clerk. Thus, he was promoted to the grade of Chief Clerk much earlier to his turn in his parent department had he continued in his parent department without going on deputation to the ex-cadre post of Complaint Inspector. Thus, he was monetarily benefitted by working as Complaint Inspector.

12. In his representations dt. 12.11.1991, he only contends for his seniority over Sri Gangadharan and granting of proforma promotion as Chief Clerk first and then as Office Superintendent. In his representation dt. 24.8.1992 to R-2, he requests only for stepping up of pay on par with his junior Sri Gangadharan. He has not asked in any of his representations for full monetary benefit from the date his junior was promoted.

...7/-

and Office Superintendent respectively. It was pleaded at the bar for the applicant that the applicant should be given monetary benefit from the date his junior Sri Gangadharan was promoted as Chief Clerk and Office Superintendent respectively. This would mean that the monetary benefit has to be extended to the applicant by fixing his pay Chief Clerk from 27.2.1979 and Office Superintendent from 1.7.1981 at the appropriate stage in the respective pay scales.

10. It is also contended that the applicant came to know that Sri Gangadharan was shown as senior to him from the provisional seniority list circulated in terms of CPO/SC's letter No.P9SG.612/Ministerial dt. 25.10.1991. But in his representation to R-2 dated 12-11-1991 he states that he was not notified about the position of seniority list during 1975-1985. This would mean that he may be aware of his seniority position far back as 1985. But he chose to represent his case only on 12.11.1991 (Annexure-¹¹~~H~~). It is also seen from the reply affidavit that an integrated seniority list of Head Clerk was issued as far back on 21-6-1978 based on the information received from the division. The applicant's name was not included in the said seniority list erroneously as admitted by the respondents. When such a list is circulated, it is for the applicant to represent his case at that time itself. The applicant has not controverted this statement of the respondents that the integrated seniority list of Head Clerks was not issued in the year 1978 though the learned counsel for the ^{applicant}respondents denied at the bar the fact of R-2 having issued such a seniority list in 1978. It is not understood

To

1. The General Manager, Union of India,
S.C.Rly, Railnilayam, Secunderabad.
2. The Chief Personnel Officer, S.C.Rly,
Railnilayam, Secunderabad.
3. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.
4. One copy to Mr.N.V.Ramana, Addl,CGSC. CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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Date of Judgement 29.6.94
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Session Officer (I)

13. Under the above circumstances, we feel that ends of justice will be met if the applicant is given notional promotion as Chief Clerk and Office Superintendent from 27.2.1979 and 1.7.1981 respectively, fixing his pay in that grade at the appropriate stage notionally as per extant rules for fixation of pay on promotion. Thereafter, notional increments have to be granted to him till he was similarly promoted as Office Superintendent on 12.5.1988. From 12.5.1988 onwards, he will be entitled for full monetary benefits and arrears of pay as he shouldered actual and higher responsibilities from that date.

14. In the result, the following directions are given -

- (i) Applicant should be promoted as Chief Clerk and Office Superintendent from 27.2.1979 and 1.7.1981 respectively when his junior Sri Gangadharan was promoted to those posts against the S.C. roster point,
- (ii) His pay should be fixed notionally as Chief Clerk from 27.2.1979 and as Office Superintendent from 1.7.1981 in the grade at the appropriate stage following the extant rules of pay fixation on promotion,
- (iii) Notional increments should be granted to him in the appropriate grade from the date he was promoted as Chief Clerk and Office Superintendent,
- (iv) He is entitled on the above basis for arrears of pay from 12.5.1988 when he actually shouldered the responsibility of the post of Office Superintendent,
- (v) The above directions should be complied within a period of three months from the date of receipt of this judgment.

14. The O.A. is ordered accordingly. No costs.

CERTIFIED TO BE TRUE COPY

Date.....

Court Office

Central Administrative Tribunal

Hyderabad Bench

Hyderabad.

29/6/89