

84

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.No.1282/93.

Date: 13th September, 1996.

Between:

V.A.Kumar. .. Applicant.

and

1. Union of India represented by
General Manager, S.E.Railway,
Garden Reach, Calcutta 700043.
2. Divisional Railway Manager,
S.E.Railway, Waltair,
Visakhapatnam - 530 004.
3. Chief Personnel Officer,
S.E.Railway, Garden Reach,
Calcutta 700 043.
4. Divisional Personnel Officer,
S.E.Railway, Waltair,
Visakhapatnam - 530 004.
5. U.V.V.Ramana, Inspector of Works (Con)
S.E.Railway Working under Senior
Project Manager, S.E.Rly. Waltair
Visakhapatnam 530 004. RESPONDENTS.

Counsel for the Applicant: Sri G.Ramachandra Rao.

Counsel for the Respondents: Sri C.Venkata Malla Reddy,
Addl. Standing Counsel for
Respondents.

Mr. K. Sankaran Reddy, Jr. B.A.

CORAM:

HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN.

HON'BLE SHRI H.RAJENDRA PRASAD, MEMBER (A). *Q*

O R D E R

(PER HON'BLE SHRI H. RAJENDRA PRASAD, MEMBER (A))

The applicant, V.A.Kumar, was initially recruited as Works Maistry in 1982, and was permitted to appear at the test for promotion to IOW, Grade III in 1990. His name did not, however, figure in the list of (two)

successful candidates contained in the Provisional Panel for Promotion to the Post of IOW, Grade III, released on 4th July, 1991, whereas Respondent No.5, U.V.V.Ramana, was shown at No.2 of the same list. The selection test was conducted for filling up of 3 vacancies, of which 2 were unreserved and one was earmarked for Scheduled Caste. According to the Respondents, three general category candidates, all of whom were adhoc IOWS Grade III, including the applicant as well as Respondent No.5, came out successful in the test. Since, however, the applicant was junior to the other two viz., M.B.B.Subramanyan and U.V.V.Ramana (Respondent No.5), he could not find a place in the panel.

2. The main grievance of the petitioner concerns his seniority vis-a-vis Respondent No.5. In this connection it is stated that whereas the applicant was initially recruited as Works Maistry and allotted to Waltair Division of South Eastern Railway on 4-4-1982, Respondent No.5 was recruited to the same post in Nagpur Division of the same Railway on 15-2-1982. Judged purely from the dates of entry, Respondent No.5 is the senior of the two. It is, however, also revealed that the father of Respondent No.5, who was working as DCS/Waltair during March, 1983, made a request on the Respondent 5's behalf, his transfer from Nagpur to Waltair Division on health grounds. While forwarding the request to Additional Chief Engineer (Works), S.E.Railway, Calcutta Visakhapatnam, on 25-3-1983, the Senior Divisional Engineer, stated that he had no objection to accept Respondent No.5 in Waltair

: 3 :

Division and also suggested that one A.K.Maity, posted to Waltair Division, could be transferred to Nagpur in the place of Respondent No.5. The suggestion apparently found acceptance and the CPO., S.E.Railway, Calcutta, duly issued an Order on 21-4-1983 interchanging A.K.Maity and U.V.V.Ramana. In pursuance of these Orders, U.V.V.Ramana joined Waltair Division in 1983.

3. The contention of the present applicant is that the shift of Respondent No.5, being at request on health grounds, the same should have been treated as either Mutual Transfer, or Request transfer; in which case he should either have taken the seniority of A.K.Maity in Waltair Division in accordance with Rule 10 of IERM, if it was treated as inter-Divisional transfer, or the bottom seniority in the New Division, if the same was a simple request transfer. In any case, he could not be allowed to retain his seniority in the Unit of his original recruitment (Nagpur) and carry it with him to the New Unit (Waltair) on his transfer to the latter Division. But it was precisely what was allowed to happen and the seniority of Respondent No.5 was duly fixed in Waltair Division on the basis of his initial recruitment in Nagpur Division. This in turn resulted in his position being shown above that of the applicant in the provisional seniority list of Works Maistries issued by the Waltair Division on 15-7-1985 and again on 31.12.1989. And it

eventually resulted in the impugned exclusion of the applicant in favour of Respondent No.5 from the empanelled list of successful candidates for the post of IOW, Grade III.

4. The main question that arises in this case is whether or not the seniority of Respondent No.5 has been correctly fixed in the cadre of Works Maistry in Waltair Division upon his transfer from Nagpur Division in 1983?

5. The Official Respondents have annexed to their counter-affidavit a copy of Demi-Official Letter No. WEX/6/378 dated 25-3-1983 from Senior Divisional Engineer, Waltair Division, addressed to the Additional Chief Engineer (Works), S.E.Rly., Calcutta, which contains a pointed reference to and encloses a copy of the request made by the father of _____ regarding the said Respondent's transfer to Waltair Division, on health grounds. The interchange between Respondent No.5 and A.K.Maity from Nagpur to Waltair and vice-versa, originally suggested by the above Senior Divisional Engineer, was accepted and acted upon by the Chief Personnel Officer vide Posting Order No. P/Engg/W/8/83 dated 21-4-1983. There is no suggestion from the Senior Divisional Engineer, nor any whisper in the Order issued by the CPO, that the said transfers were on ⁱⁿ administrative grounds/interests, though it is also true that there is, likewise, no indication that the transfers were ordered at the request of either Maity or Respondent No.5.

8/

7. Reading these two documents together, as they necessarily need to be so read, it should, however, be possible to deduce that the transfer of Respondent No.5, originated in the request made by his father for his transfer from Nagpur to Waltair specifically on health grounds and, even though no formal request was made by the said respondent No.5 himself, it is apparent to see where and how the suggestion originated and was eventually acted upon. That being so, we are unable to accept the clarification (Annexure 6) issued more than ten years after the event by the CPO, S.E. Railway, Calcutta, that transfers of Respondent No.5 and A.K.Maiti were in administrative interest. Nor are we inclined to accept the contention of Respondent No.5 that it was made in this counter-affidavit that the absence of an indication of 'administrative interest' in the posting Order was a 'clerical omission'. This belated clarification ignores and belies the circumstances brought out or revealed in the Official Respondents' own Annexure at R-5. We feel constrained, therefore, to reject the stand of the Official Respondents' clarification, Annexure R-6. It can thus be held, in the light of the unambiguous material available on record, that the transfer of Respondent No.5 from Nagpur to Waltair Division was the result of a request made on his behalf by his father, who, incidentally, was a serving Officer in the latter Division, even if no such request was made by the said Respondent himself.

It is noted that Respondent No.5 has not himself denied the fact of his father having made such a request on his behalf. It has to be assumed, therefore, that Sri V.V.V.Ramana was not only not unaware but actually acquiesced in the request so made, and was its ultimate beneficiary. This in its turn leads to the question of his seniority which is implicit in such inter-Divisional request transfers. According to established procedures and Manual regulations, V.V.V.Ramana, Respondent No.5, should have been given the lowest seniority in the new Division in his cadre. And clearly, this was not done and his position was fixed on the basis of his seniority with reference to the on the untenable ground of transfer in administrative interest, initial date of his recruitment in the old unit. No other interpretation is available or possible in the context of the facts revealed here.

8. There remains only the question of limitation, which needs to be addressed. The applicant contends that he was neither shown nor otherwise made aware of the seniority of himself and/ or of Respondent No.5, as reflected in the Seniority List of Works Mistries published on 31-12-1989 (Annexure-6) since the list was never circulated. According to the applicant, he learnt of the said list/Seniority while convalescing in the Railway Hospital at Waltair in early 1993.

9. Respondent No.5 in his counter-affidavit hotly contests this position and draws attention to the fact that, in addition to the Seniority Lists published between 28-2-1990

(of which the applicant disowns knowledge) and 29-3-1985 (which is specifically referred to by him in his representation at Annexure A-12) there was one more list published on 15-7-1985. Despite all this, the applicant never projected any grievance regarding his seniority. It is pointed out, surprisingly by him, and not by the official Respondents, that it is never the practise of the Railways to circulate seniority lists to all Officials individually, but only to endorse them to A.Es., IOWS and Unions, etc.. Thus, the Respondent No.5 asserts that the reasons and version put forth by the applicant is merely an after-thought to cover up his own laches in the matter and a clumsy effort to circumvent the constraints of limitation. The O.A., he adds, deserves, therefore, to be dismissed as hopelessly barred by limitation under the provisions of Sec.21 of the Central Administrative Tribunals Act. As regards this aspect, the official Respondents point out, almost in passing, that the applicant did not indeed agitate any grievance regarding his position when the Divisional seniority list of Works Mistries was published on 28-2-1990 and the O.A., therefore attracts limitation.

11. We have noted the contentions of all the parties on the aspect of limitation. Having duly considered the arguments in this respect, we have formed a considered view that it would be wholly unnecessary to raise the issue of limitation, or to dwell on the issue at great length, for the following reasons:

(a) When the O.A. (filed on 27-9-1993) came up for the first time before this Tribunal on 11-10-1993, the aspect of limitation was duly taken note of and kept open pending admission. The case was thereafter duly admitted on 27-10-1993 without any reservations as regards limitation. This would show that the aspect relating to limitation did not escape notice even at the preliminary stages, and the case was, nevertheless, admitted. That being so, we do not consider it necessary or even appropriate to reopen the issue at this belated final juncture when the case is ripe for final disposal.

(b) Regardless of the claims and counter-contentions of the parties on this aspect, it is also not considered equitable to overlook the overall circumstances of the case and to reject the O.A., on the narrow technical ground of limitation, specially when the applicant's claim is based on a sound base of facts.

11. In view of what is stated above, we hold that the bar of limitation is not attracted in this case.

12. To sum up the discussion so far, it is held that --

(a) the seniority of Respondent No.5 was incorrectly fixed in Waltair Division on his transfer from Nagpur Division;

(b) Respondent No.5's seniority in the cadre of

Works Mistries of Waltair Division ought to count, not from the date of his initial recruitment in Nagpur Division, but from the date of his reporting to duty on his transfer from Nagpur to Waltair; and

(c) the case does not attract the bar of limitation.

12. Here, it would also be necessary, nonetheless, to take note of the fact that the existing seniority of the applicant and Respondent No.5 has been in place for several years and the same has not been challenged until now. For that reason, we consider it undesirable to undo this long-settled position, or to create new or alternate rights for anyone and thereby to upset a firmly established and settled position. It would not be fair or proper, even if justified by facts, to interfere with the present seniority of Respondent No.5. It shall, therefore, remain unaltered. At the same time, the grievance of the applicant regarding his non-empanelment as IOW, Grade III, too needs redressal. It is not disputed that the applicant, like Respondent No.5, successfully passed the selection-test held on 22-12-1990 and 2/3.4.1991, and that he was fully eligible for promotion to IOW Grade III but for the circumstances which were fortuitously allowed to creep into the process of his empanelment.

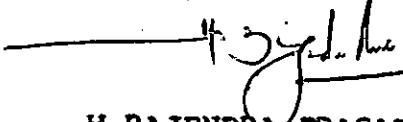
: 10 :

13. Under the circumstances, it is just, proper and expedient to issue the following directions:

- i) the present position and seniority of Respondent No.5 shall continue unaltered;
- ii) the service of the applicant in the cadre of IOW, Grade III, shall be regularised from the date of commencement of his ^Q _{13/6} ~~of Respondent No.5~~ ^Q _{13/6} ~~Adhoc appointment~~ in the same Grade and in the post in which he is now working.
- iii) any future service benefits that may accrue in favour of the applicant shall have to be conferred on him on the basis of clause (ii) above.

found necessary to implement the above directions shall be initiated and completed within a period of ninety (90) days from the date of receipt of a copy of these orders.

15. Thus the O.A., is disposed of. The parties shall bear this costs.


H. RAJENDRA PRASAD
MEMBER (A)


M.G. CHAUDHARI, J
VICE-CHAIRMAN.

Date: 13 September, 1996.

Pronounced in open Court.


Justice
2nd

O.A.1282/93.

To

1. The General Manager, SE Rly,
Union of India, Garden Reach, Calcutta-43.
2. The Divisional Railway Manager,
SE Rly, Waltair, Visakhapatnam-4.
3. The Chief Personnel Officer,
SE Rly, ~~xxxxxxxxxx~~ Garden Reach, Calcutta-43.
4. The Divisional Personnel Officer,
SE Rly, Waltair, Visakhapatnam-4.
5. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.
6. One copy to Mr. C.V.Malla Reddy, AC for Rlys, CAT.Hyd.
7. One copy to Library,CAT.Hyd.
8. One sparecopy.
9. One copy to Mr. K. Sankaran Naidu

pvm.

31/10/94
I COURT

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

Dated: 13-9-1996

ORDER → JUDGMENT

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

in

O.A.No. 1282/93

T.A.No.

(w.p.)

Admitted and Interim Directions

Issued.

Partly

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm

No Sale (Contra)

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

HYDERABAD BENCH

30.8.1996 aff

HYDERABAD BENCH