

(38)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

O.A.No.414/93

Date of decision: 1.9.93

Between

K.C.Ganganna

: APPLICANT

A N D

1. The Chief Personnel Officer,  
Secunderabad.
2. The Dy.Chief Personnel Officer,  
S.C.Rly., Secunderabad.
3. Chief Motive Power Engineer,  
Ranning & Loco, S.C.Rly.,  
Secunderabad.
4. K.Ramachandra Raju
5. S.S.N.Murthy
6. Magan Radha Krishna
7. Pocham Komaraiah
8. K.Vara Prasad
9. R.Yugandhar Rao
10. K.Hanumantha Rao

: RESPONDENTS

Appearance:

For the applicant : Sri P.V.S.S.S. Rama Rao, Advocate

For the Respondents : Sri N.V.Ramana, SC for Rlys.  
1 to 3

For the Respondents : None  
4 to 10

CORAM:

The Hon'ble Sri Justice V.Neeladri Rao, Vice-Chairman

The Hon'ble Sri P.T.Thiruvengadam, Member (Admn.)

contd...2.

J U D G E M E N T

(of the Bench delivered by Hon'ble Sri Justice V. Neeladri Rao, Vice-Chairman)

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The applicant joined service as Junior Clerk on 3-1-1981 and later promoted as Senior Clerk. He was again promoted as Head Clerk in 1982. On 11-5-89 he got the promotion to the post of Office Superintendent Gr.II. The post of Office Superintendent Gr.I in the scale of Rs.2000-3200 is a non-selection post and the employees working as O.S.Gr.II in the scale of Rs.1600-2660 are <sup>the</sup> promoted <sup>the</sup> depending upon seniority-cum-suitability. Respondent No.4 is senior to the applicant. He (R-4) alongwith his seniors were promoted to the post of O.S.Gr.I as per memo. dated 22-1-93 against normal retirement vacancies which arose prior to the re-structuring of Group C & D posts under Railway Board's letter dated 27-1-93. But Respondent No.4 declined promotion in writing on 25-2-93 and hence he was not given promotion. On re-structuring of Group C & D posts as per Railway Board's letter dated 27-1-93, Respondent-4 and a number of vacancies had arisen and then Respondents ~~XXXX~~ 5 to 10 who were juniors to the applicant, were promoted to the post of O.S. Gr.I. ~~When the~~ The applicant was not promoted to the said post while his juniors were promoted, he had given representation dated 9-3-93 requesting for his promotion ~~when~~ *he declined promotion on 25-2-93, and he was*

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and the applicant was informed that in view of adverse reports for 1988-89 and 1989-90 he was not promoted.

Then <sup>this</sup> ~~this~~ O.A. is filed praying for direction to Respondents 1 to 3 to promote him to the post of Office Superintendent Gr.I in the scale of Rs.2000-3200 with effect from the date on which Respondents 4 to 10 were promoted with all attendant benefits like that of seniority, arrears of pay, increments, etc.

2. When Respondent No.4 declined promotion in writing on 25-2-93, under normal rules he was not entitled for promotion for the next one year therefrom. But the Railway Board, by their letter No.PC/III/91/CRC/1 dated 27-1-93 laid down, as per para 15, that such of the staff who had refused promotion before the issue of restructuring orders and stand debarred for promotion for one year may be considered for promotion in relaxation of the extant <sup>a</sup> orders as one time exception if they indicate in writing that they were willing to be considered for such promotion against the vacancies existing on 1-3-93 and arising due to the restructuring scheme. It is stated that in view of the said letter the case of Respondent-4 was considered for <sup>the</sup> vacancies existing on 1-3-93 and arising due to restructuring scheme and as R-4 has not declined the promotion then, he was promoted.

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In view of the said plea of the respondents, the learned counsel for the applicant had not <sup>urged</sup> ~~objected~~ that the promotion of R-4 as per memo. dated 8-4-93 is illegal even though the said promotion was given within one year from 25-2-93, the date on which he declined his earlier promotion.

3. As already observed the promotion from the post of Office Superintendent Gr.II to the post of Office Superintendent Gr.I is on the basis of non-selection and then the promotions have to be given on the basis of seniority and suitability. The three ACRs prior to the date of consideration for promotion have to be looked into for consideration of suitability. The ACRs of 1989-90, 1990-91 and 1991-92 were taken into consideration for the D.P.C. met in the first week of April 1993. But in the case of the applicant the ACR for 1988-89 was also taken into consideration as he was absent for 300 days during the year 1990-91. In view of the adverse reports for 1988-89 and 1989-90 the applicant was not found suitable for promotion.

✓ 4. The adverse remarks reflecting in ~~his~~ CRs for the years 1988-89 were communicated to the applicant, but he did not submit any appeal or representation against the same. The adverse remarks in regard to the CR for 1989-90 were

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communicated to the applicant on 7-4-93. The learned counsel for the applicant contended that the adverse remarks as per the CR of 1989-90 should not be taken into consideration for there was delay in communicating the same and as the applicant had not the opportunity to submit his representation against the same. In 1970 SLR 926 (R.L. Butail Vs. UOI & ors.) the Supreme Court held that no injustice is caused if the DPC has taken into consideration the ~~uncommunicated~~ adverse remarks for it will be a case of review if those remarks are expunged or altered. If in this case the applicant is going to make a representation against the adverse remarks of 1989-90 and if thereby those adverse remarks are going to be expunged or altered ~~then~~ it will be a case of review. But if such a representation is going to be rejected then the question of review does not arise, and no injustice is caused to the employee when the adverse remarks relied upon by the DPC are not set aside or altered.

5. It is stated for the respondents that as the applicant was on leave for 300 days during 1990-91 and due to over-sight there was delay in communicating the adverse remarks for 1989-90. 1987(2) SCR 583 (Brij Mohan Singh Chopra v. State of Punjab and 1987(2) SCR 1030 (State of Haryana Vs. P.C. Wadhwa & anor.) were referred to for the applicant to urge that in case of delay in communicating the adverse

contd...6.

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remarks, the same cannot be looked into ~~adverse to~~<sup>against</sup> the employee. But in this case the adverse report for 1989-90 was made for the year ending 31-3-90. The applicant was on leave for 300 days in 1990-91 and <sup>it</sup> cannot be stated that the plea for the respondents that in view of the said absence of applicant the said adverse remarks could not be communicated due to over-sight, ~~cannot be held as untenable~~. So it is not a matter where in view of the delay the adverse remarks for 1989-90 should not have been taken into consideration.

6. In regard to adverse remarks of 1988-89 it was urged that as inspite of those remarks the applicant was promoted to the post of O.S.Gr.II on 11-5-89, the adverse remarks for 1988-89 should not have been taken by way of estoppel. 1990(3)SLJ 178 (Jhon Chacko Padical V. Union of India & Ors.), a judgement of CAT Ahmedabad Bench is referred to. It was stated for the respondents that the promotion of the applicant to the post of Office Supdt.Gr.II was on the basis of reservation and hence inspite of the adverse remarks for 1988-89 the applicant was promoted to the post of O.S.Gr.II. ~~But~~ <sup>It</sup> was also urged for the respondents that the remarks for 1988-89 which had become final were taken into consideration for promotion to the post of Office Supdt.Gr.I, as the present promotion is on the basis of seniority and not on the basis of reservation and hence the question of estoppel does not arise.

contd...7.

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TYPED BY

COMPARED BY

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO  
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY  
MEMBER (JUDGE)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M(A)

Dated: 1-9-1993

ORDER/JUDGMENT:

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

in

O.A.No.

T.A.No.

414/93

(W.P.)

Admitted and Interim directions  
issued.

Allowed

Disposed of with directions

~~Dismissed~~

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered

No order as to costs.

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15/9/93

Central Administrative Tribunal
DESPATCH
70 SEP 1993
HYDERABAD BENCH

There is force in the said contention. In the above view there is no need to consider as to whether in fact the ACR for 1988-89 of the applicant was before the DPC when the applicant was considered for promotion to the post of OS Gr.II as against reservation point. As the applicant had not specifically pleaded with regard to the same, The necessary material in regard to it was not referred to either in the O.A. or in the counter.

7. In the result the O.A. is dismissed. No costs.

*P.T. Thiruvengadam*  
(P.T.Thiruvengadam)  
Member (Admn.)

*V. Neeladri Rao*  
(V.Neeladri Rao)  
Vice-Chairman

Dated: <sup>1st</sup> ~~1~~ <sup>Sept</sup> ~~th~~ day of ~~August~~, 1993.

mhb/-

*15/9/93*  
Deputy Registrar(J)

To

1. The Chief Personnel Officer, S.C.Rly, Secunderabad.
2. The Deputy Chief Personnel Officer, S.C.Rly, Secunderabad.
3. The Chief Motive Power Engineer, Ranning & Loco S.C.Rly, Secunderabad.
4. One copy to Mr.P.v.S.S.S.Rama Rao, Advocate, 5-9-22/37, Adarsh nagar, Hyd.
5. One copy to Mr.N.v.Ramana, SC for Rlys. CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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*17/9/93*  
*15/9/93*