

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

O.A.No.742/94



Date of Order: 30.4.97

BETWEEN:

A Indrameshwar Rao
AND

Applicant.

1. Senior Divisional Personnel Officer,
S.C.Rly., Hyderabad Division (MG),
Secunderabad.
2. General Manager,
S.C.Rly., Rail Nilayam,
Secunderabad.
3. Dy. Secy. Personnel,
S.C.Rly., Hyderabad Division (MG),
New Boiguda, Secunderabad.
4. Bridge Inspector,
S.C.Rly., Hyderabad Division (MG),
Purna, Maharashtra.
5. K.Shiva Kumar,
O/o.Bridge Inspector,
S.C.Rly., Hyderabad Division (MG),
New Boiguda, Secunderabad.
6. Narasappa
7. Kalyan Rao
8. Srinivas
9. K.C.Vargheese
10. Laxman

.. Respondents.

Counsel for the Applicant

.. Mr.P.Krishna Reddy

Counsel for the Respondents

.. Mr.K.Siva Reddy

CORAM:

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

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

J U D G E M E N T

X Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.) X

None for the applicant. Heard Mr. K. Siva Reddy, learned standing counsel for the respondents. Record shows that private respondents R-5 to 10 ^{have been served with} ~~had received~~ the notice but they did not appear before us nor they have engaged any counsel.

a. The applicant in this OA joined as a casual labour on 19.3.76 under BRI, Secunderabad. The applicant after bifurcation of the Secunderabad Division as BG Division and MG Division came on transfer to Hyderabad division.

The office in which he was working as casual khalasi was re-designated as BRI, MG Secunderabad. The applicant states that he obtained temporary status on 21.11.77.

The applicant further submits that inspite of vacancies the respondents failed to regularise his services till 29.6.89. After regularisation he was promoted as khalasi helper by order dt. 1.3.93.

3. The applicant submits that respondents 5-10 ~~had~~ attained temporary status subsequent to him but they were regularised earlier than him. In the seniority list issued on 17.2.92 the applicant is shown at Sl.No.15 whereas R-5 to 8 were shown at Sl.No.11-14. Respondents 9 & 10 are not included in that list. The applicant submitted a representation on 18.2.92 against that seniority list. It is pleaded that without publishing the final seniority list of khalasies working under BRI MG Secunderabad the provisional seniority list of khalasi helpers working under BRI MG Secunderabad was published. In the list of khalasi helpers the applicant was shown at Sl.No.10 whereas R-5 to 8 are shown at 5, 6, 8 & 9. The grievance of the applicant is that his seniority is not fixed on the basis of the date of attainment of temporary status but on the basis of regularisation as khalasi and that procedure is

incorrect submits applicant. He also relies on the judgement of the High Court and Tribunals to submit that the seniority should be counted from the date of attainment of temporary status.

4. This OA is filed praying for a direction to the respondents to revise the seniority list of the applicant in the category of khalasi helpers published on 21.5.94 showing the applicant below Mohd. Sadiq Md. Sheriff at Sl.No.4 and above K. Siva Kumar Jangaiah at Sl.No.5 on the basis of the date of attaining the temporary status on 21.11.77.

5. Reply has been filed in this OA. The main contention of the respondents in this OA is that in view of the amended provisions of Para-2511(a) of IREM the seniority of the casual labour treated as temporary who were subsequently absorbed in temporary/permanent cadre is to be reckoned on the basis of the date of regular appointment after screening/selection and not the date of absorption in temporary/permanent regular cadre after the required selection/screening would not count for purpose of seniority.

6. The respondents also submit in their reply that the applicant was initially posted as casual labour on 19.3.76 under BRI Special Works Secunderabad and continued as casual labour upto 20.11.77 and there upon acquired temporary status on 21.11.77 and posted as Bungalow Peon cum Trolleyman in the scale of Rs.196-232 and he was transferred to Hyderabad division on 30.6.80 at his request. It is submitted that since the applicant had come to a different unit he ^{would} be in the bottom seniority. It is seen from office order No.61/80 dated 14.11.80 that the applicant, engaged as CMR khalasi in grade of 196-232 (RS)

Je working under BRI Purna was transferred and posted under

BRI MG Hyderabad in the same grade and designation. It is also seen from Note-2 of the office order that the transfer order is issued as per request of the party and hence it is subjected to all condition regulations laid down for request transfer.

7. The contention of the respondents on the basis of the above transfer is that he ^{Came} ~~came~~ to BRI Secunderabad MG as per his request and hence his seniority in the cadre of khalasis has been fixed on that basis and his regularisation was given on that basis w.e.f. 29.6.89.

8. From the above the points for consideration are :

- (1) Whether the seniority of the applicant is to be reckoned from the date of his attaining temporary status or from the date of his regularisation.
- (2) Whether BRI Purna Unit and BRI Secunderabad MG unit are two different, distinct seniority units or not ?

9. This Tribunal as well as the High Court had held that the seniority of the casual labour should be fixed on the basis of attaining temporary status. However the Apex Court had upheld the revised amended para of 2511 (a) of IREM and thereby held that the seniority is to be fixed only on the basis of the date of regularisation in Kameswari's case. The above two conflicting views were ^{Synthesised} ~~supra therein~~ by this Tribunal to arrive at an amicable solution and on that basis orders were passed in number of cases, one of them being OA 829/91 and batch. In that OA, we held that even though ~~the~~ ^{we} Apex Court had held the seniority has to be reckoned from the date of regularisation, in view of the ~~fact~~ ^{fact} that some of the employees have got orders from this Tribunal earlier to the direction of ^{we} ~~the~~ Apex Court to count their seniority

from the date of attaining the temporary status and that order had become final, a via-media solution was ordered. As per that direction the seniority of the CMR who have not approached the High Court or Tribunal will be reckoned from the date of their attaining the temporary status, if in that unit for certain employees seniority was ordered to be fixed as per the date of attaining the temporary status. But in the case of units where the seniority was not at all fixed on the basis of the attaining the date of temporary status it was directed that in those units seniority of all the casual labourers should be fixed on the basis of their regularisation as per the direction of ^{the} Apex Court. In that light, the seniority of the applicant in Purna Unit has to be decided when he was transferred from that unit by O.O. of 61/80

10. The second point for consideration is whether the BRI Purna Unit and the BRI Secunderabad MG units are two different seniority units or not? The learned counsel for the respondents produced the order No.P/C/529/BR Gang, dt.6.1.93 to state that the seniority unit of khalasies and other ^{of P.C. No. 750-940} shall be maintained inspector-wise for the purpose of promotion to higher grades. Basing on that circular the respondents counsel submit that the seniority unit of BRI Purna and BRI Secunderabad are two different seniority units. The applicant came to BRI Secunderabad MG Unit on his request. This has been indicated in Note-2 of the transfer order dt.12.11.80 and hence the applicant has to be fixed at the bottom of the seniority list at BRI Secunderabad MG unit and on that basis his further promotion will be ordered. But the circular on which the respondents are relying to state that BRI Purna unit and the BRI Secunderabad MG Units are two different seniority units is dt. 6.1.93. It is not clear whether such a circular was available even prior to the

date of his transfer from Purna to Hyderabad by office learned counsel for the respondents to check up whether the order dt. 14.11.80. Hence we asked the instructions dt. 6.1.93 will hold good even prior to 14.11.80. The learned counsel for the respondents could not produce any relevant circular. Hence it is essential that this point has to be looked into thoroughly by R-1 and decide this issue in regard to his fixation of seniority in the transferred unit, namely, under BRI Secunderabad MG Unit. If R-1 still sustains his stand that the applicant has to be placed at the bottom seniority list in view of his request transfer he should issue a relevant circular issued earlier to 14.11.80. If R-1 fails to issue a reply as directed above within 3 months from the date of receipt of a copy of this order then the applicant should be given the seniority as was provided for at the time of his release from BRI Purna Unit on transfer to BRI Secunderabad MG Unit. In that event the applicant is also entitled for all the consequential benefits as per his seniority in Purna Unit.

11. The OA is ordered as directed above. No costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

[Signature]

न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH