

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.NO.825 of 1994.

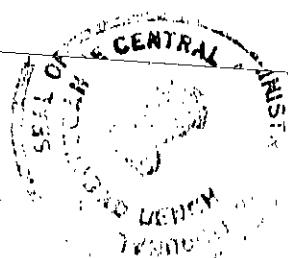
DATE OF ORDER: 22-7-1998

BETWEEN :

M. Veer Raju, s/o Sri Venkannna,
aged about 57 years,
Brick Layer Gr.II,
CBRI-II, Rajahmundry,
East Godavari District.

... APPLICANT

1. Union of India represented by
its Secretary,
Railway Board,
Ministry of Railway s,
New Delhi.
2. The General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
3. South Central Railway Manager,
Vijayawada.



COUNSEL FOR APPLICANT : Mr. Shiva for Mr. N. Rama Mohan Rao.

COUNSEL FOR RESPONDENTS : Mr. V. Rajeswara Rao, CGSC

CORAM :

HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMIN.) *✓
rph*

HONOURABLE MR. B. S. JAI PARAMESHWAR, MEMBER (JUDL.)

Contd...2.

5
O R D E R.

(Per Hon. Mr. B. S. Jai Parameshwar, Member (J))

Heard Mr. Shiva for Mr. N. Rama Mohan Rao, learned counsel for the applicant and Mr. V. Rajeswara Rao, learned Standing Counsel for the respondents.

2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 8.7.1994.

3. ~~ML~~ ~~the records available~~ particulars of the applicant described in the O.A. The respondents have also furnished the service particulars of the applicant. Hence we feel it proper to refer to the service particulars of the applicant as detailed in the ~~the records available~~ with the respondents' administration.

4. The applicant herein was initially engaged as Casual labour under the Bridge Inspector, Rajahmundry on 10.10.1959 and granted A.P. scales from 10.4.1961 at Rs. 110-120. ~~He was absorbed as Scrapper in the scale of pay of Rs. 70-85 (AS) in the year 1968. He was promoted as Bridge Khalasi on 30.8.1974. He was promoted to the post of Brick Layer Gr. III_E on ad hoc basis on 15.6.1975. The applicant passed the trade test for the post of Brick Layer in the scale of pay of Rs. 260-400 (RS) and was posted as such with effect from 22.11.1981 against the vacancy caused under the Bridge Inspector, Rajahmundry. He was promoted as Brick Layer Gr. III_E in the scale of pay of Rs. 1200-1800 (RSRP) effective from 27.2.1993 against the post upgraded under annual review made on 19.12.1991 which was consequent upon sanction of the additional posts of Brick Layers under J.~~

b -

Decasualisation Phase I Scheme.

5. The applicant submits that the annual cadre of Artisans in Civil Engineering department as on and from 1.4.1989 to 14.4.1991 was reviewed and the posts sanctioned were apportioned between the three units vide Memo dated 19.12.1991 of the DRM, Vijayawada. The review of Artisan cadre was undertaken with reference to the instructions of the Railway Board contained in its letter dated 8.6.1988. It is submitted that through the above-mentioned proceedings, distribution of posts was effected ~~from~~ ~~from~~ ~~from~~ created in the Bridge unit under Decasualisation Scheme. He submits that the total number of Brick Layers in the BRI Unit thus became 3. Consequently, the three posts were categorised as Brick Layer Gr.I, Gr.II and Gr.III.

6. The applicant submits that the Review PNM meeting was held on 19.12.1990; that in the said meeting the proposal for ~~creation~~ ~~creation~~ ~~creation~~ for equitable promotional chances in the S & T Mechanical and Civil Engineering departments was considered; that in the said meeting it was agreed to by the Railway Administration that all the ancillary categories would be clubbed together and re-structured in the Highly Skilled Gr.I, Gr.II and Gr.III categories; that the eligibility for Gr.I & II would be the basis of the combined seniority of the incumbents of different ancillary opportunities on the availability of posts ~~as on 1.1.1984~~; that the Master Craftsman post would be created on percentage basis and that would be filled up according to the eligibility. He submits that in the said meeting the CPO had instructed the officers of the Administration that the clubbing of posts be complied with as on 1.1.1984. He)

K submits that the posts in the ancillary categories were required to be clubbed together and re-structured as the Highly Skilled Grade I, Gr.II and Gr.III with effect from 1.1.1984.

7. In this connection, the applicant relies upon the letter dated 12th July, 1991 addressed to the Senior DPO, Secunderbad (Broad Gauge) enquiring about the implementation of the decision of the PNM meeting.

8. On these two counts, the applicant claims promotion to higher posts from retrospective dates. He has

- (i) To call for the records relating to and connected with the proceedings No.B/P.535/VII/Bridge/HS.I&II, dated 9.7.1993 of the 3rd respondent and quash or set aside the same holding it arbitrary, illegal and contrary to the Railway Board directions as well as that of the C.P.O. Head Quarters Branch;
- (ii) To direct the respondents to implement the decision of clubbing of ancillaries towards the purposes of reconstructing HSK.I & II Grades of posts with effect from 1.1.1984 and accord the benefit that accrues to the applicant in this regard with effect from 1.1.1984, in terms of the decision taken by the Railway Board in the PNM held on 19.12.1990;
- (iii) In the alternative, to direct the respondents to treat the applicant as to have been promoted as Brick Layer Gr.II with effect from 1.10.1989 and on that basis to consider his claims for further promotion to the posts of Brick Layer Gr.I with effect from 1.10.1991 and also to the subsequent posts of Master Craftsman/Bridge Mate/BRT Gr.III as the case may be, from

time to time and on the above basis direct the respondents to fix pay and other allowances and pay him accordingly; and

(iv) To declare that the applicant is entitled for being conferred all financial benefits including payment of arrears and post terminal benefits too.

9. The respondents have filed their counter. They submit that the applicant was promoted as Brick Layer in the scale of pay of Rs.260-400(RS) with effect from 22.11.1981 against the vacancy under the Bridge Inspector, Rajhamundry. He was promoted to ~~Brick Layer~~ ~~Brick Layer~~ scale of pay of Rs.1200-1800(RSRP) with effect from 27.2.1993 against the upgraded post under the annual cadre review made on 19.12.1991 which was consequent upon sanction of the additional posts of Brick Layers under the decasualisation phase I scheme.

9.A. Thus they submit that the request of the applicant for promotion to the post of Brick Layer Gr.I or restructuring and duly clubbing the ancillary categories was rejected being not permissible under the rules; since the applicant had not completed 2 years of service, he was not eligible for consideration for promotion to the post of Brick Layer Gr.I. However, they submit that his case will be considered after his completion of two years in the cadre of Brick Layer Gr.II and subject to his passing the trade test and availability of vacancy.

10. It is to be noted that during the pendency of this O.A., the applicant retired from service with effect from 31.10.1994 on attaining the age of superannuation. He retired as Brick Layer Gr.II.

11. The respondents have filed an additional reply on 6.7.1998 explaining the position of availability of

vacancies at that time in Brick Layer category. According to them there were 3 posts of Brick Lawyer Gr.I, Gr.II and Gr.III (in all) ; that there was no vacant post at the time. That the resolutions of the PNM meeting and minutes on various items agreed will be advised to the Cadre Section for implementation; that there are instructions/guidelines to club the ancillary categories of in the Engineering department in the Railways; that on enquiry from the Guntakal Division, it was learnt that for promotional purpose in the Engineering Department, ~~from~~ from Khasi Helper to the post of Master Craftsman, each trade is having a separate seniority list; that promotions are ordered on the basis of the seniority-cum-suitability and that the seniority of Artisans is maintained separately tradewise/category wise as per the extant rules. Thus they submit that the O.A. is liable to be dismissed.

12. The main ground of the applicant to claim retrospective promotion is the creation of 3 posts of
..... Senior Ct & Gr.II and Gr.III in the BRI Unit and on the basis of the clubbing of the ancillary posts in the department during PNM meeting. He claims retrospective promotion from 1.1.1984 and also for consideration of his case for promotion to the post of Master Craftsman.

It is stated that had the Vijayawada Division implemented the decision of the PNM meeting in clubbing of ancillary posts, his promotional chances would have been prospered and he would have been retired in the higher post.

13. Now the respondents do not dispute the clubbing of ancillary posts and also creation of posts of Brick Layers Gr.I, Gr.II and Gr.III in the BRI Unit under

decasualisation Phase I scheme. They submit that the posts were filled then by the deserving and eligible candidates.

14. He relies upon the letter of the Chief Personnel Officer of South Central Railway for clubbing of posts effective from 1.1.1984. The Vijayawada Division has not implemented the decision of the PNM meeting in the creation of ancillary posts on the basis of the annual cadre review from 1.4.1989 to 14.4.1991.

15. The applicant in the O.A. has cited certain instances of Guntakal Division whereupon implementation of the decision of the PNM meeting certain employees of the said Division, namely, Sri Subrahmanayam, Sri N. Ramakrishna and Sri M. Rama Rao were promoted to the higher posts in the Guntakal Division. He submits that several persons appointed as Revitter long after his entry into service were all promoted to higher categories and they got their ~~promotion~~ ~~promotion~~ the post of Bridge-Mate.

Thus he submits that non-implementation of the decision of the annual cadre review on the ancillary posts and the decision of the PNM meeting held on 19.12.1989, his promotion chances were affected.

16. The decisions of the Annual Cadre Review and the PNM meeting are not in dispute. It is now to be seen whether there was any mala fide intention on the part of the Vijayawada Division in not implementing the decision of the Annual Cadre Review and PNM meeting. Guntakal Division might have been punctual in implementing the decision of the Annual Cadre Review and PNM meeting.

17. To implement the decision regarding clubbing of ancillary posts and regarding the Annual Cadre Review in Vijayawada depended upon the viability of the financial position and the work load in the Division. Now he has

referred to a letter dated 12.7.1991 wherein the Senior DPO, Secunderabad Broad Gauge was requested to explain the possibility of creating higher grade posts in HSK Gr.I, Gr.II and Gr.III posts with effect from 1.1.1984.

18. On the other hand, the respondents atetempt to state that the decisions of the PNM meeting and the clubbing of ancillary posts were undertaken by the Vijayawada Division and therefore, the applicant was promoted to the post of Brick Layer Gr.III in an upgraded vacancy with effect from 22.11.1981 and further submit that he was promoted as Brick Layer Gr.II in the scale of 1000 with effect from 27.2.1993. They submit that the applicant had to qualify himself by putting service in the cadre of Brick Layer Gr.II to become eligible for consideration for promotion to the post of Brick Layer Gr.I. However, before he could complete 2 years of qualifying service in the cadre of Brick Layer Gr.II, the applicant retired on attaining the age of superannuation from 31.10.1994.

19. The question now remains to be considered is, whether the applicant can claim retrospective promotion from 1.1.1984 because the PNM meeting clubbed the ancillary posts as of 1.1.1984 and because the PNM meeting took a decision to club the ancillary posts. In our humble opinion, the decision of the PNM meeting is quite different from implementing the decision of the said meeting. As already observed, it will depend upon the financial viability and the work load in the Division. The applicant cannot compare the Vijayawada Division with that of Guntakal Division. He cannot compare the promotional opportunities of the emplo

20. The respondents have not submitted the

12

OON

necessary papers to enable us to take a decision as to whether the applicant was deliberately ignored for promotion at the time when clubbing of ancillary posts was ordered and when the decision was taken to create 3 posts of Brick Layer in the Engineering department. It is also not possible to ascertain as to whether the respondents had taken a decision to club the ancillary posts ~~as per the decision dated 11.1.1984 and to implement the decision distribution of posts was~~ retrospectively from 1.10.1989. Though the respondents ~~are~~ to explain the rule position and also the manner of maintenance of the seniority ~~as per~~ categorywise/tradewise, they have not specifically stated whether they had taken a decision to give effect with a retrospective effect. If they had taken such a decision, they ~~should have~~ ~~as per~~ ~~the case of the~~ applicant could not be considered for those ancillary posts or for the post of Brick Layer Gr.II at that time. ~~In absence of such material available on record, we cannot grant reliefs as prayed~~ ~~in the O.A.~~

21. Therefore, we feel it proper to issue the following directions :

- (a) The General Manager, South Central Railway to consider the actual position that was existing in the Vijayawada Division and the applicant to submit a detailed representation claiming for consideration of his promotion retrospectively from 1.1.1984 and 1.10.1989 within one month from the date of receipt ~~as per~~.
- (b) If such a representation is received from the applicant within the stipulated period, then the General

Manager, South Central Railway, may consider the actual posts existing at the time when the Vijayawada Division implemented the recommendations of the PNM meeting and also clubbing of ancillary posts and ascertain whether any injustice has been done to the applicant in not giving him due promotions at that time.

(c) In case, the General Manager comes to the conclusion that the applicant was entitled to such promotions, then he may consider for fixation of his pay notionally and accordingly re-determine only the pension.

(d) Time for compliance is 4(four) months from the date of receipt of a copy of this order.

(e) After such consideration, the applicant be informed through a speaking order.

~~of, leaving the parties to bear their own costs.~~

RECORDED & RETURNED
TO THE TRINITY COPY

Phulay

21.2.78

AS
REGISTERED (J)