

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL-APPLICATION-N0.96-OF-1994

DATE-OF-ORDER:-3rd-April,-1997

BETWEEN:

G.RADHAKRISHNAN

.. APPLICANT

AND

1. The General Manager,
South Central Railway,
Secunderabad,
2. The Chief Personnel Officer,
S.C.Railway, Secunderabad,
3. The Sr.Divisional Personnel Officer,
S.C.Railway, Guntakal.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.V.VENKATESWARA RAO

COUNSEL FOR THE RESPONDENTS:Mr.K.SIVA REDDY, ADDL.CGSC

CORAM:

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

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

ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

Heard Mr.V.Venkateswara Rao, learned counsel for the applicant and Mr.K.Siva Reddy, learned standing counsel for the respondents.

2. The applicant in this OA while working as Mechanical Signal Maintainer Grade.III (MSM Gr.III) was issued with a charge sheet dated 4.1.90 in connection with the derailment of No.527 Passenger Train at NLA station on

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15.10.89. That charge sheet ended with punishment for withholding of increment from Rs.1560 after passing EB to Rs.1600 in the scale of pay of Rs.1320-2040 due on 1.2.91. That order was passed on 20.2.90. In the meantime, a selection for the post of Signal Inspector Grade.III was held on 12/13.5.90 and 7/8.7.90 and 8/9.11.90. The applicant was empanelled for that post on the basis of the selection as per the panel No.P(SG)608/SIs/Gr.III dated 28.12.90 (Annexure A2 to the OA). His name stands at Sl.No.11 of the empanelled list. On the basis of that panel position, his immediate senior was promoted by the order dated 17.3.91 (Annexure A3 to the OA). By that order, the applicant was not promoted as he was undergoing the punishment for two years with effect from 1.2.91. He represented his case for promotion on par with his junior. That was refused by the impugned order dated 19.4.93 (Annexure A5 to this OA).

3. The present OA is filed praying for direction to the respondents herein to promote him to the post of Signal Inspector Gr.III, S&T Department on the basis of the panel published by R-2 by his letter No.P(SG)/608/SIS/Gr.III dated 28.12.90 (Annexure A2) with all consequential benefits such as seniority, promotion, arrears of salary and allowances etc.

4. A reply has been filed in this OA. The main contention of the respondents in this OA in not promoting him immediately after his senior was promoted by the order dated 17.3.91 is that the applicant was undergoing punishment and when the currency of the punishment is there

the applicant cannot be promoted during that period.

5. The punishment order was issued to the applicant on 20.2.90. But that punishment was effective from 1.2.91. Between 20.2.90 and 1.2.91 there was neither charge sheet pending against him nor was he undergoing any punishment. Hence it has to be held that the applicant's promotion during that period if arises cannot be withheld. But that does not mean that the applicant can go scot free without punishment for the charges framed against him. The punishment awarded to him may have to be imposed in the higher grade even if he is promoted. The contention of the applicant is that as he was free from punishment, after the issue of the panel he should have been promoted along with his colleagues empanelled in the list and his seniority and pay fixation has to be done on that basis.

6. A ~~several~~ point has been made by the learned counsel for the respondents. The learned counsel for the respondents submitted that the panel was issued on 28.12.90 and the promotion order was issued on 17.3.91. Hence no much time has been taken in issuing the promotion order and it was issued taking into account the other departmental activities. But we feel that taking about three months time to issue promotion order when the empanelled candidates are eagerly waiting for promotion appears to be a little bit high. In our opinion, about 15 to 20 days is reasonable period for issue of the promotion order. If that period has been adhered to, the applicant would have got promotion before the punishment came into existence with effect from 1.2.91. The learned counsel for the

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respondents further submits that the empanelled candidate has no right for promotion and the promotion is not indefeasible. He submits so relying on the judgment of the Supreme Court reported in AIR 1991 SC 1612 (Shankarsan Dash v. Union of India). We fully agree with the submission of the learned counsel for the respondents. But the observation

in the above cited case has to be seen from the facts of each case. The promotion panel was issued taking into account the availability of the vacancies and the necessity to fill them up. When once empanelled, though that does not bestow a right on the applicant to demand promotion that he can reasonably expect without any hesitation to get promotion to that higher grade. Inspite of doing the exercise for promotion over a year, the respondents cannot reasonably refuse on some pretext or the other promotion to the empanelled candidates unless there were strong grounds to cancel the panel. In this case, there were vacancies and for those vacancies only the panel was prepared. The applicant can register, ~~and there~~ are reasons beyond the control of the respondents to deny such promotion.

7. The vacancies of Signal Inspector Grade.III are to be filled for maintaining train operations. The post of Signal Inspector is a very important position in running of the trains as safety depends on the satisfactory performance of the Signals. If such important posts are not filled, probably the safety of the passenger trains will be jeopardised. In that context, the promotion of the empanelled candidates has to be viewed. In our opinion,

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there may not be any reason for not filling up the post after empanelment. Hence the legitimate expectation of the applicant for promotion to the post of Signal Inspector that the time taken for issuing the posting order after empanelled list is out, is considerable. Hence under the facts and circumstances of this case we feel that the applicant has to be promoted if there is vacancy between the issue of the panel i.e., 28.12.90 and the date when the punishment came into effect i.e., 1.2.91 according to his panel position. If there are no such vacancies during that period to accommodate the applicant, then the applicant cannot demand promotion on or after 1.2.91 when he was undergoing promotion.

8. The next question is, how to fix his seniority if he is given deemed promotion on par with his juniors in the panel. The panel position cannot be over looked. Hence there is no difficulty in fixing his seniority in accordance with the panel position. If any junior to the applicant in the panel position is promoted earlier to the applicant then the applicant will get his seniority below his junior in that panel.

9. The next question is in regard to the fixation of pay. the applicant cannot get monetary benefits because of his promotion as indicated above. However, his pay has to be fixed notionally on par with his junior and he will be paid on that basis from the date when he was actually asked to shoulder the higher responsibilities.

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10. In the result, the following direction is given:-

The applicant should be deemed to have been promoted to the post of Signal Inspector Grade.III as per his panel position. His seniority should be fixed as observed in para 8 above. The pay of the applicant should be notionally fixed on par with his junior but he will get monetary benefits only when he shouldered the higher responsibilities as Signal Inspector Grade.III. The the higher grade of Signal Inspector Grade-III. If on that basis any recovery has to be made, the same will be recovered from the pay and allowances of the applicant.

11. The OA is ordered accordingly. No order as to costs.

B.S.JAI PARAMESHWAR
(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)
31/11/97

Me
(R.RANGARAJAN)
MEMBER (ADMN.)

DATED: 3rd April, 1997
Dictated in the open court.

vsn

Avtar Singh
D.R (5)

Self
SOL/197
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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.R. RAO : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M(J)

DATED: 3/4/97

ORDER/JUDGEMENT

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

in
R.A. No. 96/94

ADMITTED: INTERIM DIRECTIONS ISSUED
ALLEGED

DISPOSED OF WITH DIRECTIONS
DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

II COURT

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
प्रेस्पैच/DESPATCH

30 APR 1997

हैदराबाद न्यायालय
HYDERABAD BENCH

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

M.A.No.

of 1997

IN

R.A.No.

of 1997

IN

O.A. No. 96

of 1994

BETWEEN:

The General Manager,
South Central Railway,
Secunderabad.
and two others.

.. Applicants/
Respondents.

2. The C.P.O., S.C.Railway, Secunderabad
3. The Sr. D.P.O. Secunderabad And

Shri G.Radhakrishna.

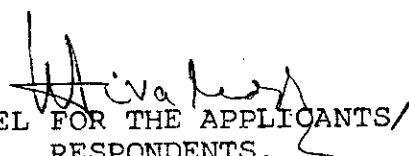
.. Respondent/
Applicant.

PETITION FILED UNDER RULE-17 OF CENTRAL ADMINI-
STRATIVE RULES

For the reasons stated in the above accompanying
affidavit, the applicants herein humbly prays that
this Hon'ble Tribunal may be pleased to review and modify
the order dt. 3.4.97 in O.A. 96 of 1994 and pass such
other order/orders as this Hon'ble Tribunal may deems
fit and proper in the circumstances of the case.

Dated: 20.11.97

Hyderabad.


COUNSEL FOR THE APPLICANTS/
RESPONDENTS.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH
AT HYDERABAD

R.A. No. of 1997
IN
O.A. No. 96 of 1994

Between:

The General Manager,
South Central Railway,
Secunderabad
and 2 others.

... Applicants/Respondents

AND

Shri G. Radhakrishnan

... Respondent/Applicant.

AFFIDAVIT FILED ON BEHALF OF THE APPLICANTS No. 1 to 3:

I, K. Venkateswarlu, S/o. Shri K. Thippanna, Occupation:
Government Service, R/O. Guntakal do hereby solemnly affirm
and state as follows:

1) I am working as Senior Divisional Personnel Officer,
South Central Railway, Guntakal Division at Guntakal. I am
the 3rd applicant herein as such I am well acquainted with
the facts of the case. I am filing this affidavit on my behalf
and on behalf of ^{applicants} other ~~respondents~~ as I am authorised to do so.

2) It is submitted that, the respondent herein filed O.A.
96/94 before this Hon'ble Tribunal which has been disposed of
vide orders dated 3.4.97 (Annexure-R1) with the following
direction:

The applicant should be deemed to have been promoted
to the post of Signal Inspector Grade-III as per his panel
position. His seniority should be fixed as observed in para-8
above. The pay of the applicant should be notionally fixed
on par with his junior but he will get monetary benefits only
when he shouldered the higher responsibilities as Signal-
Inspector Grade-III. The punishment imposed on the applicant

Corrs: One :

Page: 1.

T. Venkateswarlu
శ్రీ సి. వెంకటేశ్వరరావు
సింగి సాధ్య రెలవె/గుంతకల
Senior Divisional Personnel Officer
South Central Railway, Guntakal

DEPONENT.

శ్రీ సి. వెంకటేశ్వరరావు
సింగి సాధ్య రెలవె/గుంతకల
Senior Divisional Personnel Officer
South Central Railway, Guntakal

should be effected in the Higher grade of Signal Inspector Grade-III. If on that basis any recovery has to be made, the same will be recovered from the pay and allowances of the applicant.

3) It is respectfully submitted that, the respondent herein was promoted as Master Craftsman (MCM) in scale Rs.1400-2300(RSRP) w.e.f. 01.3.93 in his normal turn. This grade of MCM is the similar grade of Signal Inspector Grade-III. While he was working as MCM he met with an accident on 30.1.95 consequent to which he was medically decategorised for the post of MCM and he has been offered the post of Telephone-Operator in scale Rs.950-1500(RSRP) and he is working as Telephone Operator w.e.f. 23.11.95. In this circumstances the respondent herein never shouldered higher responsibility as Signal Inspector Grade-III but however, he has shouldered higher responsibility as MCM in grade Rs.1400-2300(RSRP) which is similar to Signal Inspector Grade-III from 1.3.93 to 22.11.95.

4) It is submitted that, the above fact with regard to respondent's Medical decategorisation was not brought to the notice of the Tribunal as the staff dealing case was transferred and newly joined staff has not connected these facts while finalising the counter filed in the case. Hence the above changes in service of the respondent herein were not brought to the notice of this Hon'ble Tribunal. The respondent herein also failed to bring this fact to the notice of this Hon'ble Tribunal. Hence it is an error apparent on the face of the order.

5) It is submitted that, the direction of the Hon'ble Tribunal passed in O.A. that the applicant will get monetary

Corrs:

Page : 2.


Attestor,
साहायक कामिंक अधिकारी
इक्ष्यां मध्य रेलवे/गुंतकाल
Asst Personnel Officer,
~ गुंतकाल, Guntakal


DEPONENT
गुंतकाल कामिंक अधिकारी
इक्ष्यां मध्य रेलवे गुंतकाल
Senior Casualional Personnel Office
South Central Railway, Guntakal

benefits only when he shouldered the higher responsibilities as Signal Inspector Grade-III, can not be possible to implement since the applicant was not working as Signal Inspector Grade-III by the date of passing of the order in O.A. on 3.4.97. Admittedly the respondent herein was discharging his duties in the post of Master Crafts Man (MCM) from 1.3.93 to 22.11.95 and afterwards he was reverted as Telephone Operator due to medical de categorisation on 23.11.95. Hence this Review is filed.

6. It is further submitted that, as per the para-3.6 of Railway Board Circular No.E(D&A) 88/RG/6-21 dated 21.9.88 which was circulated under Serial circular No.176/88 by South Central-Railway Administration (Annexure - A2), the empanelled candidates should be assigned seniority position as per the panel and are to be promoted in turn. The applicant is under going the punishment of with holding of increments for a period of 2 years from 1.2.91 to 31.1.93. His juniors have been promoted w.e.f. 17.3.91 vide office order No.S&T/V/20/97 (Annexure-A3) when the respondent herein was under going the above punishment. As per the above rules (Serial Circular No.176/88) the respondent herein is eligible for promotion as Signal Inspector Grade-III in scale Rs.1400-2300(RSRP) only from 1.2.93, that is after completion of penalty of with holding of increments for a period of 2 years from 1.2.91 to 31.1.93. The Hon'ble Tribunal's directions passed in O.A. that the applicant should be deemed to have been promoted to the post of Signal Inspector Grade-III as per his panel position and his seniority should be fixed if any junior to the applicant (in O.A.) in the panel position is promoted earlier to the applicant then the applicant will get his seniority ~~before~~ ^{below} ~~above~~ his junior in that panel, are contrary to the statutory rules.

Corrs: One : Additions: One

Page : 3.

T. B. Deo
Attestor.
सहायक कामिक अधिकारी
शाखा मध्य रेलवे गुत्कल
Asst. Personnel Officer
S. C. Railway/Guntakal

B. V.
DEPONENT.
सहायक कामिक अधिकारी
शाखा मध्य रेलवे गुत्कल
Sect. 1001 Personnel Office
S. C. Railway Guntakal

Returned

Refused Appln

① One copy file
② Retired copy file classified
③ One more copy file

IN THE COURT OF THE CENTRAL ADMINISTRATIVE TRIBUNAL: AT HYDERABAD.

R.A. of 1994
IN

O.A. No. 96 of 1994

BETWEEN:

The General Manager
and others.

Applicants/
Respondents.

2nd

Shri G. Radhakrishna

Respondent/
Applicant.



AFFIDAVIT FILED ON BEHALF OF THE
APPLICANTS 1 to 3

Filed On:

Filed By: COUNSEL FOR THE
APPLICANTS/RESPONDENTS.

K. Siva Reddy
ADVOCATE
8-4-87, BARKATPURAM
HYDERABAD-500 027.

Reddy
P
27/10/97
SIV/

Reddy
27/10/97
SIV/