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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD.

Op.No.120/94.

Date of order:3-8-1995.

Between:-

1. A.Rama Rao
2. D.Venkateswara Rao
3. V.S.Narayana
4. K.Bapanayya
5. P.V.Ramana
6. K.Ganga Rao
7. S.Ch.Subramanyam
8. D.Janaki Ramayya
9. K.Krishna Murty
- 10.V.Satyam
- 11.K.B.G.Nair
- 12.V.G.A.Narasimham
- 13.L.Jagannayakulu
- 14.V.Appa Rao
- 15.K.Bhaskara Rao
- 16.G.Sampath Kumar. Applicants.

And

1. Union of India rep.by the General Manager,
South Eastern Railway,Garden Reach,
Calcutta-700 043.
2. Divisional Railway Manager, South Eastern
Railway, Waltair,Visakhapatnam-530 004.
3. Divisional Personnel Officer,South Eastern
Railway, Waltair,Visakhapatnam-530 004.

.... Respondents..

Counsel for the Applicants: Mr.G.Ramachandra Rao,
Advocate.

Counsel for the Respondents:Mr.N.R.Devaraj,Sr.CGSC.

CORAM:-

~~HON'BLE MR JUSTICE V.VEERABDRI RAO, VICE CHAIRMAN~~

HON'BLE SHRI R.RANGARAJAN, MEMBER ADMINISTRATIVE

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O.A.NO.120/94.

JUDGMENT

Dt: 2.8.1995

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

Heard Shri VSN Sastry for Shri G.Ramachandra Rao, learned counsel for the applicants and Shri N.R. Devaraj, learned standing counsel for the respondents.

2. There are 16 applicants in this OA who are working and Grade-I as Fitters Grade-II/in Electric Loco Shed, South Eastern Railway, ~~Wakkaxx~~ Marripalem, Visakhapatnam at the time of filing this OA. Earlier, the applicants were promoted as Fitters Grade-III after completion of three years of service as Khalasis and after passing the prescribed trade test.

3. The applicants submit that some trainee fitters were selected from among working Group 'D' staff and they were deputed for training for one year between October 1982 and August 1983 and after passing the required trade test, they were absorbed as Fitters Grade-III. These trainee fitters were absorbed as Fitters during the period September 1984 to January 1985. ~~XXXXXXXXXX~~
On the basis of the representation submitted by the trainee fitters, their seniority was fixed from the date of completion of one year training irrespective of passing of the trade test since there was delay in conducting the trade test for administrative reasons. The applicants herein had also represented for fixation of

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their seniority from completion of three years of service as Class-IV irrespective of the conducting of their trade test. Since the requisite period of service eligibility is three years for promotion to Skilled Grade-III in terms of the Establishment Serial No.221/69 and the applicants were available for promotion at the material time and there were vacancies, it was decided to revise the seniority of the applicants in Skilled Grade-III also from the date of completion of three years of service as Class-IV. The seniority of the applicants was accordingly fixed and they were shown above the trainee fitters. The trainee fitters filed OA No.958/90 to show them as seniors to the applicants herein. But this Tribunal dismissed the OA 958/90 by the judgment dated 5.2.1992 thereby confirming the seniority of the applicants above that of trainee fitters.

5. It is stated for the respondents that the applicants herein when their case had come up for revision of seniority to place them above the trainee fitters, gave a declaration to the effect that they will not claim any proforma fixation of pay if they were given higher seniority on completion of three years of service, and they are also promoted against the existing and anticipated vacancies in the next higher grade without disturbing the existing arrangement. The applicants now request for arrears of pay due to their promotion earlier to the trainee fitters from a date some time in late 1983 or early 1984 when their next immediate junior trainee fitter

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promoted to Skilled Grade-~~III~~. The applicants submitted ^{their} representation to the concerned for the above relief. However, their request for payment of arrears due to the notional fixation of pay ^{in Skilled Grade-III} was rejected by R-3 vide letter No.WPV/RSM/2, dated 7.12.1992. In this letter it is stated that as they have given the written declaration that they will not claim for any proforma fixation of their pay provided they are given promotion to the next higher grade against the existing vacancies, they are ^{not} entitled for any arrears.

5. Aggrieved by the above reply, they have filed this OA praying for setting aside the letter dated 7.12.1992 issued by R-3 and for ~~xxxx~~ further direction to R-3 to fix the pay of the applicants on proforma basis from the date ~~xx~~ their juniors were promoted to the posts of ~~Highly~~ Skilled Grade-~~III~~ Fitters in terms of the Railway Board order dated 15/17.9.1964 and to pay the arrears of difference of pay and allowances from the date their juniors were promoted ~~xxxxxx~~ with all consequential benefits. They also pray for interest @ 12% p.a. on the arrears of pay and allowances ~~xx~~ due to the applicants from the dates they are due to be paid till the same is paid.

6. The main contention of the applicants herein is that they were given seniority over that of the trainee fitters and hence their service counts from

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the date ~~of~~ their immediate juniors were promoted. They cannot be deprived of the fixation of pay from a date earlier to their juniors who were promoted to Skilled Grade-III and their pay has to be fixed equal to that of the trainee fitters who were juniors to them treating the fixation of their seniority immediately below that of trainee fitters as an administrative error. Because of the proforma fixation and fixation of pay from an earlier date, they are entitled for arrears from that date and accordingly their pay has to be re-fixed in Skilled Grade-II Fitter. The further submission of the learned counsel for the applicants is that obtaining a written declaration from them to the effect that they will not claim any arrears of pay due to their proforma fixation if they are promoted to the next higher grade against the existing vacancies, cannot be sustained as this is against the normal rules for fixation of pay and the payment of arrears. The respondents being a model employer cannot stipulate such a condition to deprive them for payment of arrears.

7. The main contention of the respondents is that as the applicants had given a written declaration that they will not claim any arrears, they are estopped from claiming the same at this late stage.

8. As submitted by the learned counsel for the applicants, the applicants got promotion on proforma basis



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some time in late 1983 or early 1984 before promotion of the trainee fitters. The letter purported to have been given by them ~~xx~~ accepting the condition of not demanding for arrears, was given by them some time in 1986. On that basis, they were promoted some time in 1986. They applied for the arrears some time in April, 1990. Their request was turned down by the letter dated 7.12.1992. The learned counsel for the applicants submitted that this letter was issued on 7.12.1993 and not on 7.12.1992 and this fact has been indicated in Para (c) 4(iv) at Page-7 of the OA. ~~xxxxxxxx~~ ~~xxxxxx~~ The year 1993 has been corrected from 1992 to 1993 as can be seen from the correction. The respondents in their reply have given the date of this reply as 7.12.1992. In view of the above, it has to be taken that the reply was given on 7.12.1992 only and this was communicated on 22.1.1993. // The learned standing counsel submitted that this is a time barred case as promotions had taken place some time in 1986 and the OA was filed on 19.1.1994, after a lapse of about 8 years. Hence, the OA has to be rejected because of the bar of limitation.

9. The main prayer in this OA is that the applicants' pay has to be fixed equal to their junior trainee fitters in the Skilled Grade-III some time in late 1983 or early 1984 and the arrears have to be paid for that period till they were promoted as Skilled Gr.II.

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Even assuming that the applicants are entitled for arrears of pay due to their continuing right, the Tribunal was taking the view that such arrears can be given only from the date one year prior to the filing of the OA. As the applicants had already been promoted to Skilled Grade-II and Grade-I one year prior to the filing of the OA ie., 19.1.93 (this OA was filed on 19.1.1994), they will not get any arrears in Skilled Grade-III due to notional fixation of pay in that grade. However, they will be entitled to higher fixation in Skilled Grade-II and the consequential higher fixation in Grade-I also when they were promoted to the higher grades. As per the submission of the applicants, it is seen that the applicants were promoted to Skilled Grade-III some time in late 1983 or early 1984 and they were promoted to Skilled Grade-II in August, 1986. The scale of pay of the applicants in the Skilled category is in the scale of pay of Rs.260-400 and Skilled Grade-II is in the scale of pay of Rs.330-560.

10. The next question arises for consideration is as to the stage at which the applicants' pay will be fixed when promoted to Skilled Fitter Grade-II because of the notional fixation of pay in the lower Skilled Grade-III. They were fixed in the pay scale of Rs.260-400 in early 1984 and by August, 1986 when they were promoted to Skilled Grade-II, they

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would have earned only two increments in the grade of Rs.260-400 which would mean that their pay will be near about Rs.300/- in the scale of pay of Rs.260-400 and much below the initial stage of pay in the grade of Rs.330-560. Hence, the fixation of pay in Skilled Grade-II can only be Rs.330/- in the scale of pay of Rs.330-560. In that case, the applicants will not get any arrears because of their promotion to Skilled Grade-II or Grade-I. ~~even though the fixation of pay in Skilled Grade-II or Grade-I is only Rs.330/- in the scale of pay of Rs.330-560. Hence, no relief can be afforded to them by way of arrears due to their promotion to Skilled Grade-II and Grade-I even though they were given proforma fixation of pay in Skilled Grade-III due to their revised seniority above that of the trainee fitters.~~

11. In the view I have taken now, it is not necessary to consider whether the declaration given by the applicants are valid or not or whether they are entitled for any relief on the basis of the letter dated 1-10-1964 (Annexure A-4).

12. In the result, the OA is dismissed. No costs.



(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 3rd August, 1995.
Open court dictation.


Dy. Registrar (Jud)

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CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

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

A N D

THE HON'BLE MR. R. RANGARAJAN: (M(ADMN))

DATED 21/8 1995.

ORDER/JUDGMENT:

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

in
OA.No.

TA.No. (W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed. ✓

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No. order as to costs.

No Spare Copy

