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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.135 - of - 1994

DATE OF ORDER: - 22nd JANUARY, 1997

BETWEEN:

S.M.A.RASHEED .. APPLICANT
AND

1. The Senior Divisional Mechanical Engineer (C&W),
South Central Railway, Vijayawada,
2. The Divisional Railway Manager (P),
S.C.Railway,
Vijayawadab. .. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. G.V.SUBBA RAO

COUNSEL FOR THE RESPONDENTS: Mr.N.R.DEVARAJ, Sr.CGSC

CORAM:

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

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

JUDGEMENT

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

None for the applicant. Heard Mr.N.R.Devaraj,
learned senior standing counsel for the respondents.

2. The details of this case are as follows:-

The applicant appeared ~~for~~ ^{against} the 40% Departmental quota in 1979 for the post of TXR in the scale of pay of Rs.425-700/1400-2300. At that time, the assessed vacancies against that quota were 22. The applicant did not come within that quota of 22. However, to overcome the shortage of TXRs, the applicant and 9 others were promoted on adhoc

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basis as TXR with effect from 1.3.81 on the basis of the selection held in 1979 even though it was over and above the number prescribed for the departmental quota. Subsequently, adhoc TXRs i.e., the applicant and 9 others were placed on the panel and regularised with effect from 1.3.81 i.e., the date on which they were promoted as adhoc TXRs after their successful completion of one year training.

3. The applicant filed OA 961/89 on the file of this Bench which was disposed of on 12.3.91 with a direction to the respondents to finalise the seniority of the applicant therein. It is stated that his seniority was fixed accordingly in pursuance of the direction in the above said OA. He was promoted as HTXR in the scale of pay of Rs.1600-2660 on 21.11.92 and on that basis his promotion was ordered on proforma basis with effect from 16.3.89 (Annexure R-III to the reply). In the meanwhile a notification for selection to the post of CTXR in the scale of pay of Rs.2000-3200 was issued on 31.7.92 and a final panel for the post of CTXR on the basis of that selection was released on 26.11.92. As the position of the applicant in the scale of pay of Rs.1600-2660 in the category of HTXR was finalised only on 21.9.92, he was not called for the above said selection of CTXR and hence his name was not included in the panel taking his seniority position in the grade of Rs.1600-2660 as on 16.3.89. Thereafter also 13 posts of CTXR were created as a result of restructuring of the Group 'C' and 'D' cadre of Railways and these posts were created with effect from 1.3.93. It is stated that the applicant was not promoted against those restructured

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vacancies also. Hence the applicant filed a representation on 9.11.93 for promoting him as CTXR in the scale of pay of Rs.2000-3200 on the basis of his seniority in the cadre of HTXR i.e., 1400-2660 on the basis of his proforma promotion to the grade with effect from 16.3.89. By the impugned order No.B/P.535/III/C&W/Court dated 9.12.93 (Page 9 of the OA) his representation was rejected on the ground that he was not senior enough to be considered for promotion to the post of CTXR even against the upgraded post which occurred on 1.3.93. Aggrieved by the above, he has filed this OA for setting aside the impugned order dated 9.12.93 by holding it as arbitrary and for a consequential direction to the respondents to promote him to the post of CTXR in the existing vacancies with reference to the procedure to be followed in respect of the promotions to be effected to the grade of CTXR in accordance with the guidelines on restructuring that existed on 1.3.93 with all consequential benefits such as arrears of pay, allowances etc.

4. The applicant in this application has quoted that one Mr.L.V.Prasada Rao, junior to him, was promoted while he was in service. But in the reply it is stated that Mr.L.V.Prasada Rao was promoted on 26.4.94 in the cadre of CTXR and as the applicant had retired on 28.2.94 he cannot claim any benefit on par with Mr.L.V.Prasada Rao. However, we do not think that rejection on this ground is proper. The respondents themselves admit that his seniority in the ~~same~~ grade of HTXR i.e., in the pay scale of Rs.1600-2660 is with effect from 16.3.89 and on that basis it should be seen whether any body who is junior to him on the basis of that

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also is very*

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seniority were promoted against the restructured posts which occurred on 1.3.93. If any of his juniors on that basis were promoted against the restructured posts, the applicant should also be considered for promotion on par with his junior from that date. We think that the above is justifiable because there is no selection involved for that post as the restructured posts have to be filled on the basis of the modified selection looking into the CRs and other details in the service register. As no selection is involved in the restructured posts, it will not be difficult for the respondents even now to adjudge his suitability on the modified selection basis for promotion with effect from 1.3.93 if his junior on the basis of the seniority fixed to him in the cadre of HTXR with effect from 16.3.89 is promoted against the restructured posts subject to the condition that the applicant is otherwise suitable for promotion. We do not consider it possible to promote him against the earlier vacancies as that will involve positive action of selection. Hence we feel it justifiable to promote him against the restructured vacancies for the reasons stated above if he is found fit in all respects.

5. The next question arises is as to how his pay has to be fixed if promoted in view of the direction as above. The applicant had not served even a single day as CTXR before his retirement. Hence it will not be in order if he is given arrears of pay from the date he is deemed to have been promoted prior to his retirement i.e., from 1-3-93 to 28.2.94. If such promotion is given before his retirement in pursuance of the above direction, he is entitled for notional fixation of pay from that date and on that basis

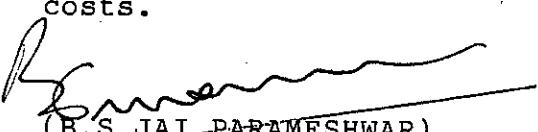


his final settlement dues have to be disbursed to him.

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

The applicant should be considered for promotion against the restructured posts which occurred on 1.3.93, on the basis of his seniority position with effect from 16.3.89 in the cadre of HTXR in the scale of pay of Rs.1600-2660, if any of his junior on that basis was promoted to the post of CTXR against restructured posts as on 1.3.93 provided he is otherwise found fit for promotion. If he does not come up for promotion as on 1.3.93, his promotion at a later date also till he is retired i.e., 28.2.94 should be considered if any of his junior after that date was considered for promotion. If promoted in pursuance of the above direction, his pay should be fixed notionally on par with his immediate junior who was promoted on or after 1.3.93. But he is not entitled for any arrears of pay till his retirement. His final settlement dues should be decided on the basis of the notional fixation of pay and he is entitled for arrears of final settlement dues and his pension should be disbursed to him on that basis.

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


(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)


(R.RANGARAJAN)
MEMBER (ADMN.)

22-1-97
DATED: - 22nd January, - 1997
Dictated in the open court.


D.Y. Reginald

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

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

AND

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

DATED: 28/1/97

~~Order/Judgement~~
~~R.P/C.P/M.A.NO.~~

0. A. NO.

1359ay

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

~~DISPOSED OF WITH DIRECTIONS~~

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

1. ORDERED/REJECTED

~~NO ORDER AS TO COSTS.~~

THE COURSE

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