

(23)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
HYDERABAD

O.A.NO.391/94

Between:

Date of Order: 27.7.95.

S.Ananda Rao

...Applicant.

And

1. The Union of India,
Represented by its Secretary,
Ministry of Railways,
New Delhi.
2. The South Eastern Railways,
Rep. by its General Manager,
Calcutta.
3. The Divisional Personnel Officer,
South Eastern Railway,
Calcutta. *Yaz*

...Respondents.

Counsel for the Applicant : Mr.A.V.Dhananjaya Rao

Counsel for the Respondents : Mr.C.V.Malla Reddy, SC for Railways.

CORAM:

THE HON'BLE SHRI A.B.GORTHY : MEMBER (A)

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OA 391/94.

Dt. of Order: 27 July 95.

(Order passed by Hon'ble Shri A.B.Gorthi, Member (A)).

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The applicant, who was promoted as a Senior Clerk on 29-5-84 against a vacancy that was available on 2-10-80, prays in this O.A. for a direction to the Respondents to effect proforma fixation of his pay in the Grade of Sr.Clerk with effect from 2-10-80 and pay him consequential arrears of pay and allowances from 29-5-1984, the day he was actually promoted.

2. The Railway Board, vide letter dt.10-11-80 introduced a scheme of restructuring of the Ministerial staff of Personnel Department. Accordingly it was provided that ~~directing~~ recruitment of Graduates would be made in the cadre of Senior Clerks to the extent of 20% of its total strength. It was further provided that the existing Graduate Clerks in the Personnel Department would be permitted to compete for recruitment against that Direct- Recruitment quota by availing age relaxation. Vide another letter dt.20-1-81, the Railway Board decided that the percentage of vacancies of Sr.Clerks arising on 1-10-80 consequent on the restructuring of the cadre would be filled in through a Limited Departmental Competetive Examination of the existing graduates clerks of the Personnel Department. Before this orders could be given effect, the matter was taken up before the Supreme Court by an unrecognised Union and a 'stay' obtained. Thereafter when the stay was vacated, the South Eastern Railway conducted Limited

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Departmental Examination, at which six candidates including the applicant qualified, as is evident from order dt. 29-5-84 issued by the Divisional Railway Manager, S.E. Railway. The applicant was to be promoted against the non-personnel graduate quota but on his representation for accommodating him against a vacancy available in the Personnel Department as on 2-10-1980, his request was accepted. He was thus promoted on a vacancy that was available on 2-10-80. But his pay was fixed only from the date of his promotion, i.e., 29-5-84.

3. The Respondents in their reply affidavit have not refuted the material averments made in the O.A. Their short contention is that the applicant has no vested right to claim fixation of his pay, proforma or otherwise, with effect from 2-10-80 and that he is entitled to such pay and allowances only from the date of his actual promotion.

4. Learned counsel for the applicant has drawn my attention to a Judgement of this Bench of the Tribunal in T.A.157/86, wherein the applicants are stated to be similarly situated as the applicant before me. In disposing of TA 157/86, the Tribunal followed a Judgement of the Allahabad Bench of the Tribunal in Registration No.132/86, wherein it was held that Graduate Clerk promoted as Sr. Clerks would be entitled to proforma fixation of pay from 1-10-80 without the benefit of arrears of pay.

5. The Railway Board itself, vide letter dt. 18-6-81 stated that the orders of the restructuring of the ministerial staff of the Department, other than personnel, would come into effect



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from 1-10-80, ^{and that the} ~~with which~~ pay of the employees appointed to the upgraded post would be fixed proforma from 1-10-80 but the actual payment of emoluments in the higher post would be allowed only from the date of assumption of charge of the higher post. Taking into consideration the said Railway Board letter as also the Judgemtn of the Allahabad Bench of the Tribuna, ~~this~~ T.A.157/86 was allowed with a direction to the Respondents to fix the pay of the ^{petitioners} ~~applicants~~ on a proforma basis with effect from 1-10-80.

6. There can be no doubt that the applicant is similarly situated to the petitioners in TA No.157/86. Though the applicant was promoted against a vacancy that arose on 2-10-80 and not on 1-10-80, that should not, in my view, make any change to the merits of the case. Applying the ratio in the aforesaid cases, it can be said that the applicant too would be entitled to have his pay fixed on a pro-forma basis with effect from 2-10-80.

7. In the result, the O.A. is allowed. The Respondents are directed to effect pro-forma fixation of pay of the applicant with effect from 2-10-80. Consequently ^{and} ~~by~~ re-fixation of his pay will also have to be done but arrears arising therefrom will ~~also~~ ^{only} be notionally fixed. Actual payment of arrears will be limited to the period commencing from 24-11-92, i.e., one year prior to the date of filing of the O.A., as the same

was filed rather belatedly.

8. Respondents shall comply with these directions within a period of four months from the date of communication of this order. No order as to costs.

A.B. Gorthi
(A.B. GORTHI)
Member (A)

Dated: 27 July, 1995.

Amberpet
DEPUTY REGISTRAR(J)

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To

1. The Secretary, Ministry of Railways, New Delhi.
2. The General Manager, South Eastern Railway, Calcutta.
3. The Divisional Personnel Officer, South Eastern Railway, ~~Calcutta~~ *Vizag*.
4. One copy to Mr.A.V.Dhananjaya Rao, Advocate, 2-2-25/3/3, Bagh Amberpet, Hyderabad.
5. One copy to Mr.C.V.Malla Reddy, SC for Railways, CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One spare copy.

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TYPED BY
CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE SHRI A.V. HARIDASAN: MEMBER (J)

AND

THE HON'BLE SHRI A.B. GORTHY: MEMBER (J)

DATED 27.7.95

ORDER/JUDGMENT

M.A.NO/R.P.NO./C.P.NO.

in

O.A.NO. 391/94

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default

Rejected/Ordered.

No order as to costs.

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