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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL-APPLICATION-NO.438-of-1994

DATE-OF-ORDER:- 11<sup>th</sup> March, -1997

BETWEEN:

V.VIJAYA KUMAR

AND

1. Union of India represented by  
the General Manager,  
South Central Railway,  
Secunderabad,
2. The Chief Personnel Officer,  
S.C.Railway, Secunderabad,  
the Railway Board represented by its  
Chairman, New Delhi.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.G.RAMACHANDRA 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

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

Heard Shri G.Ramachandra Rao for the applicant and  
Shri K.Siva Reddy for the respondents.

2. The applicant in this OA was promoted as a regular typist with effect from 30.3.82 from Group-D service against the quota of 33 1/3% earmarked for promotion from

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posts -  
Group-D<sub>1</sub> to the post of Typists. Railway Board by their letter No.E(A)I-61/CPC/84 dated 21.6.1962 (Annexure-4 to the OA) gave option to the Typists to come over to clerical category and that option had to be given within five years letter dated 21.6.62, R-2 issued Serial Circular No.136/84 dated 5.11.84 (Annexure-2) calling for volunteers from Typists for change over as Clerks. The applicant gave his willingness as per his letter dated 24.7.86 (Annexure-5). The applicant was posted as a Junior clerk on 20.5.92 on change of cadre by letter dated 20.5.92. He joined as Junior Clerk in R-2's office on 21.5.92. His seniority was interpolated in the seniority list of Junior Clerks in the scale of pay of Rs.950-1500 at Sr.No.7 as per Board's instructions of 21.6.62 i.e, based on the date of joining as Typist from 30.3.82 among all the Junior Clerks existing as on that date. He was confirmed as Junior Clerk with effect from 1.9.92. He was alerted to appear for suitability tests on 30.6.92 to adjudge his suitability for promotion to the post of Sr.Clerk in the scale of Rs.1200-2040. He appeared for the written tests held on 30.6.92 and was found suitable for promotion. Pending finalisation of the suitability test for promotion to Sr.Clerk, he was promoted to Sr.Clerk on adhoc basis with effect from 20.10.92. He was regularly promoted and posted as Sr.Clerk after qualifying in the suitability test by Office order dated 3.11.92.

3. The next promotion of the Senior Clerk is to the cadre of Head Clerk. The promotion to that cadre is by non-selection on the basis of seniority-cum-suitability.

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The applicant submitted a representation on 4.1.93 and 2.2.93 to reckon his seniority in the cadre of Senior Clerk with effect from 30.3.82 and interpolate his seniority in the cadre of Senior Clerk who had joined as Junior Clerk later than 30.3.82. The applicant submits that on that basis, his seniority should be shown below that of one Smt. Grace M. Nicholas and above that of one Shri Lakshmi Durga. The applicant submits that the interpolation as above is in accordance with the Railway Board's circular dated 21.6.62 wherein it is stated in Para 4 of that letter that "on change of cadre from typists to Clerk, the Typists will count the seniority in clerical cadre from the date of their joining as Typists". He further submitted in his representations that he should be promoted as head clerk on the basis of the above interpolated seniority amongst the Senior Clerks on par with his junior in that seniority list. In case, no post is available to promote him immediately as Head Clerk he should be promoted when the next vacancy arises in the cadre of Head Clerks and his seniority in the cadre of Head Clerks should be interpolated thereafter suitably in accordance with his date of entry as Junior Clerk with effect from 30.3.82.

4. His representations were disposed of by letter No.P/EST/612/Vol.III dated 7.4.93 (Annexure-11). It was informed to him by that letter that he had been correctly assigned seniority existing as on the date of his joining the clerical category and his plea to interpolate his name among the Senior Clerks who had already been promoted before his entry into the Junior Clerks' cadre cannot be considered.

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5. Aggrieved by this reply, he has filed this OA praying for a direction to the respondents herein to reckon his seniority in the Clerical cadre from 30.3.82 with all consequential benefits including promotions to the next higher posts of Senior Clerk, Head Clerk etc. from the date when his juniors in the clerical cadre were promoted to the said posts.

6. The main contention of the applicant in this OA is that the Railway Board's letter dated 21.6.62 stipulates that a Typist on his change of cadre as Clerk is to be given seniority in the Clerical cadre from the date he joined as Typist and that the seniority fixed as above should be carried ahead when promoted as Senior Clerk and the Typist should be interpolated in the seniority of Senior Clerks above that of those who joined as Junior Clerk later than the date of their entry as Typists. It is further contended that the promotion to the next higher post of Head Clerk should be regulated on that basis. If no vacant post of Head Clerk is available, then promotion to the post of Head Clerk should be given immediately when a post becomes vacant. The applicant also submits that this is in accordance with the Railway Board's clarificatory letter NO.E(NG)I/90/PM1/12 dated 18.6.90 (Annexure-12).

7. The respondents submit that in accordance with the Railway Board's letter dated 21.6.62, a Typist on change of cadre as Clerk should be interpolated in the seniority list of ~~Typist~~ <sup>Dr. Clerk</sup>. On that basis the Typist who changed his cadre

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as Clerk should be promoted to the post of Senior Clerk. It is not the intention of the Railway Board to disturb the seniority of the Senior Clerks who are already in the clerical cadre before the Typist joined the clerical cadre as those Senior Clerks cannot be treated as Junior to the Typists who came to the clerical cadre and thereafter promoted as Senior Clerk. The above <sup>Views</sup> is in accordance with the clarification given by the Railway Board by letter dated 18.6.90 to their earlier letter of 21.6.62.

8, We have examined both the view points. The Typist who came to the clerical cadre will count his seniority from the date of his joining as Typist. The clarificatory letter dated 18.6.90 states that the fixation of seniority as above is only in the cadre of Junior Clerks. The promotion to the next higher grade of Senior Clerk will be regulated on the basis of the above seniority. Once he is promoted as Senior Clerk, his seniority in Senior Clerks cadre will be reckoned from the date of his entry as Senior Clerk. The above clarification in our opinion is in order as (i) the settled seniority of the Senior Clerks who were already in that cadre before a Typist joins as a Junior Clerk cannot be unsettled, (ii) The option given to the Typists to come over to the clerical cadre is to further their career prospects. The second reasoning is due to the fact that the promotion in the Typist cadre is not that good compared to that of the clerical cadre. A Typist who is competent to be posted as Clerk on the basis of a positive act of selection may be able to go up in the ladder due to his ability.

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9. The applicant in this present case was regularised as Typist with effect from 31.3.82. When he joined the cadre of Junior Clerk on 21.5.92, his seniority position in that cadre was interpolated as if he joined that cadre on 31.3.82. He was promoted as Senior clerk on 20.10.92 waiving the two year service eligibility period as Junior clerk for promotion to Sr.Clerk. When he was promoted as Senior Clerk his seniority was correctly fixed as per his entry into that grade. The seniority of the applicant as reflected above in the seniority list of Junior clerks and letter dated 21.6.62 read with the clarificatory letter dated 18.6.90. ~~On~~ <sup>he</sup> the basis of the assigned seniority in the cadre of Senior Clerk, ~~he~~ has to seek his further promotion to the next higher grade of Head Clerk. He cannot jump the queue for promotion to Head Clerk by granting him higher seniority in the cadre of Senior Clerk as prayed for by him.

10. In the ground 5(c) of the application, the applicant submits that the clarificatory letter of the Railway Board dated 18.6.90 is not applicable to the facts of his case and it has no bearing on the claim made by him. He further submits that the said letter is contrary and inconsistent with the earlier Railway Board's letter dated 21.6.62. It is further contended by him in his reply affidavit that if there is any inconsistency between the letter dated 21.6.62 and 18.6.90, it is only the instruction given by the Railway Board dated 21.6.62 will prevail. The above ground is very confusing. If the

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applicant is aggrieved by the letter dated 18.6.90, he should have challenged that letter in the OA. He has not done so. As stated earlier, there is no inconsistency in these two letters. They are issued with a view to improve the career prospects of a Typist.

11. The next contention of the applicant is that he had given his option to come over to the clerical cadre as early as in 1986. There is no valid and justifiable reasons for the respondents in taking nearly 5½ years for accepting his option.

12. The respondents in their reply have stated that some deliberations were going on in regard to the method of selection of a Group-D official posted as a Typist and a directly recruited Typist for change of cadre. It is further stated that it was finally decided that the directly recruited Typists and the group-D officials promoted as Typists should qualify in the suitability test for change of category as Clerk to ensure uniformity. That decision was communicated by Serial Circular No.117 of 91 dated 8.8.91. Thereafter the suitability test was held on 18.1.92 and the applicant having passed the suitability test was posted as Junior Clerk on 20.5.92. Hence the respondents submit that delay is beyond their control and the final method was decided in consultation with the recognised Unions by issue of the Serial Circular No.117 of 91 and immediately thereafter the applicant was given the change of cadre following the extant rules.

13. From the above narration, there appears to be some delay from the date the applicant had given his option and

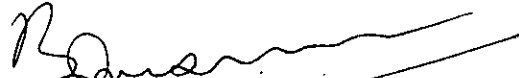
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
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his absorption in clerical cadre. If the applicant is aggrieved by the delay, he should have approached the judicial forum after lapse of a reasonable period after submission of his option form. But, he submits that ground only after he was given the change of cadre and was also promoted further in the clerical cadre. Hence it will be inappropriate if any relief is given on the basis of this ground. The applicant having failed to take suitable action in time cannot complain of delay at this distant date.

14. In view of the foregoing, we find no merit in this OA. Hence, the OA is liable only to be dismissed. Accordingly it is dismissed. No costs.

  
(B.S. JAI PARAMESHWAR)  
MEMBER (JUDL.)  
11.3.97

  
(R. RANGARAJAN)  
MEMBER (ADMN.)

  
DATED: -- 11 -- March, -1997

  
Dy. Reg. Sr. (3)

vsn



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Copy to:-

1. The General Manager, South Central Railway, Union of India, Secunderabad.
2. The Chief Personnel Officer, S.C.Rly, Secunderabad.
3. The Chairman, Railway Board, New Delhi.
4. One copy to Sri. G.Ramachandra Rao, advocate, CAT, Hyd.
5. One copy to Sri. K.Siva Reddy, SC for Rlys, CAT, Hyd.
6. One copy to Deputy Registrar(A), CAT, Hyd.
7. Copy to Reporters as per standard list of CAT, Hyd.
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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 PARAMESWAR:  
M(J)

DATED: 11/3/97

ORDER/JUDGEMENT

R.A./G.P/M.A.NO.

O.A.NO.

ADMITTED AND INTERIM DIRECTIONS ISSUED  
ALLIED  
DISPOSED OF WITH DIRECTIONS  
DISMISSED  
DISMISSED AS WITHDRAWN  
ORDERED/REJECTED  
NO ORDER AS TO COSTS.

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II COURT

