

(46)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 703/95

Date of Order : 19.3.98

BETWEEN :

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|----------------------|---|----------------|
| 1. M.L.Narasimha Rao | X | .. Applicants. |
| | X | |
| 2. Mohd. Zaheeruddin | X | |

AND

- | | |
|--|-----------------|
| 1. The Divisional Railway Manager,
Secunderabad Broad Gauge Division,
S.C.Rly., II Floor,
Sanchalan Bhavan, Secunderabad. | |
| 2. A.Rayappa, Vigilance Inspector,
III Floor, Rail Nilayam,
S.C.Rly., Secunderabad. | |
| 3. M.Saibaba, Cy.Chief Controller,
I Floor, Operating Branch,
Sanchalan Bhavan, S.C.Rly.,
Secunderabad. | |
| 4. N.Chandramouli, Dy.Chief Controller,
I Floor, Operating Branch,
Sanchalan Bhavan, S.C.Rly.,
Secunderabad. | .. Respondents. |

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Counsel for the Applicants	.. Mr.V.Venkateswara Rao
Counsel for the Respondents	.. Mr.C.V.Malla Reddy

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CORAM:

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

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

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O R D E R

)(As per Hon'ble Shri R.Rangarajan, Member (Admn.) X

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Mr.V.Venkateswara Rao, learned counsel for the applicant and Mr.Subba Rao for Mr.C.V.Malla Reddy, learned standing counsel for the respondents.

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2. There are two applicants in this OA. They were regularised in the scale of pay of Rs.455-700/Rs.1400-2300 w.e.f. 31.1.86 as can be seen from the memo No.25/Optg/BG/1987 (page-10). They applied for the post of Section Contrellers. The respondents 2, 3 and 4 also applied for the post of Section Contrellers. Respondents 2 and 3 were Guards in the scale of pay of Rs.330-560/Rs.1200-2040, when they applied for the post of Section Contrellers. When they were posted as Section Contrellers they were given seniority above that of the applicants on the premise that they being the running staff the running allowance should be added and if that is added it is to be construed that they are in the scale of pay of Rs.425-640 in terms of Railway Board's letter No.E(NG)1-89-P-12-8, dt.19.5.8 (page-8 to the reply). As the scale of pay of Rs.425-640 and Rs.455-700 were merged in the 4th Pay Commission scales of pay as Rs.1400-2300 they are to be placed above that of the applicants as they joined in Rs.330-560 which is equated to Rs.1400-2300 very much earlier than the applicants who were regularised in the scale of pay of Rs.1400-2300 only w.e.f. 31.1.86.

3. Respondent No.4 is also shown^{as} senior to the applicant as it is stated that he joined the post in the grade of Rs.455-700 on 31.1.86, whereas the applicants joined that post on 15.2.86.

4. The applicants filed a representation dated 20.10.93 for showing them senior to the Respondents 2 to 4. But that was rejected by the impugned order No.CP/535/Optg/SCR, dated 3.12.93 (page-16 to the OA). That rejection was further reiterated in the impugned letter dated 6.10.94 (page-24 to the OA).

5. This OA is filed to set aside the impugned proceedings No.CP/535/Optg/SCR, dated 3.12.93 and 6.10.94 by holding them as illegal, arbitrary and unconstitutional with all consequential benefits and for a consequential relief to declare^{that} the applicants herein are entitled to be shown above the Respondents 2 to 4 in the cadre of Section Contrellers.

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6. In the present OA the fixation of seniority of the applicants vis-a-vis Respondents 2 and 3 arises due to a rule which is different from the rule in fixing the seniority of R-4 over that of the applicants. Hence the seniority dispute of the applicants vis-a-vis respondents 2 and 3 and respondent No.4 is decided separately.

7. The respondents submit[✓] that the seniority of Respondents 2 and 3 has to be decided in terms of the proceedings No.E(NG) 1-89-P-12-8, dated 19.5.89 (page-8 to the reply). As per that letter the running staff has to be given the next higher grade adding running allowance. If that is so Respondents 2 and 3 who were Guards in the scale of pay of Rs.330-560 which is a running category post has to be shown for fixation of seniority as if they are working in the higher grade of Rs.425-640 in view of addition of the running allowance. If that rule is followed the Respondents 2 and 3 are to be equated to the scale of pay of Rs.1400-2300 in the 4th Pay Commission scales of pay as the two scales of pay, namely, Rs.425-640 and Rs.455-700 in the 3rd Pay Commission scales of pay ^{were} merged and equated to Rs.1400-2300 in the 4th Pay Commission scales of pay. The applicants joined in the scale of pay of Rs.425-640 i.e. Rs.1400-2300 w.e.f. 31.1.86. Hence their date of entry to the grade of Rs.1400-2300 is to be taken as 31.1.86. Whereas the Respondents 2 and 3 joined the scale of pay of Rs.330-560 which ^{also} should be equated to Rs.1400-2300 in the 4th Pay Commission scales of pay joined that grade much earlier some time in 1978 and 1979. On that basis the Respondents 2 and 3 who are running staff are to be shown as seniors to both the applicants in the cadre of Section Controllers.

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8. The learned counsel for the applicant brought to our notice the judgement of this Tribunal in OAs 421/90 and 431/90. Wherein it is observed that the upgradation of the scales of pay by adding the running allowance in the cases of running staff is not permissible and those running staff who are in the scale of pay of Rs.330-560 has to be shown junior to those staff who are in the scales of pay of Rs.425-640 and Rs.455-700. As the applicants in this OA are in the scale of pay of Rs.455-700 w.e.f. 31.1.86 and on that date the respondents 2 and 3 were in the scale of pay of Rs.330-560 they cannot be shown above the applicants in the OA in view of the judgement in the OAs 421/90 and 431/90.

9. The learned counsel for the respondents submits that the judgement in OAs. 421/90 and 431/90 have been challenged by filing an SLP in the Apex Court and those SLPs are still pending. No stay order of the judgement in the above referred OAs of this Tribunal has been given by the Apex Court. It is not necessary to adhere to the judgements in the OAs 421/90 and 431/90 and the applicants should be shown as junior to the respondents 2 and 3 in view of the circular dated 19.5.89.

10. We have considered the above contentions. There are two courses left to us :

(1) Adhere to the directions given in OAs.421/90 and 431/90. But adherence to ^{judgement in} those OAs may not be proper as an SLP is pending and it may be decided in favour of against the Railway Administration.

(2) The second course is to refer it to the Full Bench. But we do not consider it necessary to refer it to the Full Bench as the principle is already under scrutiny of the ^{Hon'ble} Supreme Court because of the filing of the SLP.

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11. Under the above circumstances, we are of the opinion that this seniority dispute between the applicants and R.2 and R.3 should be decided on the basis of the final orders to be given by the Apex Court in the SLP, filed against the directions given in OA Nos.421 of 1990 and 431 of 1990. If the applicants have to wait till then it is inevitable. Ofcourse if a decision is given in their favour then the applicants can ask for consequential relief from the respondents as per rule.


12. The learned Counsel for the applicants brought to our notice Para-7 of the reported case 1997(5)SCALE 82(Ajit Babu & Others Vs Union of India & others). It was observed by the Supreme Court in that para that the "Doctrine of Precedent" has to be adhered to. As the relief asked for in this OA with respect to Respondents 2 & 3 had already been decided by the earlier Bench that doctrine of precedent should be followed in this case also. But that precedent is under question now in the Apex Court. Hence it has to be held that the doctrine of precedent will come into force only when the SLP is disposed of. Hence our earlier Orders for fixing the seniority of the applicants vis-a-vis respondents 2 and 3 on the basis of the final order to be passed by the Apex Court in the SLPs in OA.Nos.421 of 1990 and 431 of 1990 is in accordance with the observation of the Apex Court and we cannot deviate from the observation of the Supreme Court in this connection.

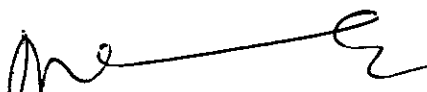
13. The next question is in regard to the fixation of the seniority of the applicants vis-a-vis R-4. It is evident from the letter dated 28-4-87(page.10 to the OA) that the applicants were regularised in the scale of pay of Rs.455-700/-Rs.1400-2300 w.e.f. 31-1-86. This order is very categorical. Even if they joined on 15-2-86 the respondents themselves have given the date of regularisation of both the applicants in the scale of pay of Rs.455-700/Rs.1400-2300 w.e.f. 31-1-86. Hence that date cannot be

changed unless a notice is given to the applicants and the date of regularisation is shifted to 15-2-86. Till then it is to be treated that the applicants were regularised in the scale of pay of Rs.425-640 w.e.f. 31-1-86 and that date will decide the inter-se seniority of the applicants and vis-a-vis others in the seniority list of the Section Controllers category. It is stated that R-4 was also given the scale of pay of Rs.1400-2300 w.e.f. 31-1-86. When both the applicants and R-4 had entered the scale of pay of Rs.1400-2300 on the same date then the question of deciding the seniority depends on the entry of the employees in the lower grade. In the lower grade of Rs.425-640 if the applicants had joined earlier than R-4 then the applicants ranks senior to R-4. That date is not clearly indicated.

14. Hence the respondents have to decide the inter-se seniority of both the applicants vis-a-vis R-4 on the basis of the date of entry of the applicants and R-4 in the grade of Rs.425-640. If the applicants had joined the scale of pay of Rs.425-640 earlier to R-4 then they rank senior to R-4 in the integrated seniority list of Section Controllers and vice versa.

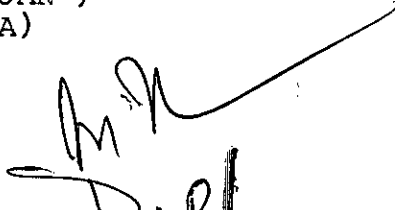
15. With the above direction the O.A. is disposed of. No costs.


(B.S. JAI PARAMESHWAR)
MEMBER(J)
10.3.98


(R. RANGARAJAN)
MEMBER(A)

Dated: 10th March, 1998
Dictated in Open Court

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