

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.668 of 1995

DATE OF JUDGMENT: 25 JUNE, 1998

BETWEEN:

P.PETER

.. APPLICANT

AND

1. The Divisional Railway Manager,
South Central Railway,
Hyderabad Divn, Secunderabad,
2. The Chief Personnel Officer,
S.C.Railway, Rail Nilayam,
Secunderabad,
3. The General Manager,
S.C.Railway, Rail Nilayam,
Secunderabad.

.. RESPONDENTS

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

JUDGMENT

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

Heard Mr.G.V.Subba Rao, learned counsel for the applicant and Mr.K.Siva Reddy, learned standing counsel for the respondents.

2. The undisputed facts of this case are as follows:-

The applicant in this OA was appointed as Assistant Station Master through Railway Service Commission

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on 1.1.71. Initially he was posted at Purna. He was subsequently promoted to the post of ASM in the Grade of Rs.425-640 on 1.8.79 and retained at Purna. He was promoted to the grade of Rs.455-700 (RS) with effect from 7.3.83 and was once again retained at Purna. The applicant was empanelled to the grade of Rs.550-750 (RS) against the existing vacancy by the order dated 30.6.84. He was posted as Deputy CYM, Purna in the scale of Rs.550-750 by the order dated 2.8.84. He joined the post of Dy.YM on 8.8.84 and his pay was fixed as Dy.YM.

3. It is submitted by the applicant that the Station Masters and Yard Masters were borne on the combined category of SM/TI/Yard Master till 30.9.84. The category of SM and YM was reported to have been bifurcated with effect from 1.10.84 and it is also on the basis of "as is where is" basis as on 1.10.84. The applicant was allotted to the YM category as he was Dy.YM on that date.

4. The applicant submits that he was posted as Traffic Inspector on 15.5.85. If the applicant is posted in the category of Yard Master with effect from 1.10.84 there is no need to post him as TI after that date. As he was posted as TI on 15.5.85, it cannot be said that he was allotted to YM cadre with effect from 1.10.84. He also submits that the respondents cannot allot a cadre of their choice without giving option to him to ascertain the choice of the cadre of the employee who was in the combined cadre of YM/TI/SM. For this, he relies on the judgment of this Tribunal in OA 303/86 disposed of on 22.2.90 (Syed Shabbir

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Hussain and others v. General Manager, South Central Railway, Secunderabad and another.

5. The applicant was further promoted as Dy.Chief Yard Master in the same scale of pay and reported to Moulali on 10.1.86 as per the order dated 7.12.85. It is stated that while he was working at Purna, he was also asked to officiate as Deputy Chief Yard Master, Purna in the scale of pay of Rs.2000-3200 (RSRP) from 1.1.88 to 30.9.88 by the order dated 8.3.89. Subsequently, he was empanelled and promoted as Dy.Chief Yard Master in the scale of pay of Rs.2000-3200 (RSRP) on regular basis and retained at Purna by the order dated 3.9.91 and since then he is working as Dy.Chief Yard Master.

6. The applicant submitted representation on 4.11.94 to the Divisional Railway Manager, Hyderabad for promoting him to the higher grades on par with his juniors in the combined cadre when his juniors in the cadre of SM/TI were promoted to the higher grade. The Divisional Railway Manager, South Central Railway, Hyderabad viz, R-1 after consulting R-2 informed him by the impugned letter NO.YP/535/P 11/3/YMs dated 9.1.95 that the cadre of SMs/AYMs was bifurcated with effect from 1.10.84 on the basis of "as is where is" and no options were extended for change of cadre. It is also stated that he was posted as TI from 15.5.85 temporarily in the exigencies of service and that will not confer on him any right to post him in SM/TI category and that is not violation of R-2 instructions. Hence his representation was rejected by the impugned order dated 9.1.95.

7. This OA is filed to set-aside the impugned order No.YP/535/P 11/3/YMs, dated 9.1.95 (Page 9 to the OA) and

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for consequential direction to the respondents to treat him as one belonging to the SMS/ASMs cadre and promote him to the grade of Station Superintendent etc. in the scale of pay of Rs.700-900, Rs.840-1040 grades from the date his juniors in the SMS and ASMs cadre were promoted to the said grades with all consequential benefits such as arrears of pay and allowances etc. and to interpolate his seniority in the cadre of SMS/ASMs as per the original seniority at the appropriate place.

8. The contentions of the applicant are two fold:-

(i) None can be allowed to a cadre without opting for the same when they were posted in a combined seniority unit. In the present case he has been posted in the combined seniority unit of SMS/TIs/YMs when he was recruited. Even though he was working as YM on the crucial date viz, 1.10.84, he cannot be allotted to that cadre as per the instructions of the CPO on "as is where is" basis. For this he relied on the judgment of this Tribunal in OA 303/96.

(ii) He was posted as TI on 15.5.85 even after bifurcation. Hence it cannot be said that he was allotted to YMs cadre. He has to be continued in the SMS cadre.

9. A reply has been filed in this OA. The facts are as indicated above. The respondents submit that the applicant has been allotted to YMs cadre in accordance with the instructions and hence the applicant cannot object to his posting in YMs category.

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10. A rejoinder has been filed in this OA. It is more or less on the basis of the OA.

11. The applicant had filed this OA on 10.5.95 after a lapse of 11 years from the date of bifurcation of the cadre. In between there were a number of occasions when the applicant would be knowing about his allotment to YMs cadre and situation would have arisen when his juniors in the combined SMS/ASMs category were promoted to the higher grade in that category. Further, there might have been issue of seniority lists separately for SMS/TIs cadre and YMs category. It cannot be said that the applicant is unaware of any of these facts. Though he submits that he kept on representing his case, such repeated representations will not extend the period of limitation. The applicant failed to approach this Tribunal in time. Settled position of seniority cannot be unsettled after passage of a long time as emphasised by the Supreme Court in a number of cases. In a similar OA viz, OA 372/95 we had held wherein the applicant in that OA who filed petition challenging the posting in the YMs category without obtaining proper option that the challenge is not tenable as that OA was also filed in the year 1995 for the reasons stated in that judgment. The reasons given in that judgment for rejecting the prayer in that OA equally applies in this OA also. The contentions and the prayer raised in this OA ~~is~~ ^{are} of same nature. This Tribunal in another OA viz, OA 1235/95 when a similar prayer was advanced had dismissed that OA concurring with the view expressed by this Tribunal in OA 372/95. Thus the present prayer has been gone into in ~~depth xxxxxxxxxx in the two~~

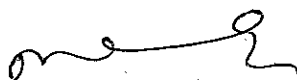
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depth earlier also in the two other cases and both cases were dismissed on the ground that the applicants in those OAs had acquiesced themselves to the situation and were complacent about their replacement. Those reasons hold good squarely in this OA also.

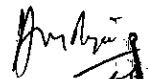

12. In view of what is stated above, we find that this OA has to be dismissed for the delay and laches and accordingly it is dismissed. No order as to costs.


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


(R. RANGARAJAN)
MEMBER (ADMN.)

26/6/98
DATED:  June, 1998

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Copy to:

1. The Divisional Railway Manager, South Central Railway, Hyderabad Division, Secunderabad.
2. The Chief Personnel Officer, South Central Railway, Railnilayam, Secunderabad.
3. The General Manager, South Central Railway, Railnilayam, Secunderabad.
4. One copy to Mr.G.V.Subba Rao, Advocate, CAT, Hyderabad.
5. One copy to Mr.K.Siva Reddy, Addl.CGSC, CAT, Hyderabad.
6. One copy to D.R(A), CAT, Hyderabad.
7. One duplicate copy.

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6/7/98

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II COURT

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APPROVED BY

IN 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: 25/6/98

ORDER/JUDGMENT

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

in

O.A.NO. 668/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

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