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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD

O.A.No. 749 OF 1995.

Date of Order: 24-2-1998.

Between:

U.Srinivasa Rao. .. Applicant
and

1. Union of India, represented by its General Manager, S.E.Railway, Garden Reach, Calcutta-43.
2. Divisional Railway Manager, S.E. Railway, Visakhapatnam-530 004.

.. Respondents

COUNSEL FOR THE APPLICANT(S) :: Mr.P.B.Vijaya Kumar

COUNSEL FOR THE RESPONDENTS :: Mr.C.V.Malla Reddy

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER(ADMN)

AND

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

: O R D E R :

(AS PER HON'BLE SRI R.RANGARAJAN, MEMBER(ADMN))

Heard Mr.Patre for Mr.P.B.Vijaya Kumar for the Applicant and Mr.C.V.Malla Reddy for the Respondents.

2. The applicant in this OA joined as a Khalasi in the S.E. Railway and he was called for a test for filling up the vacancy of Telephone Operator on 1-5-1980 and the test was conducted on 26-5-1980. He was appointed as an adhoc Telephone Operator by office Order No.WPV/169/T0/81, dated:21-7-1980 (Page.11 to the OA). This order clearly states that he was transferred from Vizianagaram to Waltair and temporarily promoted to officiate as Telephone Operator in the scale of pay of Rs.260-400 purely on adhoc basis and posted under TCI(L) Waltair against one of the

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post of Telephone Operators in the scale of pay of Rs.260-400/- created under the office Letter dated:14-4-1980. It is also stated in the note of that office Order that, adhoc promotion will not confer on him any title or claim for continuance as such or for promotion against future vacancies either permanent or temporary or for seniority or they will be reverted to their former posts as Khalasis without notice as soon as BSG/empannelled candidates are posted in the said vacancies(emphasis added). The applicant later was selected on a regular basis to the post of Telephone Operator as can be seen from the provisional panel bearing No.WPV/169/T.O./Selection/35, dated:6-9-1983, (page.12 to the OA). The applicant stands fifth in the provisional panel and there are four seniors above him in that panel. The applicant was regularly posted as Telephone Operator by office Order No.WPV/169/T0/Selection/56, dated:7-9-1983 (Page.13 to the OA).

3. The applicant submits that, ~~once~~ Sri U.Eswara Rao was appointed by the same proceedings. The proceedings showing the name of Sri U.Eswara Rao having been promoted as a Telephone Operator is not enclosed to the OA. It is further stated that Sri U.Eswara Rao was regularised from the date of his adhoc promotion without conducting another selection. It is further added that since Sri U.Eswara Rao was regularised as a Telephone Operator without subjecting him for second selection, his case has to be regularised with effect from the date of adhoc promotion. The applicant submits that he was irregularly subjected to a second selection for which panel was issued on 6-9-1983 and because of that the respondents failed to advance his date of regular promotion from the date of his posting on adhoc as Telephone Operator.

4. This OA is filed praying for a direction to the respondents to regularise his promotion as Junior Telephone Operator with effect

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from 21-7-1980 or atleast from the date of availability of regular vacancy basing on the original test and consequently recast his seniority as Junior Telephone Operator with all consequential and attendant benefits including revision of his pay on national basis and for payment of the monetary benefits (arrears) with effect from the date preceding one year from the

5. A reply has been filed in this O.A. The respondents submit that the case of the applicant was rejected when it was represented by the Trade Union Organisation and the rejection of his case was informed to the Trade Union by Letter No.WPU/169/TD, dated:8-6-1984(Annexure.A2). The reply to the applicant's representation dated:20-11-1992 is only a reiteration of their earlier stand and hence that will not be a reason for abridging the period of limitation. The OA is barred by limitation and hence on that count the OA has to be dismissed.

6. The respondents also contend that the affected parties are not impleaded in this OA as by giving him date of promotion from the year 1980, it will involve supersession of his seniors in the panel. It is also the contention of the respondents that the applicant was promoted earlier on adhoc basis against the Direct Recruitment Quota and in the selection held in the year 1983 he was considered fit against promotion quota and he was promoted. The case of Sri U.Eswara Rao is not comparable with that of the applicant as the said U.Eswara Rao was promoted against departmental 33 1/3rd quota posts arose during 1980 vacancies of Telephone Operators. The above fact has been made clear in the letter to the Trade Union dated:8-6-1984. It is also made clear in the earlier adhoc promotion order that he will not get seniority as he has been promoted on purely adhoc basis on account of exigencies of service.

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7. We heard both sides.

8. The applicant knows very well that his regular promotion was effected only by the issue of office Order dt:7-9-1983. If he ^{was} is aggrieved by that Order, he should have approached this Tribunal well in time immediately after that date. Unfortunately, he filed this OA only on 6-6-1995 much later after the issue of the regular promotion order dated:7-9-1983. Hence this case can be dismissed on account of limitation. However, we thought it fit to analyse this case on merits and pass an order on the basis of merits of this case.

9. The applicant submits that he had been promoted as a Telephone Operator on adhoc basis by Order dated:21-7-1980, after subjecting him to a regular selection. If that be the case, he should have protested against the second selection. No proof is produced to show that he even submitted a letter protesting against calling him for the second selection when he was called and subjected to second selection. The applicant cannot now submit that the second selection is irregular and hence he should be given promotion from the date he was promoted earlier on adhoc basis when he allowed himself to be subjected to second selection without murmur. Having subjected himself to a selection and protesting against the same now may not be ^a proper reason to grant him the relief asked for in this O.A. Even a protest letter before appearing for the second selection is not produced. Hence this contention has to be rejected and the rejection of his contention is in accordance with the Apex Court's Judgment.

10. The second contention of the applicant is that he was promoted in the year 1980 even though on adhoc basis following the rules. If that be the case, it is not understood how four employees have ^{been} placed above him in the panel issued on 6-9-1983. That itself shows that these four employees were senior to him and their cases were not considered while the applicant was

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promoted on adhoc basis, probably due to the exigencies of service at that time. That exigency would have necessitated the promotion of the applicant on adhoc basis without subjecting his seniors for promotion. As the promotion took place in the year 1983, it will be too late to consider this contention at this juncture. The Apex Court in DIRECT RECRUIT CLASS II ENGG.OFFICERS' ASSOCIATION Vs STATE OF MAHARASHTRA (reported in AIR 1990 SUPREME COURT, 1607) had held that, an employee promoted on adhoc basis will get seniority from the date of adhoc promotion provided, he was promoted on adhoc basis in accordance with the recruitment rules. In this case, when the seniors above him were available for consideration for promotion to the post of Telephone Operator, the applicant was promoted on adhoc basis probably without considering his seniors. If that be the case, in view of the MAHARASHTRA ENGINEERS' case, it has to be held that the applicant will not get the benefit of seniority from the date of his promotion on adhoc basis as he was promoted dehors the recruitment rules.

11. The applicant submits that the case of Sri U.Eswara Rao is similar to his case and the said Sri U.Eswara Rao was given seniority from the date of his adhoc promotion. Hence his case also should be dealt accordingly. It is stated in Para.8 of the reply that the said Sri U.Eswara Rao was promoted against departmental 33 1/3% quota post arose during 1980 vacancies of Telephone Operators. That was made clear in the reply given to Trade Union in the Letter dated:8-6-1984(Annexure.A.1 to the OA). Hence the respondents submit that the case of Sri U.Eswara Rao cannot be compared with that of the applicant herein for giving him the seniority as was given to Sri U.Eswara Rao. The applicant has not filed any Rejoinder explaining his case to show that his case was also similar to that of Sri U.Eswara Rao. In view of that, there is no other alternative except to reject this contention also made by the applicant in this O.A. upholding the reply of the respondents.

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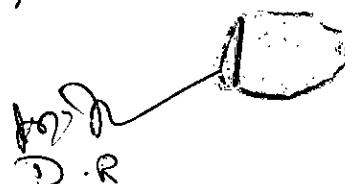
13. Considering the above points, we are of the opinion that the present Application is devoid of merits and hence ^{it} has to be dismissed.

14. Accordingly, it is dismissed. No costs.


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

24.2.98


(R.RANGARAJAN)
MEMBER(A)


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Dated: This the 24th day of February, 1998

Dictated in the Open Court

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Copy to:

1. The General Manager, South Eastern Railway,
Garden Reach, Calcutta.
2. Divisional Railway Manager, South Eastern Railway,
Visakhapatnam.
3. One copy to Mr. P. B. Vijayakumar, Advocate, CAT, Hyderabad.
4. One copy to Mr. C. V. Malla Reddy, Addl. CGSC, CAT, Hyderabad.
5. One copy to D. R(A), CAT, Hyderabad.
6. One duplicate copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. RANGARAJAN : M(A)

AND

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

DATED: 24/2/98

ORDER/JUDGMENT

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

in

O.A.NO. 749/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS
DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

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