

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

AT HYDERABAD.

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O.A.No.912/95.

Date of decision: June 9, 1998.

Between:

B. Narayana Rao. Applicant

and

1. General Manager, South Central Railway,
Rail Nilayam, Secunderabad.
2. Divisional Railway Manager (BG),
South Central Railway, Secunderabad.
3. Senior Divisional Personnel Officer (BG),
South Central Railway, (BG),
Secunderabad.
4. Additional Divisional Railway Manager(1),
Secunderabad.
5. Senior Divisional Engineer (Co-ordination),
South Central Railway (BG), Secunderabad.

Respondents.

Counsel for the applicant: Sri P.Krishna Reddy.

Counsel for the respondents: Sri V.Bhimanna.

CORAM:

Hon'ble Sri R. Rangarajan, Member (A)

Hon'ble Sri B.S. Jai Parameshwar, Member (J)

JUDGMENT.

(per Hon'ble Sri R. Rangarajan, Member (A))

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Heard Ms. Sarada for Sri Krishna Reddy for the applicant
and Sri V. Bhimanna for the respondents. A

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The applicant in this O.A., joined Railways as works Maistry on 18-10-1965. Subsequently, he was promoted as PWI/Gr.III in the scale of Rs.1400-2300 and in the year, 1984 he was promoted as PWI, Gr.II in the scale of Rs.1600-2660. The applicant was in the feeder category for promotion to the post when Grade I vacancies arose with effect from 1-3-1993 on the basis of the re-structuring of the cadre. The name of the applicant did not find place in the first panel issued on 16-7-1993 vide Memorandum No. P.E.608/PWIS/Gr.I/VIII. It is seen from Memorandum dated 16-7-1993 that 68 employees were kept on the panel for filling up the posts generated due to restructuring of the cadre with effect from 1.3.1993 and in the existing vacancies as on 28-2-1993. The name of the applicant did not find a place in that panel. Further 29 employees kept in the panel of 16-7-1993 were promoted on 22.7.1993. The cases of the remaining 39 candidates in that panel were considered and they were promoted the very next day i.e., on 23-7-1993. The name of the applicant was placed in the panel for promotion to the post of PWI Gr.I by Memorandum No.P.E.608/PWI Gr.I/VIII dated 26.11.1993.

There were 9 employees in that panel and the applicant is at Sl.No.1 of that panel. It is stated that Memorandum dated 26-11-1993 is in continuation of the provisional panel of 68 employees empanelled for promotion to

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PWI Gr.I in the scale of Rs.2300--3200 which was issued on 16-7-1993. In that Memorandum dated 26-11-1993 a consolidated list of the employees to be promoted for the post of PWI Gr.I was also issued containing 77 employees (i.e., 68+9=77) in that consolidated list. The name of the applicant figures at Sl.No.38 of that consolidated list. Some of the employees who were empanelled by the earlier Memorandum dated 16-7-1993 figured juniors to the applicant in that consolidated list.

The applicant was reverted to PWI, Gr.I by the impugned Order No. CP/292/PWI/Engg/Vol.VII dated 25.5.1995 (page 12 to the O.A.) as his performance as PWI/Gr.I was found unsatisfactory during the period from 24.1.1994 till the date of issue of impugned Memorandum dated 25.5.1995. It is further stated in that Memorandum that the applicant had not improved inspite of several oral warnings given to him. Against that order of reversion the applicant submitted an appeal dated 20-5-1995 to the Respondent No.3; but that appeal was rejected by Memorandum No. CW/452.W.IV.DAR/Co-ord/Vol.II dated 21-6-1995 (page 9 to the O.A.) It is stated in the appellate order that the applicant's reversion was ordered based on his performance as Grade I PWI in terms of Railway Board's letter No.E(NG)1.82-PMI-68 dated 28-4-1982.

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This O.A., is filed to set aside the order of the Appellate Authority dated 21.6.1995 and the order of the Disciplinary Authority dated 25.5.1995 and to continue him as PWI Gr.I.

The applicant was also issued with a minor penalty charge-sheet for negligent working while performing the duties of PWI Gr.I which resulted in a loss of Rs.6,000/- to the Government by Memorandum No. C/452/W.IV/DAR/Coord. dated 15.3.1995 (Page 19 of the O.A.) That minor penalty charge-sheet was considered and disposed of by ordering recovery of Rs.6,000/- from the salary of the applicant in 24 equal monthly instalments at Rs.250/- p.m. by Order No. C.W.452 WIV.DAR. Co-ord dated 3.4.1995. Against that order the applicant filed an appeal which was also rejected by Memorandum No.CW/452/W.IV/DAR/Co-ord dated 15.5.1995 (Page 15 to the O.A.) The applicant also filed revision petition which is still pending disposal.

This O.A., is filed for setting aside the punishment order also referred to above.

The Railway Board's letter No.E(NG)1-82-PMI-68 dated 28-4-1982 based on which the applicant was reverted was perused. As per this letter, the Ministry of Railways have evolved a procedure for effecting reversion of the

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persons promoted after due selection within a period of 18 months of promotion on account of unsatisfactory performance of the employees in the promoted post. Such unsatisfactory performance has to be judged from:

- i) The annual confidential reports of the employee, if already written;
- ii) by calling for a special report on his performance if confidential report has not been written so far;
- iii) reversion should take place only after the incumbent has been warned for unsatisfactory performance and after having watched his subsequent performance after warning;
- iv) decision for such reversion should be taken at the level of DRM in the Division and Head of Department for the headquarter controlled posts.

It is stated in the reply by the respondents that the performance of the applicant was unsatisfactory and hence he was reverted in terms of the Railway Board's letter dated 28-4-1982 within 18 months from the date of his actual promotion as he was promoted to the post of PWI, Gr.I with effect from 24-1-1994 and the impugned reversion order was issued on 25-5-1995 which is within the period of 18 months and hence the reversion is in order and there is no need to hold any enquiry following the

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D & A Rules.

The only point for consideration in this
O.A., is:

"Whether the promotion of the applicant
with effect from 24.1.1994 is sustainable
or he should be deemed to have been promoted
earlier to that date as his juniors in the
consolidated seniority list were promoted
to the post of PWI Gr.I with effect from
23-7-1993 empanelled by Memorandum
dated 16.7.1993?"

In the first panel issued for promotion to the
post of PWI Gr.I by Memorandum dated 16.7.1993 the name
of the applicant was not included. However, in continuation
of that panel dated 16.7.1993, 9 more employees including
the applicant were kept in the panel by Memorandum
dated 26.11.1993. It is not known as to why the applicant
was not placed in the panel of 16.7.1993 initially itself.
It may be possible that some details had to be checked up
before empanelling him. However, he was empanelled by
Memorandum dated 26.11.1993 in continuation of the earlier
panel dated 16.7.1993 as the points to be checked might
have been ascertained by then and hence the supplementary
panel was issued by Memorandum dated 26.11.1993. The

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The subsequent panel is very clear that it is in continuation of the earlier panel and the combined seniority of the employees to be promoted to PWI Gr.I is also included in the Memorandum dated 26.11.1993. In that combined empanelled list, some of the juniors of the applicant were promoted earlier to the applicant as their names were found place in the panel dated 16.7.1993. The delay in finalising the case of the applicant and including his name in the supplementary panel appears to be due to administrative reasons and cannot be attributed to the applicant. Hence, when his juniors were promoted earlier, the applicant should also deemed to have been promoted from the date his juniors were promoted as PWI Gr.I on 23.7.1993 and not from the actual date of his assuming charge on 24.1.1994. The period of 18 months as indicated in the Railway Board's letter dated 28.4.1982 should be counted from the date of his deemed date of promotion. The Memorandum dated 28.4.1982 does not clearly stipulate that the 18 months period should be counted from the actual date of promotion. Further for no stated reasons the name of the applicant was not included in the panel of 16.7.1993 when his juniors were empanelled. Hence, it is but fair that he is deemed to have been promoted from the date his juniors were promoted i.e., 22.7.1993 and from that date only the period of 18 months had to be counted.

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The period of 18 months from the date of his deemed date of promotion expires by January, 1995. Hence, if he has to be reverted to PWI Gr.II on the basis of the Railway Board's letter dated 28.4.1982 it should have been done not later than January, 1995. The impugned letter dated 25.5.1995 was issued much later than January, 1995. Hence, the reversion on the basis of the letter of the Railway Board issued in 1982 cannot be said to be in order. If at all the applicant had to be reverted for unsatisfactory working, the Railway Servants (Disciplinary & Appeal) Rules have to be followed in toto. As the Railway Servants (Disciplinary & Appeal) Rules have not been followed in this case while reverting him from Grade I, the impugned Memorandum No. CP/292/PWI/Engg/ Vol.VII dated 25-5-1995 and the appellate order dated 21.6.1995 have to be set aside and the applicant should be deemed to have been continued as PWI Gr.I from the date his juniors were promoted to PWI Gr.I i.e., with effect from 23.7.1993. The applicant is entitled for arrears from the date of his reversion by the impugned Memorandum dated 25.5.1995. // However, the respondents are at liberty to initiate Disciplinary Proceedings, if it is required in accordance with the rules. This order of setting aside the impugned Memorandum dated 25.5.1995 and the appellate order dated 21.6.1995 does not stand in the way of respondents to initiate the Disciplinary Proceedings, if required, in accordance with the Railway Servants (Disciplinary

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and Appeal)Rules.

Summarising, the impugned reversion orders dated 25.5.1995 and the appellate order dated 21.6.1995 are set aside and the applicant is deemed to have continued as PWI/Gr.I from deemed date of his promotion. The applicant should be given arrears of pay in the grade of PWI/Gr.I from the date of his reversion by the impugned order dated 25.5.1995. However, the respondents are at liberty to initiate Disciplinary Proceedings, if required, as per Railway Servants' (Disciplinary & Appeal)Rules.

This O.A., is filed for redressal of specific relief of setting aside the reversion order. More than one grievance cannot be combined in an application for redressal. In this O.A., the applicant has challenged the punishment imposed on him for negligent working as per Memorandum dated 15.3.1995. The respondents themselves admit that the reversion is not attributable to this punishment. Hence, we do not propose to give any direction in regard to the punishment order. The applicant is at liberty to follow up his revision

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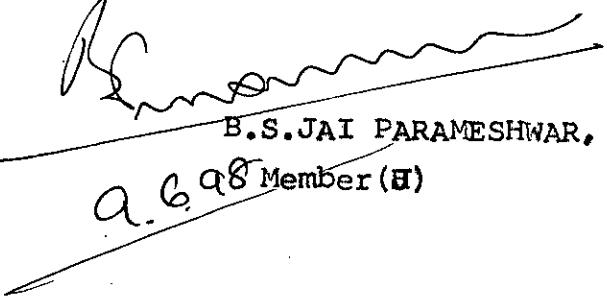
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petition submitted to the appropriate authority in accordance with law. If he is aggrieved by the Order to be passed by the Revisional Authority, he is at liberty to challenge the whole Disciplinary Proceedings in accordance with the rules, if he is so advised.

The O.A., is ordered accordingly. No costs.


B.S.JAI PARAMESHWAR,


a.G. Member (B)


R.RANGARAJAN,

Member (A)


D.R.TIGER

Date: June, 9, 1998.

Dictated in open Court.

sss.

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Copy to:

1. The General Manager, South Central Railway, Railnialayam, Secunderabad.
2. Divisional Railway Manager(BG), South Central Railway, Secunderabad.
3. Senior Divisional Personnel Officer(BG), South Central Railway, (BG) Secunderabad.
4. Additional Divisional Railway Manager(1), Secunderabad.
5. Senior Divisional Engineer(Co-ordination), South Central Railway, Secunderabad.
6. One copy to Mr. P. Krishna Reddy, Advocate, CAT, Hyderabad.
7. One copy to Mr. V. Bhimanna, Addl. CGSC, CAT, Hyderabad.
8. One copy to D.R(A), CAT, Hyderabad.
9. One duplicate copy.

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TYPED BY
COMPARED BY

CHECKED
APPROVED

IN THE CENTRAL ADMINISTRATIVE TRI
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN : M(A)

AND

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

DATED: 9/6/88

ORDER/JUDGMENT

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

in

O.A.NO. 912/85

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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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

22 JUN 1998

हैदराबाद भाष्यपीट
HYDERABAD BENCH