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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.1345/95

DATE OF ORDER : 16-06-1998.

Between :-

A.Laxmanan

... Applicant

And

1. Divisional Railway Manager,
SC Rlys, Hyderabad Division,
Sec'bad.
2. Chief Personnel Officer,
SC Rlys, Rail Nilayam,
Sec'bad.
3. General Manager,
SC Rlys, Rail Nilayam,
Sec'bad.

... Respondents

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Counsel for the Applicant : Shri G.V.Subba Rao

Counsel for the Respondents : Shri V.Rajeshwar Rao, CGSC

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CORAM:

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

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

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



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

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Heard Sri G.V.Subba Rao, counsel for the applicant and Sri V.Rajeshwar Rao, standing counsel for the respondents.

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

The applicant while working as Yard Master, Purna was removed from service with effect from 16-4-84. On that date the categories^{ies} of Station Master, Traffic Inspector and Yard Master were treated as a combined seniority unit. The category of Yard Master was bifurcated from that of Station Master and Traffic Inspector categories with effect from 1-10-84. When that bifurcation took place, the applicant was not in service. Subsequently, on appeal against his removal, the appellate authority considered his appeal and posted him in the lower category of TNC. Against that, the applicant filed OA 729/88 and that OA was disposed of setting aside the impugned order^s. On the basis of that judgement in that OA, the applicant was re-posted as Yard Master in the scale of Rs.550-750 (Rs.1600-2660) vide order dt.12-1-90. Later the applicant was promoted to the higher grade of Rs.700-900 (Rs.2000-3200) as Dy.Chief Yard Master by an order dt.3-9-90. The applicant retired from service on 31-7-95.

3. The case of the applicant is that he was posted in the category of SM/TI in the combined category of SM/TI/YM and on the date of his removal ^{when} ~~also~~ it was a combined cadre and at that time he was working as Yard Master. Hence treating the applicant as having been allotted as Yard Master unilaterally is in-correct and he should have been treated as continued in the seniority unit of

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SM/TI when he joined and had to be given promotion etc., on par with his juniors who were continued as SM/TI after bifurcation. The applicant represented his case for the above relief by his representation dt.20-8-92 (Annexure-II to the OA). That representation was rejected by the impugned order No.YP/535/P11/3/YM dt.21-4-94 (Annexure-I page-9 to the CA).

4. This OA is filed for setting aside the impugned order dt.21-4-94 and for a consequential direction to the respondents to treat him as one belonging to SMS/ASMs cadre and promote him to the grade of Station Superintendent etc., in the scale of pay of Rs.700-900 and Rs.840-1040 grade from the date his juniors were promoted to the said cadre with all consequential benefits.

5. The applicant had retired on 31-7-95 as Dy.CYM in the scale of Rs.700-900 (Rs.2,000--3,200). Hence if at all he has to be considered for higher grade promotion, it is only to Rs.840-1040 (Rs.2375-3500). The main contention of the applicant is that he was not given an opportunity to opt to the cadre in which he wanted to work as he was away from service on the date of bifurcation i.e. on 1-10-84. He cannot be considered as an employee working in the Yard Category. On the date of removal, he was an employee in the combined seniority unit of SM/TI/YM. Hence when he joined the service after the disposal of OA 729/88 i.e. on 12-1-90 he had to be treated as an employee in the combined cadre and he ^{was} has to be allotted to the cadre which he ^{ed} wants. Posting him in Yard Master category is irregular. As the applicant is not aware of the position on ¹²21-1-90, and so he assumed that he will be promoted in accordance with the combined seniority

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list on par with his juniors either in the category of SM/TI. As he was not given promotion on par with his juniors in the combined seniority unit of SM/TI, he is forced to file this OA.

6. A reply has been filed in this OA. The main contention of the respondents in this OA is that the combined cadre was bifurcated into SM/TI cadre and the other one is Yard Master. As the applicant was working as Yard Master on the date of removal from service, he was deemed to have been an employee of Yard category on 1-10-84 and accordingly, he was posted as Yard Master in the scale of Rs.550-750 on 12-1-90. He was also promoted in that cadre. The question of giving options was considered by this Tribunal in some other earlier cases also and that contention was rejected. Hence the applicant cannot now ask for options to choose a category of his liking. Further it is stated that the applicant when joined should be aware of the rule position in the Railways and hence he cannot now after retirement demand that he should be given the higher scale of pay on par with his juniors in the category of SM/TI.

7. We have heard both sides. The contentions of the respondents that the applicant should know the rules when he joined as Yard Master on 12-1-90 does not appeal to us. It is not possible for an employee to know the cadre details when he was away from service, ~~he was in the combined category~~. Hence it is essential that the respondents should have informed him of the bifurcation when he was posted back as Yard Master and should have asked for his option either to continue as SM/TI cadre or in the Yard Master category. Even otherwise the respondents could have given a letter stating that in view of bifurcation effected from 1-10-84 he was posted

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as yard master as he was yard master on the date of removal; but that was also not done. It is too much to expect from the applicant when he was away from service for six years to state that the applicant must be knowing all rules eventhough he was not in service. Hence this contention is also rejected.

8. The third contention of the respondents is that the applicant was posted as TNC and that was also in Yard category. This appears to be an irrelevant contention. Further the TNC category has got a chance of promotion as SMS. Further the applicant was *directly* recruited as ^{ASM}AMS. The pay scale of ASM is higher than that of TNC. Hence posting him as TNC itself is not correct. However, we do not want to observe anything in that matter as the applicant's posting as TNC has been set aside.

9. In view of the foregoing, we consider it necessary to give some relief to the applicant in this OA.

10. The applicant had ^sretired from service on 31-7-95. A seniority list of SM/ASM in the cadre of Rs.425-640 has been enclosed to this OA dt.10-3-80 (Annexure-IV page-13 to the OA). There are eight juniors to the applicant from Sl.No.69 to 76. It may be possible that some of them would have been promoted to the higher grade of Rs.840-1040 (Rs.2375-3500) during the period when the applicant joined as Yard Master in the scale of Rs.550-750 and retired as Dy.CYM on 31-7-95. If the post in the scale of Rs.840-1040 is not a selection post and is a non-selection post and if any of the eight juniors mentioned as above had been promoted to the higher posts of SM/TI in the scale of pay of Rs.840-1040 (Rs.2375-3500) before the

retirement of the applicant, then applicant¹ should also be considered for promotion to that grade if he is eligible for promotion otherwise from that date when the above referred juniors^{one was} who promoted on the basis of non-selection procedure. The pension of the applicant should be fixed on that basis if he is promoted to the higher grade after suitably fixing his pay in the higher grade. Arrears if any arising out of ^{re-} fixation of pension^{only} should be paid to the applicant expeditiously. The applicant is not eligible for any other retiral benefits other than fixation of pension as directed above.

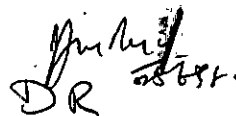
11. With the above direction, the GA is disposed of. No costs.


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

16.6.98


(R. RANGARAJAN)
Member (A)

Dated: 16th June, 1998.
Dictated in Open Court.


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Copy to:

1. Divisional Railway Manager, South Central Railway, Hyderabad Division, Secunderabad.
2. 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.V.Rajeswara Rao, Addl.CGSC, CAT, Hyderabad.
6. One copy to D.R(A), CAT, Hyderabad.
7. One duplicate copy.

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TYPED BY
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II COURT

CHECKED BY
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: 16/6/98

ORDER/JUDGMENT

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

in

O.A.NO. 1345/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

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