

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A.NO.1354/95.

DATE OF ORDER: 23-6-1998

BETWEEN :

1. S.Sethuraman
2. Md.Khaja Mohiddin
3. N.P.Sunder Rao
4. N. Bhaskar Shetty
5. R. Devoji Rao
6. G. Sreenivasulu
7. N. Venkateswarlu
8. Abdul Hameed
9. P.V.Krishna Kumar
10. C. Denna Dayalan
11. V. Lakshman Rao

... APPLICANTS

A N D

1. General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
2. Divisional Railway Manager,
South Central Railway,
Vijayawada.
3. Sr.Divisional Personnel Officer,
South Central Railway,
Vijayawada.
4. Assistant Personnel Officer(Traffic)
South Central Railway,
Vijayawada.

... RESPONDENTS

Counsel for Applicants	: Miss P.Sharada for
	Mr. P.Krishna Reddy
Counsel for Respondents	: Mr. Siva Reddy,CGSC

CORAM:

The Honourable Mr.R.Rangarajan, Member (Admn.)

The Honourable Mr.B.S.Jai Parameshwar, Member(Judl.)

O R D E R.

(Per Hon.Mr.B.S.Jai Parameshwar, Member(Judl.))

1. Heard Miss P. Sharada for Mr. P.Krishna Reddy
the learned counsel for the applicants and Mr. Siva Reddy
the learned counsel for the respondents.



2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 1.11.1995.

3. There are 11 applicants in this O.A. During the year 1991 they were working in Grade C posts in the various departments of Vijayawada Division in South Central Railway. The applicants 1 to 6 were working in the scale of pay of Rs.1200-1800 and the applicants 7 to 11 were working in the scale of pay of Rs.950-1500. The Railway Administration with a view to encourage small family norms, offered certain incentives to its employees. Accordingly it is stated that the applicants underwent family planning operation by 19.3.1991.

4. They submitted a representation to the respondent No.2 who marked thereon as under :

" May be placed in the waiting list for TNC."

However, their representation was not considered. On 31.3.1992 the Assistant Personnel Officer (Traffic), Vijayawada informed the applicants that their request for change of category for the post of TNC in the scale of pay of Rs.950-1500 in the Operating Department under the Family Welfare Planning Incentive Scheme has been registered against the future vacancies.

5. In the meanwhile the respondents promoted certain Class IV employees to the posts of TNCs. By this action of the respondents, the applicants felt aggrieved. They felt that their legitimate claim for the posts of TNCs was ignored by giving promotion to Class IV employees. They submit that the promotion of Class IV employees to the posts of TNCs was illegal when their representations were pending.

6. They were deputed for training by order dated

22.9.1992 and 25.9.1992. On completion of their training the applicants were directed to report to various departments indicated against their names by an order dated 19.10.1992 issued by the Principal, ZTS, Moulali. Their further grievance is that their pay was not fixed immediately. However, their pay was fixed by order dated 11.7.1994. The applicants are not satisfied with the fixation of their pay on their change of department and coming over to the Operating Department.

7. The applicants made representations that their seniority in the Operating Department has to be properly fixed taking into consideration their undergoing family planning operation during March, 1991.

8. The Assistant Personnel Officer (Traffic), Vijayawada, sent a reply dated 28.10.1994 to the representations of the applicants that the fixation of pay on 11.7.1994 was ~~not~~ in order since they had accepted the transfer as TNCs in the Operating Department in the scale of pay of Rs.950-1500 on bottom seniority. The applicants submit that however, the said order dated 28.10.1994 was not communicated to them but it was notified on the notice board.

9. Being not satisfied with the fixation of pay and being aggrieved by the action of the respondents in giving promotion to Class IV employees while their representations were still pending, the applicants have filed this O.A. to direct the respondents to fix seniority of TNCs promoted from Group D. (Class IV) and the applicants who were absorbed as TNCs from other departments under the Family Welfare Planning Scheme in the ratio of 1:1 and to fix the pay of the applicants on the basis of their last pay drawn when they were absorbed as TNCs in the scale of pay of Rs.950-1500 with all

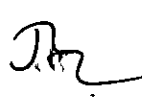
~

22.9.1992 and 25.9.1992. On completion of their training the applicants were directed to report to various departments indicated against their names by an order dated 19.10.1992 issued by the Principal, ZTS, Moulali. Their further grievance is that their pay was not fixed immediately. However, their pay was fixed by order dated 11.7.1994. The applicants are not satisfied with the fixation of their pay on their change of department and coming over to the Operating Department.

7. The applicants made representations that their seniority in the Operating Department has to be properly fixed taking into consideration their undergoing family planning operation during March, 1991.

8. The Assistant Personnel Officer (Traffic), Vijayawada, sent a reply dated 28.10.1994 to the representations of the applicants that the fixation of pay on 11.7.1994 was not in order since they had accepted the transfer as TNCs in the Operating Department in the scale of pay of Rs.950-1500 on bottom seniority. The applicants submit that however, the said order dated 28.10.1994 was not communicated to them but it was notified on the notice board.

9. Being not satisfied with the fixation of pay and being aggrieved by the action of the respondents in giving promotion to Class IV employees while their representations were still pending, the applicants have filed this O.A. to direct the respondents to fix seniority of TNCs promoted from Group D (Class IV) and the applicants who were absorbed as TNCs from other departments under the Family Welfare Planning Scheme in the ratio of 1:1 and to fix the pay of the applicants on the basis of their last pay drawn when they were absorbed as TNCs in the scale of pay of Rs.950-1500 with all




consequential benefits.

10. The respondents have filed their counter stating that the relief claimed by the applicants cannot be granted as there is no question of fixing seniority of the applicants in the ratio of 1:1; that when the representations were received during 1991, there were no posts vacant against the Direct Recruitment Quota; that therefore, the applicants were kept in the waiting list; that the select panel dated 24.1.1991 had already been prepared; that the proceedings under which the Class IV employees were promoted were initiated much earlier to the date of consideration of the request transfers of the applicants herein; that the only promotion of the employees of the select panel was done during the period from July, 1991 to December, 1992. In page 3 of the counter, the respondents have given the details of the posts and the scale of pay and the date of family planning operation underwent by the applicants.

11. It is stated that the applicants requested for posting them as TNCs in the scale of pay of Rs.950-1500 as a change over from the cadre in which they were working at the time they underwent family planning operation. Hence the respondent No.2 acceded to their request and ordered to place their names on the waiting list for transfer as TNCs in the Operating department on bottom seniority. They submit that the request of the applicants could not be considered immediately as there were no vacancies available against the Direct Recruitment Quota.

12. However, during 1992 when vacancies arose the applicants were addressed letters whether they were willing for transfer as TNCs in the scale of pay of Rs.950-1500(RSRP) as change of cadre on bottom seniority.



The applicants herein submitted their willingness. Accordingly they were deputed for initial training course for the post of TNC which was mandatory and on completion of their training, they were issued posting orders.

13. The respondents further submit that the promotion of Class IV employees to the post of TNC is no way concerned with the case of the applicants. It is stated that the select panel for such promotion was initiated much earlier to the representation of the applicants. They submit that the selection was initiated against the vacancies arose during the period from 1.4.1989 to 31.3.1990 to the extent of 33 1/3% quota for which Grade D employees working in the Operating Department alone were eligible and their promotion as TNCs is based on selection. Hence the selection was conducted and 24 employees were empanelled vide Memo No.B/P.531/VI/3/Vol.II of 24.1.1991. They were also deputed for training and were declared passed in the training. When the vacancies arose during July,1991, February,1992, September,1992 and December,1992, they were issued promotion orders. Thus the respondents submit that the promotion of Group D employees as TNCs was within the frame work of the rules.

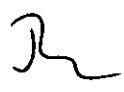
14. They further submit that at the time when the posting orders were issued to the applicants, their service records were not readily available and that therefore, it was stated in their posting orders that their pay would be fixed later. Thereafter updating the service registers and following the terms of the provisions contained in Para 604(a)(i) of the IREM Vol.I,1989.(revised edition), the pay of the applicants was fixed. The contention of the applicants that they

R

were eligible to get their pay fixed in the grade of Rs.950-1500 based on the basic salary they were drawing before their posting as TNCs in the Operating Department is not supported by any rules. The pay which they were drawing in higher scale cannot be protected when they were transferred to a lower grade on inter-departmental transfer and their pay was required to be fixed only in terms of the provisions of Rule 604 of IREM. They submit that the applicants sought change of cadre on their own volition. Hence fixation of pay made in favour of the applicant was in order and does not require any revision. They submit that there are no provisions nor guidelines issued by the Railway Board or from the Headquarters to consider the request of inter-departmental transfer vis-a-vis departmental promotion in the ratio of 1:1. The departmental promotions were issued against the vacancies meant for promotional quota pertaining to the year 1989-90. They submit that the initiation of the proceedings They submit that the seniority of the applicants would count only from the dates they reported as TNCs as their transfers were on inter-departmental request transfers in terms of Para 312 of IREM and hence they cannot claim seniority over the employees who were promoted during the year 1992.

15. When some of the applicants submitted representations against fixation of pay, they were accordingly informed by letter dated 28.10.1994. The fixation of pay of the applicants on their appointment as TNCs in the Operating Department is in accordance with the rules. Hence there are no merits in this O.A. and the O.A. is liable to be dismissed;

16. The prayer made by the applicants is to fix their seniority in the ratio of 1:1 along with the Class



IV employees who ere promoted during 1992. As already stated, during 1992, 24 employees were promoted as TNCs in the Operating Department. Those 24 employees were earlier working in the Operating Department and they were promoted against the promotion quota.

17. The request of the applicants could only be considered against the vacancies meant for Direct Recruitment Quota. The respondents categorically stated that at the time when the applicants underwent family planning operations and submitted their representations, there were no posts of TNC meant for Direct Recruitment Quota. This aspect has not been challenged or controverted by the applicant. Therefore, they cannot stand on par with the Class IV employees of the Operating Department who got promotion as TNCs in the year 1992. Hence, the claim of the applicants to fix their seniority in the ratio of 1:1 along with the Class IV employees of the Operating Department who were promoted in the year 1992 cannot be accepted. Moreover, their claim is also not supported by any rule. The respondents specifically stated that there are no rules or guidelines or instructions from the Headquarters to treat the inter-departmental candidates on par with the employees working in the Operating Department. When that is so, it is not permissible to concede the request of the applicants.

18. The respondents submit that they offered the posts of TNCs in the Operating Department to the applicants on bottom seniority. The applicants expressed their willingness. Then the applicants were deputed for training. On completion of training they were posted as TNCs at various places. When the applicants offered willingness to come over to the Operating Department in the posts of TNCs on bottom seniority, they cannot claim

seniority on par with the regular employees in the Operating Department. Even this fact of submitting their willingness is also not disputed by the applicants.

19. Coming to the question of fixation of pay on their transfer and appointment as TNCs in the Operating Department, we find that the Principal, ZTS, Moulali issued posting orders to the applicants as TNCs. In the posting orders, it was stated that their pay would be fixed later. For this, the explanation of the respondents is that at the time the posting orders were issued to the applicants, their service registers were not available. Hence it was indicated in the posting orders that their pay would be fixed later. The respondents further submit that after updating the service registers of the applicants, their pay was fixed in accordance with Rule 604(a)(i) of the IREM Vol.I, 1989(revised edition). Earlier, the scale of pay in which the applicants were working have been clearly stated on page 3 of the reply. Further they submit that the fixation of pay of the applicants was done in accordance with Rule 604(a)(i) of the IREM.

20. We have perused Rule 604(a)(i) of the IREM Vol.I (1989 revised edition). It speaks of temporary employees. From the service particulars furnished by the respondents at page 3 of the reply, it is disclosed that they were appointed between 1974 and 1984. They underwent family planning operation on 19.3.1991.

21. From the reply filed by the respondents it is clear that the applicants came on request to the Operating Department. When that is so, we fail to understand the manner of fixation of pay of the applicants by invoking Rule 604(a)(i) of the IREM, 1989 edition. A specific rule in the IREC, Vol.II 1987, 6th

R

edition is available for fixation of pay of those employees who come on request transfer from one department to another department in the Railway Administration. It is Rule 1313(2). When that is so, the respondents were required to fix the pay of the applicants strictly in accordance with Rule 1313(2) of the IREC, 1987 6th edition. The manner of fixation of pay of the applicants on their transfer on request to the Operating Department by invoking Rule 604(a)(i) of the IREM is not proper and the same is rejected.

22. Hence we feel it proper to give the following directions:

(a) The pay of the applicants be properly fixed in the post of TNC in the scale of pay of Rs.950-1500 in accordance with Rule 1313(2) of the IREC, 1987, 6th edition.

(b) Action be taken to fix their pay properly within four months from the date of receipt of this order.

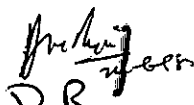
23. With the above directions, the O.A. is disposed of. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDICIAL)
23/6/98


(R. RANGARAJAN)
MEMBER (ADMINISTRATIVE)

DATED THE 23rd JUNE, 1998.

DJ


D R Jeevan

..10..

Copy to:

1. The General Manager, South Central Railway,
Railnilayam, Secunderabad.
2. The Divisional Railway Manager, South Central Railway,
Vijayawada.
3. Senior Divisional Personnel Officer, South Central Railway,
Vijayawada.
4. The Asst. Personnel Officer (Traffic), South Central Railway,
Vijayawada.
5. One copy to Mr. P. Krishna Reddy, Advocate, CAT, Hyderabad.
6. One copy to Mr. Siva Reddy, Addl. CGSC, CAT, Hyderabad.
7. One copy to HBSJP, (M)(J), CAT, Hyderabad.
8. One copy to D.R(A), CAT, Hyderabad.
9. One duplicate copy.

YLKR

27/7/98

(9)

II COURT

TYPED BY
COMPARED BY

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: 23/6/88

ORDER/JUDGMENT

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

in

O.A.NO. 1354/85

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

