

26

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

ORIGINAL APPLICATION NO. 1561 OF 1995

DATE OF ORDER : 20-3-1998

BETWEEN :

S.S. Murthy ... Applicant

AND

1. Union of India represented by General Manager, South Central Railway, Rail Nilayam, Secunderabad.
2. Chief Personnel Officer, South Central Railway, Rail Nilayam, Secunderabad.
3. N.S. Raghavan, Divisional Electrical Engineer, Construction, South Central Railway, Secunderabad. ... Respondents

— — —

COUNSEL FOR THE APPLICANT - SHRI G. RAMACHANDRA RAO

COUNSEL FOR THE RESPONDENTS - SHRI D.F. PAUL

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 (ADMN.))

Heard Shri G. Ramachandra Rao for the Applicant and Shri D.F. Paul for the Respondents. The Applicant in this OA while working as Asstt. Electrical Engineer in Group 'B' Service was considered for promotion to adhoc senior scale Group 'B' post by the DPC on 25-11-1995. The Applicant is third in the list for consideration, as can be seen from the Annexure to the proceedings. There were two other officers below him, and they were found fit for promotion to the ad-hoc Group 'B' senior scale post.

*Tgj*

47

The Applicant's representation in this connection was rejected by the South Central Railway vide letter No. P/SC/607/SS/E dated 11-12-1995. By the impugned order No. P(GAZ)675/EI/Pt.IX dated 29-11-1995 some officers junior to him were promoted as Divisional <sup>Electric</sup> Engineers on ad-hoc basis. This OA is filed praying for a direction to the Respondents 1 to 3 to promote him on ad-hoc basis from the date his junior was promoted to the said post with all consequential and attendant benefits.

The Learned Counsel for the Respondents has filed a reply. In the reply it is stated that no clear integrity certificate was given in favour of the Applicant and hence he could not be promoted, as on the <sup>ground</sup> basis of non-availability of certificate the DPC did not empanel him for the post of ad-hoc senior scale.

We have perused the minutes of the meeting of the DPC held on 28-11-1995. It is seen from the minutes that the Applicant herein had been rated 'Very Good' and was also declared as fit for promotion. But in view of the Railway Board letter No. E(GP)85/1/6 dated 25-5-92, the DPC rejected this case as clear integrity certificate in favour of the Applicant who was under consideration for Ad-hoc promotion to senior scale is not given. It is further noted in the proceedings that the clear integrity certificate could not be given in the case of the Applicant as a case was under investigation which <sup>was</sup> of a serious nature. Hence, he was passed over for ad-hoc promotion to senior scale.

We asked the Learned Counsel for the Respondents to show us the instructions in regard to a case wherein the

Ta

1

48

issue of clear integrity certificate can be refused by the Head of Department. The Counsel for the Respondents produced before us a letter of the Railway Board bearing No. E(GP)85/1/6 dated 25-5-1992. In this letter it is stated that "integrity certificate in the prescribed pro-forma has to be placed <sup>before</sup> by the selection committee and an officer should have a clear integrity certificate before he is promoted." From the above, the only point was mentioned in the letter dated 25-5-1992 is that integrity certificate is to be issued before an officer is considered for promotion to a senior scale. This letter does not indicate the circumstances under which the issue of the clear integrity certificate can be refused. When we further questioned the Learned Counsel for the Respondents in regard to any other letter for refusing to give the integrity certificate the Learned Counsel for the Respondents submitted that the letter of Railway Board dated 25-5-1992 is in clear terms and integrity certificate cannot be issued in view of that letter. But we are not satisfied with the reply. The Counsel for the Respondents produced before us the Railway Board letter bearing No. E(GP)93/1/10 dated 10-4-1996. In that letter in para 2 it is clarified the circumstances under which integrity certificate can be refused. There are 3 conditions when the integrity certificate can be refused. The conditions indicated in the letter dated 10-4-1996 <sup>are</sup> is reproduced below :

- (a) Government servants under suspension;
- (b) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- (c) Government servants in respect of whom prosecution for a criminal charge is pending.

This letter was equally applicable when the case of

Applicant for promotion was considered to the senior scale on 28-11-1995. The letter of Railway Board dated 10-4-96 is a clarification and the contents of the letter cannot be ignored when the case of the Applicant was considered for promotion to senior scale in November, 1995. It is submitted by the Learned Counsel for the Respondents that as the letter dated 10-4-1996 was not available with the DPC when it met and only the letter of 25-5-1992 was available, the DPC had acted on the basis of the letter dated 25-5-1992. When there is no instructions in regard to the circumstances under which the issue of integrity certificate can be refused, then either the Railway Board or the DPC should have asked for clarification at that time itself. Merely assuming that a charge is under consideration and on that basis reject the case of the Applicant in our opinion is not proper. Even the letter of 10-4-1996 cannot be treated as a new concept. Such a concept is available right from the birth of the Railways. Hence the circumstances quoted in the letter dated 10-4-1996 cannot be ignored by the DPC even at the time it met in November, 1995. It is stated that the Applicant was promoted to senior scale in August, 1996 (1.8.1996), in view of the Railway Board's letter dated 10-4-1996. If the Respondents own their mistake in not issuing the integrity certificate after the issue of the Railway Board letter dated 10-4-1996, then they should have gracefully promoted him on adhoc basis on par with his

3

D

5e

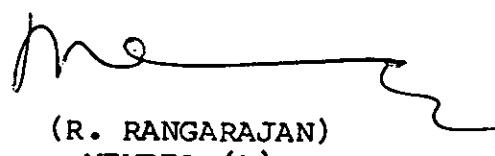
juniors who were promoted on the basis of the DPC which met on 28-11-1995, giving him notional promotion and fix his pay on that basis, then it would have been considered as fair deal by the Respondents. Unfortunately, they have not taken that course of action. They have promoted him only w.e.f., 1-8-1996 prospectively. Hence, we consider that the promotion of the Applicant w.e.f., 1-8-1996 without promoting him retrospectively w.e.f., the date when his juniors were promoted may not be in order.

Hence, under the circumstances the following directions  
are  
is given :

- (1) The Applicant should be deemed to have been promoted on notional basis, on par with his juniors who were promoted on the basis of the DPC which met on 28-11-1995.
- (2) His pay in the cadre of senior scale Divisional Electrical Engineer should be fixed on par with his junior, notionally. He is also entitled for fixation of pay on that basis from the date he was actually promoted to senior scale w.e.f., 1-8-1996 and also entitled for arrears on that basis.

With the above direction the OA is disposed. No costs.

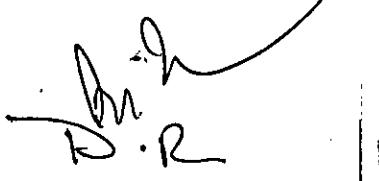
  
(B.S. JAI PARAMESHWAR)  
MEMBER (J)  
20.3.98

  
(R. RANGARAJAN)  
MEMBER (A)

DATED : THIS THE 20TH DAY OF MARCH, 1998

DICTATED IN OPEN COURT

...js

  
D.R.

51  
OA.1561/95

Copy to :-

1. The General Manager, South Central Railway, Rail Nilayam, Secunderabad.
2. The Chief Personnel Officer, South Central Railway, Rail Nilayam, Secunderabad.
3. One copy to Mr. G.Ramachandra Rao, Advocate, CAT., Hyd.
4. One copy to Mr. D.F.Faul, SC for Rlys, CAT., Hyd.
5. One copy to D.R.(A), CAT., Hyd.
6. One duplicate copy.

srr

27/3/98  
TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

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: 20/3/98

ORDER/JUDGMENT

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

in

D.A.NO.

1561/95

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

YLKR

