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CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A.NO.163 of 1995.

Date of Order:-05.3.1998.

BETWEEN :

1. K. Sudhakar
2. M. Suresh Babu
3. M.S. Srinivas
4. Sk. Fathuddin
5. G. Churchill
6. B. Appa Rao

.. Applicants

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1. Sr. Divisional Accounts Officer,
S.C. Railway, Vijayawada.

2. General Manager, S.C.Railway,
Rail Nilayam Secunderabad.

.. Respondents.

Counsel for the applicants : Mr.Jacob for Mr.V.Rama Rao

Counsel for the respondents : Mrs.G. Shakti for
Mr. J.R.Gopal Rao.

CORAM :

Honourable Mr.R. Rangarajan, Member(Administrative)

Honourable Mr.B.S.Jai Parameshwar, Member(Judicial)

ORAL ORDER.

(Per Hon.Mr.R. Rangarajan, Member (Admn.))

Heard Mr. Jacob for Mr. V.Rama Rao for the applicants and Mrs. G. Shakti for Mr. J.R.Gopal Rao for the respondents.

2. There are six applicants in this O.A. The first applicant was initially appointed as Clerk Grade I in the Secunderabad Division, while the applicants 2 to 6 were appointed as ^{such} in Guntakal Division of South Central Railway. All of them came to Vijayawada Division on inter-Divisional transfer as per the dates mentioned against each of them in Annexure-1 to the O.A. The column No.4 indicates the date of inter-divisional transfer to Vijayawada Division of the applicants. While they were

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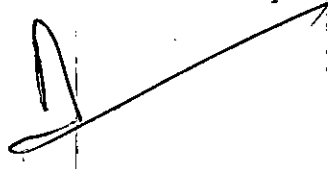
working as Accounts Clerk Grade I in the scale of pay of Rs.1200-2040 they were promoted as Accounts Assistant in the scale of pay of Rs.1400-2600. The dates are indicated in Column 5 of Annexure-I to the O.A. and they were confirmed also as Accounts Assistants as on 1.1.1989 and their seniority position in the seniority list is shown in Column 7 of Annexure I. Their pay is also indicated.

3. Earlier to their coming to Vijayawada Division, some employees in the grade of Rs.950-1500 who were working as Clerk Grade II were promoted to the scale of Rs.1200-2040. The promotions were ordered following the reservation rules. However, it was found that the application of reservation rules to the promotion to the post of Clerk Grade I in the scale of pay of Rs.1200-2040 is not necessary as direct recruitment is 80% and only 20% of the posts of Clerk Grade I in the scale of Rs.1200-2040 is to be filled by promotion from the lower grade i.e. Clerk Grade II in the scale of Rs.950-1500. This is evident from the Railway Board's letter No.90-E(SCT)I/25/7 dated 35.5.1990 (Annexure-I at page-6 of the counter). The promotions made to the post of Clerk Grade I against 20% quota adhering to the reservation rules was found to be erroneous after the applicants had joined Vijayawada Division as Clerk Grade I in the scale of pay of Rs.1200-2040. Before the error could be ^{detected} found out, all the six applicants ^{were} also promoted to the post of Accounts Assistant in the scale of pay of Rs.1400-2600. Because of the erroneous promotion of the reserved candidates to the scale of Rs.1200-2040 earlier to the applicants' joining the Vijayawada Division, the seniority list of Clerks in the scale of Rs.1200-2040 ^{has} ~~was~~ to be revised. Hence the respondents revised the seniority list of the Clerks in the scale of pay of Rs.1200-2040 reverting the reserved community candidates

who were promoted to the said grade applying the reservation rules and in their place, promoting other O.C. candidates who got promotion later than the applicants joined Vijayawada Division in the scale of pay of Rs.1200-2040. In view of the revision of the seniority, the seniority position of the applicants was brought down. The applicants who were promoted to the scale of pay of Rs.1400-2600 earlier to the revision had to be reverted in view of the revision of the seniority position in the seniority list in the grade of Rs.1200-2040. Hence the review of promotion of Junior Accounts Assistants was ordered by the Office Order No.59/94 issued by proceedings No.AAD/00/101/Vol.XV dated 3.10.1994 (Annexure-II at page 9 of the O.A.). The applicants because of that were to be reverted to the scale of pay of Rs.1200-2040. But the said reversion had not affected them for their continuance in the scale of pay of Rs.1400-2600 because of availability of vacancies on the date of reversion. Thus the applicants for certain period have^d to be shown as reverted to the scale of pay of Rs.1200-2040 even though during that period they worked as Accounts Assistants in the scale of pay of Rs.1400-2600 and were promoted due to availability of the vacancies on the date the review promotion order was issued.

4. In the meantime, the applicants filed O.A.No.1441 of 1994 in this Tribunal for continuing them in the higher grade without reversion. That O.A. was disposed of on 28.11.1994 directing the respondents to dispose of their representation including the objections raised in the said O.A. by treating the same as

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continuation of the representations of the applicants as against the impugned order dated 3.10.1994. The applicants were informed by the impugned order No.AAD/OA.1441/94 dated 4.1.1995 (Annexure-IV at page 13 of the O.A.) rejecting their representations.

5. This O.A. is filed to set aside the impugned proceedings No.AAD/00/101/Vol.XV dated 3.10.1994 and the proceedings No.AAD/OA.1441/94 dated 4.1.1995 whereby the pay of the applicants was reduced in the present scale of pay by holding the decision as arbitrary and illegal and for consequential direction to the respondents to continue to pay them the pay scale which was in force prior to issue of the impugned orders i.e. Office Order No.59/94 dated 3.10.1994 with consequential and usual benefits. This relief means that (1) the review of seniority in the seniority list of candidates in the grade of Rs.1200-2040 by lowering the seniority position of the applicants below that of the O.C. candidates who were deemed to have been promoted and placed above them due to the corrections of the mistake is to be set aside; (2) the order of reversion in the seniority and thereby reversion to lower grade of Rs.1200-2040 for certain period resulting in recovery of certain emoluments is to be set aside; and (3) even though they were not physically demoted to the scale of pay of Rs.1200-2040 when the review order was issued on 3.10.1994 due to the availability of the vacancies in the higher scale of pay of Rs.1400-2600 at that time, the respondents have not fixed their pay at the stage in which they were drawing their pay immediately before issue of the impugned order dated 3.10.1994. Hence their pay should not be reduced while showing them as repromoted in the scale of pay of Rs.1400-2600 after

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issue of the impugned order dated 3.10.1994.

6. The seniority of the applicants in this O.A. in the scale of pay of Rs.1200-2040 is to be decided on the basis of their entry in the grade of Rs.1200-2040 in the Vijayawada Division. There is no change in the date of entry; but because of the erroneous promotion earlier to the scale of pay of Rs.1200-2040 by adhering to the reservation principle, some of the other community candidates who were to be promoted in the place of reserved candidates were given promotion from the date the reserved candidates were promoted by reverting the reserved community candidates; thereby showing the promotion of the other community candidates earlier to the date of entry of the applicants resulting in showing those employees above that of the applicants in the scale of Rs.1200-2040 was necessitated affecting the applicants' seniority position. When the error is corrected in giving the promotion and that necessitated the recasting of the seniority in the scale of pay of Rs.1200-2040, such correction has to be done as otherwise illegitimate promotions will be regularised. The legitimate candidates will lose not only their seniority but also their further promotion because of lowering of their seniority erroneously. The error committed by the Railways has to be rectified in the interest of number of employees involved in the case.

7. Hence if the seniority list in the scale of pay of Rs.1200-2040 of the Clerks Grade I was revised for the reasons stated above, it cannot be said that the revision of seniority is irregular or unsustainable. If any of the employees shown above them has been given that seniority due to some mala fide action of the respondents, then the seniority position of that employee can be questioned. But there is no such plea in

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this O.A. Hence the revision of seniority in the scale of pay of Rs.1200-2040 for the reasons stated above cannot be challenged and cannot be set aside. Hence the seniority position in the scale of pay of Rs.1200-2040 of the Clerks Grade I of Vijayawada Division revised under the impugned proceedings dated 3.10.1994 is sustainable and cannot be set aside.

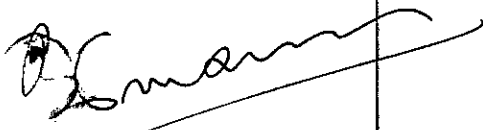
8. The applicants submitted a representation for maintaining the original seniority and also not to recover from their pay for the period they were not entitled to work in the grade of Rs.1400-2600. The recovery portion is relief No.2 sought by the applicants. Both the reliefs 1 and 2 quoted above have been turned down by the impugned proceedings dated 4.1.1995. However, the respondents cannot be questioned in regard to the non-grant of relief No.1. But the refusal to grant them the second relief in the impugned proceedings dated 4.1.1995 cannot be accepted. The applicants had discharged the duties of Accounts Assistant in the scale of pay of Rs.1400-2600 even though they were not entitled for that post from the date they were initially promoted to that post till the issue of the impugned proceedings dated 3.10.1994. But having discharged the duties and responsibilities of higher grade, they cannot be denied the higher pay for that period. This is a well-settled law and hence the recovery of the excess amount paid to them for the period ~~1994~~ they were not entitled to work in the higher grade scale of Rs.1400-2600 as Accounts Assistant though they were not eligible, cannot be allowed to be made from their pay. Hence the recovery order is set aside.

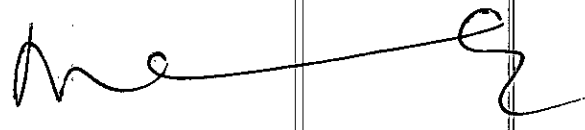
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9. The third relief is in regard to getting their pay fixed after issuance of the impugned proceedings dated 3.10.1994 without involving any lowering of their pay at the stage in which they were drawing at the time of issue of the impugned proceedings dated 3.10.1994. This relief is not connected with the reliefs in this O.A. as stated under reliefs 1 and 2. Hence, granting of that relief in this O.A., in our opinion, is not warranted. However, having included the said relief, a direction has to be given in this connection. As lot of rules and regulations have to be examined before granting that relief, and such rules and regulations are not brought out very clearly in the O.A. as well as in the reply, we are of the opinion that the applicants, if so advised, may make a detailed representation to the respondent No.1 for fixation of their pay as stated above and if such a representation is received, the same should be disposed of by the respondent No.1 within a period of three months from the date of receipt of such representation.

10. With the above directions, the O.A. is disposed of. No costs.


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


(R. RANGARAJAN)
MEMBER (ADMINISTRATIVE)

DATED THE 5TH MARCH, 1998.
Dictated in the Open Court.

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Copy to:

1. Senior Divisional Accounts Officer,
South Central Railway, Vijayawada.
2. General Manager, South Central Railway,
Railnilayam, Secunderabad.
3. One copy to Mr. V. Rama Rao, Advocate, CAT, Hyd.
4. One copy to Mr. J. R. Gopala Rao, CGSC, CAT, Hyd.
5. One copy to D.R(A), CAT, Hyderabad.
6. One duplicate copy.

YLKR

CHECKED BY
APPROVED BY

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

AND

TO: J. C. J. PARAMESHWAR;
M(3)

DATED: 5/3/98

ORDER/JUDGMENT

... / T. A. / C. A. NO.

in

O.A.NO. 163/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALL WED.

DISPOSED OF WITH DIRECTIONS.

DISMISSED

DISMISSED AS WITHDRAWN

~~DISMISSED FOR DEFAULT~~

ORDERED X REJECTED

NO ORDER AS TO COSTS.

II COURT

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