

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 372/95

DATE OF ORDER : 24-10-1997.

Between :-

1. M.V.Rama Raju
2. M.Venkata Krishniah
3. T.V.Mukunda Rao
4. A.Sambi Reddy

... Applicants

And

1. The Divisional Railway Manager, (Personnel), SC Rlys, Vijayawada.
2. The Chief Personnel Officer, SC Rlys, Rail Nilayam, Sec'bad.
3. The General Manager, SC Rlys, Rail Nilayam, Sec'bad.

... Respondents

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Counsel for the Applicants : Shri P.V.S.S.S.Rama Rao

Counsel for the Respondents : Shri N.R.Devaraj, Sr.CGSC

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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... 2.

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

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Heard Sri K.R.Srinivas for Sri P.V.S.S.S.Rama Rao, counsel for the applicants and Sri N.R.Devaraj, standing counsel for the respondents.

2. There are 4 applicants in this O.A. They are working as Dy. Chief Yard Masters in Vijayawada Division. They joined the service as probationary Asst. Station Master through Railway Service Commission on various dates in the year 1961 to 1964. At that time when they joined service, the yard masters, stations masters and Traffic Inspectors etc., were in common seniority unit. Later by memorandum dt.3-7-84 the cadre was bifurcated and the cadre of yard master's became a separate seniority unit. The applicants submit that such a bifurcation can be done only by calling for options which was not done. Hence they could not opt for the cadre in which they wanted to progress after issue of memorandum dt.3-7-84. Further it is submitted that they came to know only in the year 1993 about the issuance of memorandum dt.3-7-1984. A representation was submitted by applicant No.1 for promotion to the higher grade of Rs. 2375-3500 and for posting him as Station Superintendent/Traffic Inspector, Bhimavaram, NDD. It is stated that the said representation was not replied. However, the learned counsel for the applicant enclosed a letter No. B/P. 535/VI/Optc/SM/ASM dt. 7-5-94 (Annexure A-III to OA) to state that the above representation was rejected. The letter dt. 7-5-94 is an internal correspondence. Hence it cannot be held that the applicant was given a reply to his representation. However, the applicant came to know the position, which he must have obtained

through some source. From letter dt. 7-5-94, the applicant states that he came to know about memorandum dt. 3-7-84. After coming to know that the memorandum dt. 3-7-84 was issued for bifurcation of cadre of Yardmasters and stations masters all the four applicants submitted a representation dt. 24-9-94. In the meantime, some other applicants submitted for a similar relief by filing an original application on the file of this Bench bearing OA No. 303/86. There also the applicants requested for promotion as prayed for in this OA questioning memorandum dt. 3-7-84 regarding bifurcations without options. That was disposed of allowing the OA but restricting their benefits only to the applicants in that OA.

3. Thereafter, the applicants filed this OA praying for a declaration that the action of the respondents in not obtaining options from and keeping them as yard masters as per proceedings dt. 3-7-84 is illegal and arbitrary and in violation of Articles 14 and 16 of the constitution of India and consequently direct the respondents to obtain the options from the applicants and grant all the consequential benefits on such options. They also pray for quashing the proceedings dt. 7-5-94 to grant the relief as prayed for above.

4. If the applicants are promoted as SS/TI category from the category of Yard Master because of non calling of options then that order of promotion will involve serious repercussions. The applicants will definitely march over in the seniority list of SS/TI and that may mean placing them as seniors to those who are already working as SS/TI. That will affect the future promotional prospects of these persons above whom the applicants seniority was shown. Because of the interpolation of the applicants name in the category of SS/TI.

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there is likely to be some reversions also if there are no posts to accommodate the applicants. Unless those applicants who were also likely to be affected are also heard, such a direction cannot be given at the present juncture.

5. The applicants submit that they came to know about circular dt.3-7-84 only in 1993. Thereafter they represented for interpolating them in the cadre of SS/TI and to promote them in that cadre to the higher scales of pay. It is not clear why they ~~were~~ kept ^{had} ~~out~~ ^{clue} from 1983 to 1993. Though the applicants submit that they came to know about the memorandum dt.3-7-84 only after some promotions took place in Secunderabad Division, issuance of memorandums and circulars, ~~especially~~ ^{especially} as challenged in this OA, spreads like a wild fire and the ignorance of that circulars cannot be accepted unless documentary proofs are brought on record. Moreover, there were 3 seniority lists issued after issuance of the circular dt.3-7-84. When those 3 seniority lists are in existence, the submission of the applicants that they are not aware of the seniority lists as their names were not in those seniority lists and hence they cannot be held responsible for not raising objections to the seniority lists cannot be treated as an acceptable contention to grant them relief. The very fact that the names of the applicants were not in the seniority list that itself should have given them the clue as to why their names were deleted in the seniority ^{lists} when they were recruited in ^{the} combined seniority units of SS/TI/Yardmasters. Hence the submission that they have not objected to the seniority list, because their names were not placed in the seniority list, cannot be accepted and also it cannot be taken as a reliable proof to come to the conclusion that they were not aware of the circular dt.3-7-84.

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6. In view of the ~~re~~percussions indicated above, it will be unfair to give any direction, which will affect the other employees who are in the cadre of SS/TIs.

7. The learned counsel for the applicant relying on the judgement of Hon'ble High Court of Madras, reported in 1989 (i) SLR 647 (M.Vishwanath Vs. Govt. of Tamilnadu) wherein it was held that the applicant in that case is entitled for promotion on par with his junior even though passage of time should not stand in their way of granting the relief prayed for in this OA.

8. In a situation like this, where the ~~re~~percussions are severe each case has to be examined on the basis of the facts. In the present case we find that the ~~re~~percussions, if the application is allowed, will be severe and in such circumstances, the delay and latches ^{have} to be taken note of. Merely in some case the delay and latches ^{were} not taken into account, that does not mean that the delay and latches should be condoned in all ^{the} cases. Hence this contention is rejected.

9. The second contention of the applicant is that when once the OA is admitted, the delay and latches should not be considered at the stage of final hearing. We fully dis-agree with this contention. For the above contention, the applicant relies on the judgement of the Central Administrative Tribunal, Bangalore Bench reported in 1989 (i) SLR 641 (G.K.Shenava & others Vs. Union of India & others). The merits of the case varies from case to case. Probably in that case there may not be much of ~~the~~ ^{any} ~~re~~percussions. Even if there were ^{could} ~~re~~percussions, they ^{can} be set right smoothly. But in the

present case the repurcussions not only severe but they cannot be set right smoothly and will only lead to litigation. The employees of the SS/TI cadre will have serious set back and without hearing them no relief can be given in this OA ignoring the delay and latches.

10. The Supreme Court repeatedly emphasised that the settled portion of the seniority should not be unsettled. If the application is allowed, the seniority already settled for the last 15 years will definitely get unsettled, which is not desirable.

11. Hence the Original Application is liable only to be dismissed on that count also. Accordingly it is dismissed. No order as to costs.

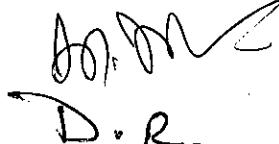

(B.S.JAI PARAMESHWAR)
Member (J)

24-10-'97


(R. RANGARAJAN)
Member (A)

Dated: 24th October, 1997.
Dictated in Open Court.

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D.R.

10/11/97

(A)

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

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

AND

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

Dated: 24-10-97

ORDER/JUDGMENT

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

in
D.A.NO. 372/95

Admitted and Interim Directions
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLR

II Court

