

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 254/96

Date of Order : 8.1.99

BETWEEN :

B.Bheemeshwara Rao

.. Applicant.

AND

1. Govt. of India, rep. by its  
Chief Post Master General,  
Dept. of Posts, A.P.Circle,  
Hyderabad.

2. The Postmaster General,  
Eastern Region, Vijayawada.

3. Superintendent of Post Offices,  
Machilipatnam-1, Krishna Dist.

4. Postmaster,  
Machilipatnam, Krishna Dist.

5. Manager (Motor Mail Service),  
Hyderabad.

.. Respondents.

- - -

Counsel for the Applicant

.. Mr.V.Venkateswara R

Counsel for the Respondents

.. Mr.N.R.Devraj

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CORAM :

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

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

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(As per Hon'ble Shri R.Rangarajan, Member (Admn.) X

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Mr.V.Venkateswara Rao, learned counsel for the applicant and Mr.N.R.Devraj, learned standing counsel for the respondents.

2. The applicant in this OA submits that he was in the class-IV category of the Group-D Mailman under R-3 w.e.f.

3.3.82. Subsequently, he was appointed after selection by the Departmental Promotion Committee held on 18.7.83 and was posted as MMS Driver in the ordinary grade in the month of July 1983. He had completed 2 years of probation period. Later he was transferred and posted at Tadepalligudem in the year 1990. While he was working so he was promoted to the next higher category of Gr-II driver in the scale of pay of Rs.1200-1800 w.e.f. 1.8.93 by order No.ST/24/MMS, dated : 2.11.94 (A-5).

3. R-2 appointed the applicant in quasi permanency capacity in the scale of pay of Rs.260-400 by proceedings dated 2.9.87 (A-3).

4. A promotion scheme was <sup>introduced</sup> formed for staff car driver w.e.f. 1.8.93. As per the said scheme some drivers were promoted to Gr-II drivers under the promotion scheme for staff car drivers in the scale of pay of Rs.1200-1800 and for further promotion to

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Gr-I, a staff car driver should put in minimum of 6 years service in Gr-II. The method of appointment of Gr-I and Gr-II will be issued subject to passing of the trade test.

5. In view of the above said scheme R-2 by his proceedings <sup>lal</sup> dated 2.11.94 (A-5) / promoted the applicant as Gr-II Driver in the scale of pay of Rs.1200-1800 w.e.f. 1.8.93. He was kept as the first promotee in the seniority list of candidates to the Gr-II. He was also paid arrears w.e.f. 1.8.93 along with others who were promoted at the same time.

6. The applicant submits that he had discharged the duties in the cadre of Gr-II MMS from 2.11.94 for a period of more than 2 <sup>adverse</sup> years without any remarks. But he was served with a show cause notice on 5.10.95 (A-7) calling for his explanation for cancelling his promotion on the ground that the applicant's seniority was erroneously fixed in Circle Gradation List. The applicant submitted the detailed explanation. However R-1 passed the impugned order dated 8.1.96 without taking into consideration all the relevant facts.

7. This OA is filed for setting aside the impugned order of R-1 bearing No. ST/19-4/2/VI dated 8.1.96 by holding the same <sup>an</sup> as arbitrary, illegal and a consequential direction to the respondents to retain him as Gr-II driver with all consequential benefits.

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8. When the OA was taken up for hearing we asked the learned counsel for the respondents as to how the applicant was promoted initially by order dated 2.11.94 w.e.f. 1.8.93. The learned counsel for the respondents submitted that initially the post of Drivers was controlled by the division. Later it was ~~not~~ controlled by the circles issuing the circle seniority list. The applicant was given ~~✓~~ on the basis of his date of entry to the quasi permanency post as driver Gr-III. But on the basis of that date he was found to be junior and hence he was reverted by the impugned order dated 8.1.96, as there were seniors who were confirmed earlier to him. The applicant was confirmed regularly at a later date.

9. We further questioned the respondents' counsel in regard to the rules for fixing the seniority under the circumstances quoted above. The applicant submitted that date of confirmation decided the seniority. But the Apex Court in case of Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra (AIR 1990 SC 1607 para 44) had observed that the date of confirmation should not be taken for fixing the seniority and it is only the date of regular entry should decide the seniority. In view of the above fixing the seniority on the basis of the date of confirmation is not acceptable. Hence the date of entry of the applicant has to be taken for fixing of ~~entry~~ as ordinary driver i.e. w.e.f. July 1983.

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10. The learned counsel for the respondents submitted that there were 102 posts of drivers in the circle for filling up. Out of which 20 posts should be treated as Gr-I, 26 posts as Gr-II and 56 posts as Gr-III in the ratio of 55 : 25 : 20. The applicant on the basis of the seniority reckoned from the date of confirmation does not come within the 26 posts to be filled as Gr-II drivers from amongst the staff car drivers. He was earlier promoted erroneously taking his seniority on the basis of his quasi permanency status and hence a show cause notice was issued and he was reverted by the order dated 8.1.96. Thereafter we asked the learned counsel for the respondents to check the seniority of the applicant as per the date of entry as ordinary driver and not on the basis of the date of confirmation. A seniority list showing the seniority as per the date of entry as a Driver Gr-III and seniority as per the date of confirmation as a driver was prepared by the respondents. On that basis the learned counsel for the respondents submitted that if the date of entry is taken for fixing the seniority then the applicant comes within the number to be promoted as Gr-II driver. If the date of confirmation is taken for fixing the seniority then the applicant will not come within the number of 26 posts of Gr-II driver for promotion.

11. We have already observed that the date of confirmation is not a realistic date for fixing the seniority. It is only the date of entry as an ordinary driver is to be taken for preparing considered for a seniority list. Hence the case of the applicant has to be/

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promotion to the post of Driver Gr-II taking his seniority position on the basis of his entry as driver Gr-III in the respondent organisation. It is already stated by the respondents that counsel if the date of entry — is — taken the applicant has to be promoted as Driver Gr-II as he comes within the seniority for filling up the post of Gr-II driver numbering 26. Hence it has to be held that the applicant is eligible for consideration for promotion to the post of Gr-II driver against the 26 posts earmarked for Gr-II driver. Infact the applicant had been promoted already as a Gr-II driver by the order dated 2.11.94. However for reasons stated above he was demoted by impugned order dated 8.1.96. Hence the impugned order dated 8.1.96 has to be set aside and a direction has to be given to the respondents to promote him as Gr-II driver w.e.f. 1.8.93 as indicated in the proceedings dated 2.11.94 with continuity of service and other consequential benefits such as seniority, arrears, etc as per the rules.

12. In the result, the following direction is given:-

The impugned order dated 8.1.96 is set aside. The applicant should be deemed to have continued as Gr-II driver from the date he was reverted by the impugned order dated 8.1.96 and the consequential benefit of seniority in the gr as driver Gr-I of driver Gr-II should be fixed on the basis of his entry i.e. w.e.f. 1.8.93. Arrears arising out of above order shall be paid to him within a period of 3 months from the date of receipt of a copy of this order.

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1ST AND 2ND COURT

COPY TO:-

1. HON. J.
2. HHRP M(A)
3. HSSP M(J)
4. D.R.(A)
5. SPARE

TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR :  
VICE CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD :  
MEMBER (A)

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

THE HON'BLE MR. B.S. JAI PARAMESWAR :  
MEMBER (J)

DATED: 8-1-99

ORDER DOCUMENT

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

In

O.A. NO. 254/96

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLEGED

DISPENSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

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(9 copies)

