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Ac. 24/20

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 455/97

Date of Order : 6.1.99

BETWEEN :

G.Kameswara Rao

.. Applicant.

AND

1. Union of India, rep. by its
General Manager, S.C.Railway,
Rail Nilayam, Secunderabad.
2. The Chief Personnel Officer,
S.C.Railway, Rail Nilayam,
Secunderabad.
3. The Divisional Railway Manager,
Hyderabad M.G.Division,
S.C.Railway, Secunderabad.

.. Respondents.

Counsel for the Applicant

.. Mr.N.kamamohanaRao

Counsel for the Respondents

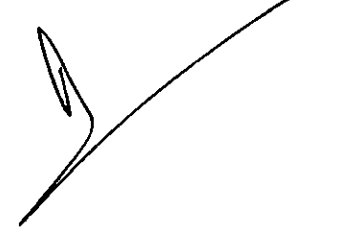
.. Mr.C.V.Palla Reddy

CORAM :

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

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

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proceedings in regard to deemed dates of promotions in various categories by 15th September, 1995 failing which the applicant will be entitled to interest at the rate of 12% per annum if the monetary benefits are payable to the applicant w.e.f. 16.9.1995.

If any clarification is required by the respondents, they can move this Tribunal by way of miscellaneous application in this OA. If necessary orders are not going to be issued by the respondents by 31.10.1995, the applicant is free to move this Tribunal by way of miscellaneous application in this O.A. for necessary orders.

It is needless to say that if the applicant is going to be aggrieved in regard to the final order that has to be passed by the concerned authority, the applicant is free to move this Tribunal by way of application under Section 19 of the A.T. Act."

4. The respondents have not asked for any clarification from this Tribunal as directed in the extracted portion of the judgement. The direction has become final. However the applicant was informed by the impugned memo No.YP/121/Admn/HCs/CCs/Per.Cadre, dated 30.10.95 (A-8) stating that "he had joined on transfer to personnel branch only on 20.11.96 accepting the bottom seniority and therefore his promotion to various grades in personnel branch shall be reckoned from original dates as existed prior to issue of the memorandum dated 30.12.87. It is also stated that the memorandum dated 30.12.87 shall accordingly remain cancelled."

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seniority basing on their date of entry in the grain shop organisation. In view of the above direction the applicant was given the seniority in the personnel branch as on 15.4.84 based on his appointment as Clerk in grain shop, namely, 15.3.61. In that seniority position he was shown at Sl.No.14 as seen from the letter dated 18/25.3.87 (A-1). Later the applicant was promoted as Senior Clerk by order dated 30.12.87 (A-2) and his seniority also fixed immediately above his immediate junior Sri P.Venkataratnam who was promoted as Senior Clerk in terms of the Railway Board's letter dated 1.2.75 as per memo dated 30.12.87 (A-3). He was also promoted to the Higher Grade upto O.S. Gr-II by subsequent orders. The applicant retired on 31.12.87. Due to the revision of the seniority, R-2 was approached by R-3 for promoting him to the post of O.S. Gr-I from 15.10.85 by letter No.YP/121/Admn./Persl./Cadre dated 20.11.89 (A-5). The applicant also submitted a representation dated 28.2.91 (A-6) to R-3 herein requesting for payment of arrears due to him including pension etc as O.S. at an early date. As no reply was received by the applicant he filed O.A.352/92 on the file of this Bench praying for revision of his pay fixation and revision of pension. That is disposed of by the following order :-

"If the respondents feel that it is necessary to revise the placement of the applicant in the category of clerks in the then pay scale of Rs.60-130/-, then they have to issue necessary revised proceedings and also consequential

informed to him by memo dated 18/25.3.87. The letter dated 30.10.85 has been issued without assigning any reason for earlier issuing of the letter dated 18/25.3.87 fixing his seniority on the basis of his entry in the grain shop on 15.3.51 and also further promotion given to him subsequently. The impugned letter of Additional General Manager is very cryptic. It only says that his representation is rejected without any valid reasons.

8. If the applicant is not entitled for fixation of seniority on the basis of his entry in the grain shop then he should have been told about it ~~when~~ immediately after the decision of the Supreme Court in regard to the seniority dispute. The necessity of issuing the letter dated 18/25-3-87 does not arise if that view is taken. The respondents without any application of mind had given him the seniority in the personnel branch in the clerical cadre taking his date of entry in the grain ^{shop} i.e. 16.3.51. Subsequently also the respondents did not ~~care~~ to see whether the seniority given as per the letter dated 18/25.3.87 is in ^{order} or not. The respondent had promoted him to higher grade upto OS Gr-II on the basis of that seniority and the applicant had proceeded and reached the level of OS Gr-II. But after a lapse of about 8 years the respondents woke up and issued the memorandum dated 30.10.95 stating that the promotion to senior clerk as ordered by memorandum dated 30.12.87 stands cancelled. In the memorandum dated 30.10.95 there is no whisper in regard to the

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5. The applicant thereafter addressed a representation to the Additional General Manager by his representation dated Nil for revision of seniority for Ex-Grain Shop ^{employee} That was rejected by the impugned order No. P/EST/535/OS/Gr. I/Vol. VIII dated 24.5.96 (A-11) .

6. This OA is filed for setting aside the impugned order dated 24.5.96 and for a consequential direction to the respondents to grant notional promotion as O.S.Gr-I w.e.f. 15.10.85 the date on which the junior to the applicant Sri P.Venkataratnam was promoted as recommended by R-2 in proceedings dated 20.11.89 and to compute and release all the benefits consequent upon his notional promotion and also refixation of pension and other pensionary benefits.

7. A reply has been filed in this OA. The only reason given for rejecting his case is that the applicant having come to the personnel branch accepting the bottom seniority he cannot get the seniority as per the date of entry into the grain shop. The learned counsel for the respondents further submits that fixation of seniority as per his date of entry in the Grain Shop issued by memorandum No. YP/121/Admn/HC&CCs dated 18/25-3-87 (A-1) ^{is not in order} as the applicant had joined Personnel Branch accepting the bottom seniority and hence his date of entry in the personnel branch will decide his seniority. There is no explanation given in the reply in regard to his further promotion as Senior Clerk and upto the rank of O.S.Gr-II on the basis of the seniority as

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his pay in the grade of OS Gr-I should be fixed notionally from the date his immediate junior was promoted. His pension and pensionary benefits should be fixed on the basis of that notional fixation and arrears if any arising due to fixation of his pension and pensionary benefits as above should be paid to him within a period of 3 months from the date of receipt of a copy of this order. There is no order in regard to the interest payable to him on the delayed payment.

10. The OA is ordered accordingly. No costs.

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cancellation of the seniority position as conveyed to him by letter dated 18/25-3-87. Hence without cancelling the ~~xx~~ revision of the seniority as conveyed to him by letter dated 18/25.3.87 the respondents cannot cancel his promotion to senior clerk and also to higher grades. Cancellation of the seniority position as fixed by letter dated 18/25.3.87 after a lapse of about 8 to 9 years is unwarranted in view of the Supreme Court judgement that "settled position of the seniority cannot be unsettled". Hence the impugned letter of the respondents dated 30.10.95 and 24.5.96 are liable only to be set aside. The applicant retired on 31.12.87. The cancellation of his promotion to the senior clerk was done a date earlier to his retirement i.e. on 30.10.87. Hence it has to be held that the respondents have issued that letter dated 30.12.87 to put the applicant in a disadvantageous position probably to conceal their error committed earlier. That cannot be considered as fair treatment to the applicant.

9. Hence the following direction is given :-

The impugned proceedings dated 30.10.95 and 24.5.96 are set aside. The seniority of the applicant should be in accordance with the letter of the respondents dated 18/25.3.87 and on that basis if he is entitled for promotion to OS Gr-I from the date his immediate junior was promoted his case also should be considered and if found fit, promoted notionally on par with his junior. As the applicant had not worked as OS Gr-I

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TO Condone delay in filing
the O.A.

Hyderabad District

In the Central Administrative
Tribunal: Additional Bench: at
Hyderabad

M.A.No. of 1997

in

O.A.Sr.No. 900 of 1997

Condone delay Application

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M/s. Nooty Rama Mohana Rao,
KSV Subba Rao,
Abhinand K Shavili, &
Siva.

Counsel for the Applicant.

R.D.M. A. Ampl.
C. R. Rao
9/14/97

CLA truly

not be filed
9/14/97