

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD
***O.A.1549/97.Dt.of Decision : 26-4-99.

1. B.J.N.Swamy
2. V.V.Krishna Murthy
3. A.C.Arjunan

.. Applicants.

Vs

1. The General Manager,
SC Rly, Rail Nilayam,
Sec'bad.
2. The Chief Admn. Officer,
Headquarters Office,
Works Constructions Branch,
Sec'bad.
3. The Financial Adviser & Chief
Accounts Officer, SC Rly,
Rail Nilayam, Sec'bad.
4. Sri B.Ranga Rao

.. Respondents.

Counsel for the applicants : Mr.G.V.Subba Rao

Counsel for the respondents : Mr.J.R.Gopala Rao, SC for Rlys.

CORAM:-

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

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



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ORDER

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

Heard Mr.G.V.Subba Rao, learned counsel for the applicants and ^MMrs Sakthi for Mr.J.R.Gopala Rao, learned counsel for the respondents.

2. There are 3 applicants in this OA. All the three applicants had retired from service. They submit that they were posted at SC Railway on the formation of the Railway. They submit when they were posted at SC Railway all of them ranked senior to R-4 herein. The R-4 was sent to Badrachalam Road in Construction Cell and they submit that they ^{were} are not aware of posting of R-4 at Badrachalam cell even though they submit that they ^eknew that he was posted along with them to the construction organisation in the SC Railway initially. The R-4 was promoted as Sr. Draftsman on 1-7-78 when his pay was fixed at the stage of Rs.455/- in that category whereas applicants No.1 and 2 were posted as Sr.Draftsman on 1-4-79 and third applicant on 1-8-79. All the three were fixed at the stage of pay of Rs.455/-. The applicant No.1 was promoted as Heads Draftsman on 14-2-91 whereas the applicant No.2 was promoted as Heads Draftsman on 1-6-92 and applicant No.3 was promoted as Heads Draftsman on 3-8-92. At that time their pay in the category of Heads Draftsman was fixed at the stage of Rs.2050/-, Rs.2050/- and 2000/- respectively. The R-4 was promoted as Heads Draftsman on 3-8-92. But his pay was fixed at the stage of Rs.2200/- probably in view of the fact ~~that~~ that his pay as Sr.Draftsman was more than the three applicants in this OA because of his earlier promotion as Sr.Draftsman. Thereafter they were promoted as Chief Draftsman and the pay difference continued in the post of Chief Draftsman also.

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3. The applicants submit that R-4 is their junior and he is drawing more pay than them in the cadre of Heads Draftsman. Their pay also should be stepped up on par with their junior. It is stated that the CAO had recommended their cases to the Accounts department but the accounts department turned down their cases on the ground that FR 22 C is not applicable in their cases. Hence, they filed OA.4/96 on the file of this Bench. That OA was disposed of by order dated 9-4-97 directing the General Manager of the SC Railway to dispose of the representation. Accordingly, the General Manager disposed of the representation which is indicated in para-19 of the reply. That was communicated to the applicant by CAO by his order No.P.Con.648/O.A.No.4/96 dated 11-08-97 (Annexure-I).

4. This OA is filed to set aside the impugned order No.P.Con.648/OA.No.4/96 dated 11-08-97 (Annexure-I) by holding the same as arbitrary, illegal, unconstitutional and for a consequential direction to the respondents to equalise the pay of the applicant on par with their junior i.e., R-4 herein by notionally promoting the applicants to the post of Sr.Draftsman in the scale of pay of Rs.425-700/- from the date of their junior i.e., R-4 was promoted on adhoc basis with all consequential benefits such as arrears of pay, allowances, increments, seniority, promotions from time to time and to grant them the pensionary benefits based on the revised pay at the time of retirement.

5. The main contentions of the applicants are as follows:-

1) As the applicants are senior to R-4, R-4 should not have been transferred as Sr.Draftsman to Badrachalam without giving them a chance to be posted at Badrachalam. If the

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administration had asked their willingness they would have given their willingness and that would have enabled them to get the post of Sr. Draftsman earlier to 1979 i.e., in the year 1978 itself when R-4 was promoted as Sr. Draftsman. Thus the pay differential would not have occurred. As the respondents have failed to ask their willingness to go to Badrachalam their cases had to be reviewed now and their pay has to be fixed on par with R-4 not only in the post of Sr. Draftsman but also in the post of Heads Draftsman and in the higher posts on their promotion. Their pay fixation and seniority should be accordingly fixed in the higher grades. On the basis of the revision of the pay their retirement benefits should also be revised.

2) The CAO himself had admitted that there is a case for the applicants for stepping up of pay. Without any rule the accounts department had turned down the case. The General Manager has not seen their cases in its real perspective. The General Manager had turned down their cases merely on the ground of delay. Hence, such an order has to be set aside.

6. We have heard both the sides.

7. The R-4 was transferred to Badrachalam way back in the year 1969. If the applicants ^{were} ~~are~~ aggrieved by that then they should have represented their cases then and there itself. The only reason for not representing their case is that they ^{were} ~~are~~ not aware of his transfer. When all of them working in the Construction organisation and they knew very well R-4 ^{was} ~~is~~ junior to them when all of them joined SC Railway initially the question that they ^{were} ~~are~~ not aware of the transfer of R-4 to Badrachalam does not appear to be realistic and factual. This submission in our opinion is only to substantiate their case without any basis. Hence, this submission has to be rejected.

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8. The R-4 had worked in Badrachalam for about 8 to 9 years before he was promoted as Sr.Draftsman on adhoc basis. It is too much to come to the conclusion that even for 7 to 8 years the applicants ^{were} ~~are~~ not aware of his transfer to Badrachalam. Such a view is far fetched and cannot be accepted. When he was working in Badrachalam he was promoted in 1978 as Sr.Draftsman. It was an adhoc promotion. In Swaminathan's case reported in 1997 (SCC)(L&S) 1852 the Apex Court had clearly stated that a senior cannot aspire to get adhoc promotion when he is not available at the site when adhoc promotion for his junior who was available on hand when ordered. Such adhoc promotion was necessitated due to administrative exigencies. When such adhoc promotion had been ordered an administrative exigencies, the question of stepping up of pay of senior when promoted to the higher grade may not be applicable. This view has been clearly stated by the Apex Court in the above cited case. The judgement in Swaminathan's case should apply ^{equally} ~~equally~~ whether the applicant is in the same seniority unit or in some other seniority unit elsewhere. Even if all of them were in the same seniority unit, when the post had occurred elsewhere the question of shifting senior to one place to another is not possible due to the exigencies of the service and administrative grounds. If the applicants herein were aggrieved by the adhoc promotion granted to their junior R-4 in 1978 they should have approached this ^{judicial forum} ~~Tribunal~~ in 1978 itself. There also the applicants submit that they are not aware of the promotion of R-4. It is in our opinion is not in order and is only an excuse to conceal their inaction. As any promotion whether adhoc or regular given to a junior spreads like


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a wild fire the mere fact that he was promoted elsewhere is no reason to come to the conclusion that the applicants are not aware of the promotion of R-4 at Badrachalam.

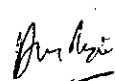
9. The General Manager has rejected their case due to long delay and also due laches and inaction of the applicants to follow their cases in ^{time} ~~time~~. That reply is in order and also in consonance with our views expressed above and also in consonance of the observation of the Supreme Court in Swaminathan's case.

10. In view of what is stated above, we find no merits in this OA. Hence, the OA is dismissed. No costs.


(E.S. JAI PARAMESHWAR)
MEMBER (JUDL.)
26.4.99


(R. RANGARAJAN)
MEMBER (ADMN.)

Dated : The 26th April, 1999.
(Dictated in the Open Court)


3-5-99

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COPY TO:-

1. HDHND
2. HHRP M(A)
3. HBSJP M(3)
4. B.R.(A)
5. SPARE

IST AND IIND COURT

TYPED BY
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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 (3)

DATED: 26.4.99

ORDER / JUDGEMENT

MA./R.A./C.P.No.

IN

C.A. No. 1549/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

DISPOSED OF WITH DIRECTORATE
HYDERABAD BENCH

DISMISSED.

DISMISSED AS WITHDRAWN.

ORDERED/REJECTED.

NO ORDER AS TO COSTS.

SRR

केन्द्रीय प्रशासनिक आयोग Central Administrative Tribunal प्रेषण / DESPATCH 12.5.99 हैदराबाद न्यायालय HYDERABAD BENCH

7 (Seven) copies

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

M.A.No. 1057 of 1997

in

O.A.No. 3306 of 1997

Between

1. B.J.N.Swamy, s/o late Sri B.Lalappa, aged 60 years, Retired ~~Senior~~ Chief Draughtsman, S.C.Rly, R/o 22-1187A (Old) 22-182(new, Radhakrishnanagar, Malkajgiri, Hyderabad-500047
2. V.V.Krishna Murthy s/o Late V.Rangaiah, Chetty, aged 59 years, Retired Chief Draughtsman, S.C.Rly., R/o 12-11-1595/10, Plot No. 181, Lalithanagar, HYDERABAD - 500045.
3. A.C.Arjuman s/o Sri Chokkalinga Mudalai, aged 58 years, Retired Chief Draughtsman, S.C.Rly., R/o First Floor, Aishwarya Flats, No. 6, Kumbhar Street, Virigambakka, MADRAS ~~HYDERABAD~~ - 600 092.

... Applicants

and

1. General Manager, South Central Railway, Rail Nilayam, Secunderabad.
2. Chief Administrative Officer, Headquarters Office, Works Construction Branch, SECUNDERABAD.
3. Financial Adviser & Chief Accounts Officer, South Central Railway, Rail Nilayam, Secunderabad.
4. Sri B.Ranga Rao, s/o Sri Venkata Seshiah, aged 57 years, Worked as Chief Draughtsman, S.C.Rly., R/o Plot No. 10, Phase II, Priya Colony, Kakaguda, Karkhana, SECUNDERABAD.

... Respondents

MISC. APPLICATION UNDER RULE 4(5) OF THE CENTRAL ADMINISTRATIVE TRIBUNAL PROCEDURE RULES, 1987 TO PERMIT THE APPLICANTS TO FILE ONE SINGLE O.A.

- - -

The applicants in O.A.No. of 1997 humbly submit that the relief claimed by them is common in that their claim for ~~equal~~ equalising their pay with that of Respondent No. 4.

Read for
scary
V.V.
C.R.
15-10-97

To file a writ of A

In the Central Administrative
Tribunal
Hyderabad

MA 1997

in

of 97

Between

B.T. Gumpthorpe

vs
18/8/97

And

General Manager
S. R. G. & Co.

By application under
Rule 4(5) of the
Procedural Rules of 1987
to file an affidavit

Filed By:
~~S. R. G. & Co.~~

G. V. Subbarao
Advocate



may be filed
12/10/97

They filed O.A.No. 4/96 in this Hon'ble Tribunal which was disposed with a direction to make representation to the General Manager regarding ~~my~~ ^{their} claim and the Chief Administrative Officer ~~my~~ ^{their} S.C.Rly., rejected ~~my~~ representation by his order dated 11-8-97.

As the relief claimed is common to all of ~~us~~ ~~myself~~ them, they pray that this Hon'ble Tribunal may be pleased to permit them to file one single O.A.

V E R I F I C A T I O N

We, B.J.Swamy, S/o B. Lalappa, aged 60 years, V.V.Krishna, Murthy, s/o late V.Rangaiah, aged 59 years, and A.C.Arjunan, s/o ^{Chief} Chokkalinga Mudalai, aged 58 years, Retired/Draughtsman, South Central Railway, residents of Hyderabad and Madras do hereby verify that the contents of this application are true and correct to the best of our knowledge and belief.

Hence verified on this the 5th day of October, 1997
at Hyderabad.

1) B.J. Swamy

2) V.V. Krishna Murthy

3) A.C. Arjunan

APPLICANTS

G. S. S. S.

Counsel for the Applicants.

MA 1057/97 in OASR 3306/97

मूल/ORIGINAL

18-11-97

Heard Sri G.V. Subba Rao
for the applicant and Sri
Phalguna Rao for Sri
S.R. Gopal Rao for the res-
pondents.

2. MA is not opposed.
Under the circumstances
referred to in MA, MA is
allowed as prayed for.
Register the OA, if it is
otherwise in order and
list it for admission on
19-11-97.

HBSP
MP

HRAN
MP

रेलवे/RAILWAY

बेच केस/BENCH CASE

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

M.A. NO. 1057 OF-1997

IN

O.A. No. 3306 OF 1997

SINGLE O.A. PETITION

Mr. G.V. Subba Rao
COUNSEL FOR THE APPLICANT.

AND

Mr. _____
Sr. ADDL. STANDING COUNSEL FOR
C.G. Rlys.