

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO.298 of 1999

DATE OF JUDGMENT: 21<sup>st</sup> JANUARY, 2000

BETWEEN:

Sk. AHMED

.. APPLICANT

AND

1. Union of India rep. by the  
General Manager,  
South Central Railway,  
Rail Nilayam,  
Secunderabad 500017,
2. The Chief Personnel Officer,  
S.C.Railway,  
Secunderabad 500017,
3. The Divisional Railway Manager (M.G),  
S.C.Railway,  
Secunderabad Division,  
Opp: Rail Nilayam,  
Secunderabad 500017.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.G.RAMACHANDRA RAO

COUNSEL FOR THE RESPONDENTS: Mr.V.BHIMANNA, Addl.CGSC

CORAM:

HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

HON'BLE SRI S.MANICKAVSAGAM, MEMBER (ADMN.)

JUDGMENT

ORDER (PER HON'BLE SRI S.MANICKAVASAGAM, MEMBER (ADMN.))

The applicant is a retired employee of the Railways. He retired from service on 31.1.98, on attaining the age of superannuation. It is his case that while

h...

working as Senior Clerk in Lalaguda, he was promoted as Head Clerk and posted to Purna vide order dated 15.7.1986. For some reasons, he did not join Purna immediately but by the order dated 16.3.1987 the applicant was retained as Head Clerk in Lalaguda itself. When the seniority list of Head Clerks was published on 26.2.93, the seniority of the applicant was shown with effect from 16.3.1987 instead from the date of promotion i.e, 15.7.1986. When he represented about this to the higher authorities vide letter dated 28.6.1993 he got reply on 12.1.94. It was stated in the reply that the seniority will be counted from the date he assumed office i.e, with effect from 16.3.87 since the applicant did not carry out the order of transfer on promotion dated 15.7.86 as Head Clerk to Purna. This dispute in seniority had resulted in promotion of his juniors to the post of Office Superintendent Grade-II. Therefore, the applicant came before the Tribunal in OA No. 434/95 decided on 18.11.1997. In the said decision, the Tribunal directed the Chief Personnel Officer of South Central Railway to examine the case and issue a suitable order. Pursuant to the direction of the Tribunal in OA No. 434/95, the applicant made a representation on 22.12.1997. The said representation of the applicant was disposed of by the Chief Personnel Officer by his letter dated 10.11.98 rejecting the claim of the applicant. It is against this order of the respondent that the applicant is before the Tribunal now seeking the following relief:-

" To issue direction to the respondents herein calling for records relating to the impugned proceedings NO.YP/121/Admn./T-Power, dated 10.11.1998 and quash the

le...

same with consequential directions to the respondents herein to reckon the seniority of the Applicant in the post of Head Clerk from 15.7.1986 for all purposes including promotion to the next higher post of Office Superintendent, Grade-II with effect from 1.3.93 on par with his juniors with consequential and attendant monetary benefits including arrears of pay and pensionary benefits."

2. The respondents have filed a detailed reply. Admittedly, the applicant was promoted as Head Clerk and posted to Purna vide order dated 15.7.86. It is averred in the reply that there were repeated representations from the General Secretary, South Central Railway Employees Sangh on many occasions for retention of the applicant at Lalaguda. Finally, the applicant was posted at Lalaguda with effect from 16.3.1987. It is also admitted that the seniority list of Head Clerks was published on 25.7.1991 (not on 26.2.93 as alleged in the OA) and the seniority of the applicant was correctly reckoned from 16.3.1987, the date the applicant had actually joined that post on promotion at Lalaguda. It is also admitted that the applicant had made a representation in the year 1993 and the same was rejected after careful consideration. It is further averred in the reply that the persons who were promoted to the grade of Office Superintendent had assumed the higher responsibilities as Head Clerk much earlier than the applicant and by virtue of entry into the grade of Head Clerk, they were seniors to the applicant. It is also stated that for selection for filling up the post of Office Superintendent Grade.II, the procedure of giving promotion by seniority-cum-suitability was observed and the applicant

h...

did not come up for consideration for want of seniority.

3. Heard both the sides and perused the records. The learned counsel for the applicant argued that the applicant at no point of time declined promotion. The promotion was ordered on 15.7.1986 after the duly constituted DPC approved the panel for promotion and, therefore, the seniority of the applicant should be reckoned by the position which the applicant occupies in the select panel prepared for promotion to the post of Head Clerk. This cannot be altered at will by the respondents, is the argument very strenuously put forward by the learned counsel for the applicant.

4. The learned counsel for the respondents cited various letters written by the South Central Railway Employees Sangh and pointed out that the applicant was indirectly bringing pressure on the administration for retention and ultimately succeeded in staying at Lalaguda on promotion. Therefore, his seniority has to be counted from the day he assumed the office as Head Clerk. The learned counsel also pointed out that the Chief Personnel Officer had elaborately discussed the matter while considering the representation of the applicant and rejecting the same vide letter dated 10.11.1998. Therefore, he prayed that the application be dismissed.

5. Admittedly, the applicant was promoted to the rank of Head Clerk vide order dated 15.7.1986. Though repeatedly it has been said in defence that the applicant did not join his new post immediately after the order was

h..


issued, there is nothing on record to show as to why and what prevented the respondents from relieving the applicant on his promotion to join the new post. In the same breath it can be also said as to why the respondents were silent and did not take<sup>o</sup> letter of refusal from the applicant since he was not going and joining the new post on promotion. These are matters which have been left to vague in the reply filed by the respondents. A point has been advanced that vide Para 224 of Indian Railway Establishment Manual, an employee refusing promotion expressly or otherwise, his seniority will be from the date of effect of promotion and he will be junior to all persons promoted earlier than him from the same panel irrespective of his panel position. This argument advanced by the respondents has not been fully explained. It is now admitted that the applicant did not give any letter in writing insofar as declining the promotion is concerned. Therefore, his category will be insofar as Rule 224 of IREM is concerned, in the residuary area. If so, the respondents ought to have produced proof of persons who were promoted earlier or later and who have joined as Head Clerk prior to the applicant so that the argument is complete. Surprisingly, no such details have been furnished by the respondents. In the absence of any such details, it is to be believed that between July 1986 and March 1987 no other promotion order to the grade of Head Clerk was issued and, therefore, nobody can supersede him. It is well settled law by now that the seniority position in any promotion will be governed by the position a person occupies in the panel and not the date actually joining on promotion. Persons promoted from the same panel may join the promotional post at various points of time for

h...

various reasons. It is for the administration to monitor implementation of the promotional order and if there is any undue delay in the case of any person joining promotional post, administration ought to have taken appropriate measures. After going through the details of this case, we are of the view that the administration have failed to take appropriate measures in this case. Instead of doing so, it is now sought to support their action by citing letters from the South Central Railway Employees Sangh which ought not to have exercised any influence in this regard. Having succumbed to some sort of external pressure at that point of time and ultimately accommodating promoted persons in the same station, it is now futile on the part of the respondents to argue that the applicant did not join the promotional post at Purna immediately. It can be also asked now as to what prevented the administration from either cancelling the promotion order or obtaining a declining letter from the applicant. Under these circumstances, we are not convinced of the arguments put forward by the respondents in support of their case. In the absence of any valid and strong grounds, the panel prepared for promotion shall be the only factor for determining the seniority and not the date of actual joining of that post by any of the promotee persons. Accordingly, the OA is allowed. The seniority of the applicant shall be reckoned from the date of issue of the promotional order i.e, with effect from 15.7.1986 for all

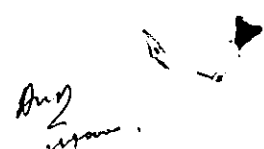
12..

purposes. The applicant is entitled for all benefits that will flow from the fixation of seniority with effect from 15.7.1986 in the post of Head Clerk. No order as to costs.

  
(S. MANICKAVASAGAM)  
MEMBER (ADMN.)

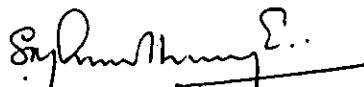
  
(D. H. NASIR. j)  
VICE CHAIRMAN

DATED: 21<sup>st</sup> JANUARY, 2000



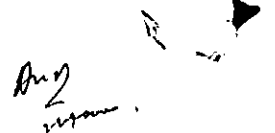
vsn

purposes. The applicant is entitled for all benefits that will flow from the fixation of seniority with effect from 15.7.1986 in the post of Head Clerk. No order as to costs.

  
(S.MANICKAVASAGAM)  
MEMBER (ADMN.)

  
(D.H.NASIR.j)  
VICE CHAIRMAN

DATED: 21<sup>st</sup> JANUARY, 2000



vsn