

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

HYDERABAD

O.A. No.1045 of 2012

Date of CAV:13.02.2018. Date of Order :16.03.2018.

Between :

N.V.N.Reddy, s/o N.Venkata Subba Reddy,
aged 41 yrs, Occ:Loco Pilot (Goods),
O/o the Chief Crew Controller,
South Central Railway, Guntakal Division,
Tirupati.

... Applicant

And

1. Union of India, rep., by the General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.

2. The Chief Personnel Officer,
South Central Railway, Rail Nilayam,,
Secunderabad.

3. The Senior Divisional Personnel Officer,
Guntakal Division, South Central Railway,
Guntakal.

4. L.Jagdeesh Babu, Occ:Loco Pilot (Goods),
O/o The Chief Crew Controller,
South Central Railway, Guntakal.

5. D.Suresh Kumar, Occ: Loco Pilot (Goods),
O/o The Chief Crew Controller,
South Central Railway, Guntakal. ... Respondents

Counsel for the Applicants ... Mr.K.R.K.V.Prasad

Counsel for the Respondents ... Mr.M.Brahma Reddy, SC for Rlys.

CORAM:

THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)

THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The applicant while working as Diesel/Electrical Assistant in Guntakal Division of the South Central Railway was given adhoc promotion as Goods Driver (presently called Loco Pilot (Goods), vide office order No.73/2000, dated 13.11.2000. While working as Goods Driver on adhoc basis, he appeared for regular selection as Goods Driver. According to the applicant even though he qualified in the selection, his name did not appear in the select panel dated 19.06.2001 for want of sufficient seniority. However, he was allowed to continue in the higher post of Goods Driver on adhoc basis.

2. The applicant submits that in the select panel dated 19.06.2001 there is a mention that the names of such selected candidates, who failed in the promotional course, will be deleted and that the size and seniority of the panel is likely to be altered. In view of this, he submitted a representation on 01.07.2001 requesting for inclusion of his name in the select panel dated 19.06.2001 since 8 selected candidates failed in the promotional course and could not be promoted as Goods Driver. After a delay of about 4 years, regular selection to the post of Goods Driver was made on 23.06.2005 and the applicant was regularized in the post of Goods Driver. Prior to his selection about 30 employees were inducted in the cadre of the Goods Driver on mutual transfer basis from different Railways and were shown as senior to the applicant in the provisional seniority list dated 11.01.2007. While the name of the applicant was shown at Serial No.62, the names of such employees who have come from other Railways were shown at Serial Nos.53, 54, 55, 56, 57, 58 and 59 in the said seniority list. The applicant submitted representations dated 6.02.2007, 25.02.2007 and 21.08.2008 including the filing of a petition in Lok Adalat held during February 2008. However, neither was any reply given nor any action taken.

3. In the meantime, another provisional seniority list was again issued on 20.05.2011 showing the names of the employees who have come on mutual transfer from other Railways as seniors to the applicant by assigning them seniority at Serial Nos.39, 40, 43, 44 and 45 and placing the applicant at Serial No.48. He submitted a representation on 21.06.2011 for revision of his seniority and to reckon his seniority from the date of his adhoc promotion. As the respondents did not give any reply, he filed O.A.No.1164/2011 which was disposed of on 21.11.2011 with a direction to the 3rd respondent to dispose of his pending representation. The applicant was also granted liberty to approach the Tribunal again if he is aggrieved. The 3rd respondent vide Annexure.A-I impugned letter dated 03.02.2012 informed the applicant that he has no claim for inclusion of his name in the panel dated 19.06.2001. Thus, his request for consequential benefit of seniority and promotion was rejected.

4. The applicant's contention is that though he submitted representations in respect of the seniority list dated 11.01.2007, the further provisional seniority list dated 20.05.2011 was published without carrying out any correction. Further, in view of the fact that since regular selections were delayed for several years and the applicant was allowed to continue on adhoc basis for about 4 years and 7 months, his adhoc service should be considered for the purpose of reckoning his seniority in the cadre of Loco Pilot (Goods).

5. From the reply statement filed by the respondents, it is seen that there is no serious dispute on the factual aspects of the case and the dates of the applicant's adhoc promotion on 13.11.2000 as well as regular promotion on 23.06.2005. The respondents, however, contend that a provisional seniority list of Goods Driver/Loco Pilot (Goods) in the pay scale of Rs.5000-8000/- was published on 31.12.2006 with a

direction to the employees to submit their representations, if any within one month from the date of issue of seniority list. As per Para 321 of IREM Volume-I, staff concerned can represent against the seniority position within one month of publishing the seniority list and no cases of revision of seniority list would be entertained beyond this period. In the said list, the applicant is shown at Serial No.62 duly indicating the date of his adhoc promotion as 15.12.2000 and regular promotion as 23.06.2005. The said seniority is fixed based on the applicant's regular promotion in the grade. As such the unofficial respondents 4 and 5 are placed at Serial Nos.53 and 54 with date of entry into the grade as 19.07.2001 and 22.10.2004 respectively. As the dates of entry of those respondents were earlier to the applicant, they were correctly shown above the applicant in the seniority list. The respondents also point out that although the applicant is allegedly aggrieved by the said placement in the seniority list below the respondents 4 and 5, he kept quiet all the while and never submitted any representation against the said placement in the seniority list. As such, the said seniority list has become final.

6. The respondents also state that another provisional seniority list dated 20.05.2011 was published, wherein the applicant was placed at Serial No.48 with the date of entry into the grade as 23.06.2005. The private respondents are placed at Serial Nos.39 and 40 with their date of entry as 19.07.2001 and 22.10.2004. In compliance of the orders of this Tribunal in OA.No.1164/2011, the representation of the applicant was disposed of by rejecting his request for the change of his seniority on the ground that the adhoc promotion would not confer on him any seniority benefit and that the date of regular selection alone would determine the seniority.

7. It is also submitted by the respondents that mutual transfer is permissible under the rules and the seniority of transferees is fixed as per the relevant rule. To support their contention, they cited Para 310 of the Indian Railway Establishment Manual (IREM), Volume-I, which stipulates that "*Railway servants who are transferred on mutual transfer shall take their seniority on the basis of the date of promotion to the grade or taking the seniority of the Railway servants with whom they have exchanged, whichever of the two may be lower*". The respondents point out that mutual transfer is permissible even in the intermediate grade and that, existing employees are not affected as the incoming employee will only take the slot of the outgoing person as per Para 310 of IREM and further even if there was no mutual transfer, the position of the applicant in the seniority list would continue to be the same and no undue benefit is conferred on the private respondents as alleged by the applicant. Further, the placement of the applicant and the private respondents 4 and 5 in the present seniority list dated 20.05.2011 is same as in the earlier seniority list dated 11.01.2007. As the applicant has not made any representation at the relevant point of time, no cause of action will arise on 20.05.2011. In other words, the cause of action in the present case arose on 11.01.2007 when the private respondents were placed above the applicant. It is also pointed out that when the applicant was regularly promoted in 2005, he never sought for promotion based on his adhoc promotion. From the seniority list dated 11.01.2007, it is seen that many officials who were initially promoted on adhoc basis were later promoted on regular basis. However, in no case, the date of adhoc promotion is taken as the date of entry for the purpose of seniority. It is also pointed out that the contention of the applicant that failure of some of the candidates would automatically give promotion to the applicant is not supported by rules. Though such warning is incorporated in the panel, a failed candidate can avail three chances to pass the promotional course at the cost of the administration and subsequent chances at his own cost.

8. Thus, the respondents submit that the applicant has no cause of action to challenge the seniority list dated 20.05.2011 as the position of the applicant in this seniority list vis-a-vis the private respondents is the same as in the seniority list dated 11.01.2007. Hence, the relief sought by the applicant has to be rejected on the ground of delay and laches and also limitation under the Administrative Tribunals Act. Further, the present relief sought by the applicant would unsettle the settled seniority of the Loco Pilots (Goods) and as such the same is unsustainable in law.

9. The respondents also state that the applicant never challenged the delayed selection to the post of Goods Driver and that the reason for the delay which occurred cannot be ascertained at this distant date.

10. The respondents lastly pointed out that the applicant was not included in the panel dated 19.06.2001 and that the non-inclusion in the said panel cannot be the subject matter of an OA in 2012, particularly when he entered the grade with effect from 23.06.2005. Further, when the applicant accepted the adhoc promotion and reaped the benefits of such promotion, he cannot now contend that the respondents should not have allowed him to continue on adhoc basis.

11. Heard the learned counsel on both sides and perused the record.

12. The question that falls for consideration in this OA is whether the applicant is entitled to the seniority in the cadre of Goods Driver with effect from the date of his adhoc promotion vide Annexure.A-III order dated 13.11.2000.

13. The main grounds advanced by the applicant in support of his claim for seniority with effect from the date of his adhoc promotion is that the respondents have inordinately delayed holding of the regular selection by a period of more than 4 years in violation of the extant DoPT instructions. He also relies on the office order dated 19.06.2001, wherein it is mentioned that the promotional course has to be passed within 8 months failing which the names of the persons would be deleted from the panel and they would have to appear in the next selection as and when held. According to him, 8 persons in the select panel of 19.06.2001 failed and therefore their names should be deleted and his name ought to have been included. The second contention of the applicant is that the respondents have erred in placing the Goods Drivers, who came on mutual transfer above him in the seniority list.

14. In this context, it is necessary to first observe that the applicant has failed to show any supporting rule or executive instructions or circulars to show that he is entitled to count his adhoc service as Goods Driver for the purpose of reckoning his seniority in the Goods Driver cadre. In the absence of any supporting rule or instructions, the claim of the applicant in the instant OA is without any foundation.

15. As regards the first contention, there is admittedly a mention in the Select Panel of 2001 that the persons in the panel would have to pass the promotional course failing which their names would be deleted from the panel. Applicant has also submitted a representation in this regard on 1st July, 2001. But the respondents have pointed out that even though there is a mention, as stated by the applicant, the failed candidates are given three chances to pass the promotional course at the cost of the Administration and subsequent chances at the employees cost. Even otherwise, the deletion of some names in the panel will not entitle the applicant to any automatic inclusion in the panel. Therefore, this plea is not tenable.

16. With regard to the second contention, the respondents have drawn our attention to Para 310 of IREM, which reads as follows:

"Railway servants transferred on mutual exchange from one cadre of a division, office or railway to the corresponding cadre in another division, cadre or railway shall take their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servants with whom they have exchanged, whichever of the two may be lower."

A reading of this provision shows that the seniority of the mutual exchange transferee will be either on the basis of the date of promotion to the grade OR the seniority of persons with whom the mutual transfer has been ordered. The applicant has failed to show that the persons who came on mutual transfer and were placed above him had been promoted later than him or that the persons with whom they have had a mutual transfer were his juniors.

17. From the reply statement, which has gone unrebutted, we note that the private respondents have been placed above the applicant even in the seniority list published on 11.01.2007.

18. The respondents have submitted that the applicant has neither represented against the seniority list published on 11.01.2007, nor represented against the seniority assigned vis-a-vis the employees who had come on mutual transfer and whose positions in the seniority list are now being assailed. Thus, having failed to do so, he cannot challenge the 2011 seniority list, which is based on the earlier seniority list of 2007. We are not inclined to wholly accept this contention in view of the fact that the applicant has produced certain acknowledgements which are available in the Annexures in token of such representations having been received by the

3rd respondent. Notwithstanding this, the fact remains that the applicant has not challenged the inaction of the respondents on his representations for revision of seniority at the relevant time. If the respondents failed to consider his representations against the seniority list dated 11.01.2007, he ought to have availed the legal remedies available to him. He has, however, failed to do so. It is also observed that in the Annexures.A-7, A-8 and A9 representations dated 6.02.2007, 25.02.2007 and 21.08.2008 respectively, against the provisional seniority list of 2007, he has never challenged the seniority given to the unofficial respondents. He has been mainly contending that he should have been included in place of certain empanelled Goods Drivers, who had declined their promotions and that his seniority should be revised taking into consideration the date of his adhoc promotion. In none of these representations has he claimed seniority against the unofficial respondents or for that matter any other person included in the provisional seniority list dated 11.01.2007. Hence, this becomes a stale claim, which cannot be admitted at this distance of time.

19. Further, it is a settled principle of law that any challenge to the seniority has to be done within a reasonable time and that unsettling the settled position after the efflux of much time is not in the best interest of administration.

20. In **K.R.Mudgal & Others vs. R.P.Singh & Others** (AIR 1986 SC 2086), the Hon'ble Apex Court has held as follows:

“Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties.”

It has also been held that:

“A Government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. It is unfortunate

that in this case the officials who are appellants before this Court have been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmful litigation should be discouraged."

21. In the instant case, the applicant is praying for revision of his seniority taking into consideration the adhoc service rendered by him in the cadre of Goods Driver with effect from 13.11.2000. By filing an OA in 2012 claiming seniority with effect from his adhoc promotion in 2000, the applicant would be unsettling the settled seniority. Such a prayer would not be permissible in the light of the ratio laid down by the Hon'ble Supreme Court as mentioned in Para 19 (supra).
22. Having regard to the aforesaid discussions, the OA is devoid of merit and is liable to be dismissed. Accordingly, the OA is dismissed. No order as to costs.

**(MINNIE MATHEW)
MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)**

Dated: this the 16th day of March, 2018

Dsn.