

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.021/1038/2015

Reserved on : 08.10.2018

Order pronounced on : 09.10.2018

Between:

B. Shankar, S/o. B. Chandriah,
Aged about 60 years, Occ: Retd. Senior Passenger Guard,
O/o. Station Superintendent, Kacheguda Railway Station,
Hydereabad Division, S.C. Railway, Secunderabad.

... Applicant

And

1. The Union of India, rep. by
The General Manager,
Rail Nilayam, III Floor,
S.C. Railway, Secunderabad – 500 071.
2. The Senior Divisional Personnel Officer,
Hyderabad Bhavan, Ground Floor,
Hyderabad Division, S.C. Railway,
Secunderabad – 500 071.
3. The Senior Divisional Operations Manager,
Hyderabad Bhavan, Ground Floor,
Hyderabad Division, S.C. Railway,
Secunderabad – 500 071.

... Respondents

Counsel for the Applicant ... Mrs. S. Anuradha

Counsel for the Respondents ... Mr. N. Srinivasa Rao, SC for Rlys

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)
Hon'ble Mr. Swarup Kumar Mishra ... Member (Judl.)

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA is filed for not granting the applicant's promotion to the post of
Mail Guard while promoting juniors to the applicant for the said post.

2. Brief facts of the case are that the applicant was appointed on compassionate grounds as Leave Reserve Parcel Porter in the respondents organisation on 22.9.1982. Thereafter he rose in the ranks and was promoted as Senior Passenger Guard on 21.2.2000. The applicant was shown as 'SC' candidate in the service records and he claims that despite representing regularly to rectify this error since 1992, it was not done. All throughout his career, applicant asserts that he was promoted on regular basis and not on reservation basis. The applicant was empanelled as per seniority list at SI No.5 for promotion to the post of Express/ Mail Guard vide lr dt 18.7.2006 but his name did not figure in the promotional order released on 3.7.2007. On informal inquiry it was informed that his caste status is being investigated and that his request is under consideration. Many juniors were promoted in the years 2009, 2012, 2013 and 2014 but he was not promoted till he retired in March 2015. Promotion to the Express/ Mail Guard is purely based on seniority and for having been denied the same, the present OA is filed.

3. The respondents state that the name of the applicant was kept in the select list for promotion to the Express Mail Guard vide lr dt 18.7.2006. Applicant was given promotions based on his 'S.C.' status which he accepted and that only after the All India SC/ST Association complained in the year 2005 that he has produced a bogus 'SC' certificate, applicant started representing to correct the error. As the applicant's SC status was under investigation he was not promoted and in the meanwhile the applicant has retired. The respondents contend that the applicant has been promoted as Passenger Guard in 1992 on the basis of his 'SC' status and thereafter as per seniority to Sr. Passenger Guard in 2001. Therefore the claim of the applicant he got promotions only on seniority is incorrect. The

respondents also inform that the applicant has represented only in 2005 and on 29.11.2010 to rectify his caste status after receipt of the complaint about his bogus SC certificate and when he was given notice about the caste status vide lr dt 10.11.2005. The respondents argue that though the applicant was aware that he was shown as an 'S.C.' candidate in Service Register yet he did not act to get it corrected earlier to the complaint. On the contrary he enjoyed benefits of promotion based on the SC status. Respondents claim that the applicant approached the Tribunal after retirement being apprehensive that there will be disciplinary action taken if he were to take up while in service.

4. Heard learned counsel and went through the documents placed on record.
5. The Ld. counsel for the applicant claims that the applicant has been representing to rectify the error from 1992 about his caste status but there was no action taken by the respondents and that he has earned the promotions in the normal course. Denying promotion to Express /Mail Guard for no fault on his part is unfair. In response the ld counsel for the respondents states that he availed promotions unduly using a bogus SC certificate and representing after a complaint was received is only a cover up. Pending investigation about the caste certificate he was not promoted.
6. The facts of the case reveal that the applicant did represent to rectify his caste status as per letters dt 22.11.2005, 16.2.2009, 29.11.2010 and 12.7.2013 but the respondents did not act. The letters pertaining to the years 2005 and 2010 have been acknowledged by the respondents in the above paras. Albeit, the complaint was received way back in 2005 the respondents failed to take any

action against the applicant for 10 years till he retired. It is surprising that even though the applicant has represented in 2005 that his caste be properly shown yet the respondents did place him in the select list for Express/Mail Guard on 18.7.2006 under SC status. When the matter was being investigated by the respondents and having issued show cause notice on 29.11.2005, it was incorrect to place him in the select list in 2006. Moreover, the applicant has been claiming that he has been representing from 1992 to correct his caste status and not doing so is the fault of the respondents. While in service he did represent but the respondents did not act. Therefore the applicant after retirement has every right to approach the Tribunal to render Justice, which the respondents claim it to be inappropriate. Having received a complaint about the caste status, without investigating the matter for years together and denying the promotion is irregular on part of the respondents. More so ,when the applicant has been representing to rectify the error over the years. In the reply statement nor during submissions, it was not made clear as to whether the applicant was promoted against a specific S.C vacancy and if so the details. Excepting to state that he was promoted based on SC status which the applicant has been hotly contesting. Inaction on part of the respondents cannot be a cause for penalising the applicant. Therefore the grievance of the applicant has to be attended to since he has been consistently representing that he has been given promotions in the normal course and not based on reservation quota.

7. In view of the foregoing the respondents are directed to consider as under:

- i) Investigate applicant caste status based on his representations to rectify the same and in case he was given promotions in the normal course based on seniority without considering the SC status, applicant be

given the promotion to the Express /Mail Guard from the date due along with consequential benefits by re-fixing the pension and other arrears which are due from the date he was supposed to be promoted as Express/ Mail Guard, consequent to this order

- ii) Based on the investigation, if it is found that the applicant did submit a bogus SC certificate and promotions were given based on the same before the complaint was lodged in 2005, the respondents are at liberty to proceed against the applicant under the relevant disciplinary rules and take action as deemed fit in the matter. If found conclusively that a bogus certificate was submitted and that the applicant did not bring it to the notice of the respondents to rectify the error before availing of benefits of promotion under reservation, clause (i) shall be inoperative.
- iii) Time frame fixed to comply with the order is 7 months from the date of receipt of this order.

8. In the result, OA is disposed of with the above directions. No order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 9th day of October, 2018

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