

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

Original Application No. 1190 of 2013

**Reserved on: 15.02.2019
Pronounced on: 22.02.2019**

Between:

B. Srinivasa Rao, S/o. B. Venkateswara Rao,
Aged about 37 years, Occ: Section Engineer (Tele),
South Central Railway, Vijayawada Division,
R/o. Near Railway Station, Ongole – 001, Prakasam District.

... Applicant

And

1. Union of India, Rep. by its Secretary,
Railway Board, Sanchalan Bhavan, New Delhi.
2. The South Central Railway,
Rep. by the General Manager,
Rail Nilayam, Secunderabad.
3. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.

... Respondents

Counsel for the Applicant	...	Mr. Siva
Counsel for the Respondents	...	Mr. Pavan Maitreya, Advocate for Mr. D. Madhava Reddy, SC for Rlys

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

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

2. Applicant is claiming the ante dating of his promotion from 2011 to 2009 in the grade of Section Engineer (Tele), through the OA filed.

3. Applicant joined the respondents organisation as Junior Engineer (Tele) Grade II in 2002. Thereafter he was promoted as Junior Engineer (Tele) Grade I in 2007. The next higher grade is Section Engineer (Tele). Selections were conducted in 2008 for Section Engineer (SE) (Tele) but no ST candidate got

selected and hence the one ST post was carried forward to the next selection as per memo dt 2.1.2008. In 2009 there were no selections for Section Engineer (Tele) from ST category. Later selections took place in 2011 and the applicant got selected as Senior Section Engineer (SSE) (Tele) on the basis of seniority cum fitness. Applicant through RTI found that the ST vacancy of Section Engineer of 2008 was not filled up even in 2009. Armed with this fact, applicant represented on 6.2.2012 seeking promotion as Section Engineer from 2009 instead of 2011. It was not considered and hence, the OA.

4. The contentions of the applicant are that being an ST candidate he should have been promoted against ST vacancy of 2008 in 2009 as per reservation policy along with others who were promoted in 2009. By not doing so the applicant is not only put to monetary loss but also in regard to seniority. The fact he was promoted as Section Engineer in 2011 would mean that he would have qualified even in 2009 for the said post.

5. Per contra respondents state that the OA is barred by limitation as the cause of action arose in 2009 and the OA was filed in 2013. No application was filed for condonation of delay. Besides, in 2009 when he was not selected as Section Engineer (Tele) or after 2011 when he made it to the grade of Section Engineer (Tele) he did not represent. Coming to facts, the respondents claim that, to be selected for Section Engineer, an employee's service records are to be in good stead and he has to pass a written test after completing the residency period of 2 years in junior engineer grade -1. In 2008, respondents do confirm that, an ST vacancy had to be carried forward for the next selection in the absence of any eligible candidate. Consequently, the roster point at Sl.46 in the sanctioned strength of 50 posts of SE (Tele) remained unfilled. However, with the implementation of the 6th CPC, posts of Section Engineer (Tele) and Sr. Section

Engineer (Tele) were merged. Due to the merger, 4 posts of SE(Tele) had to be reduced and hence the promotional quota of SE(Tele) posts got reduced from 50 to 46. As a result, 11 vacancies were assessed for promotional quota with the breakup of 8 UR, 3 SC and nil ST in 2009. Besides, as per *R.K.Sabarwal* Judgment, wherein it was held that the number of roster points will be equal to the number of posts in the cadre, the roster point at Sl 46 ceased to exist. Therefore, there being no ST vacancy, the contention of the applicant that he should have been considered for 2009 vacancy is incorrect. On 7.12.2011, he was promoted as SSE (Tele) based on suitability.

6. Heard the learned counsel. Perused the documents submitted. Submissions made were in accordance with the written material on record.

7. A. Primarily, the respondents raised the objection that OA is barred by limitation. It was answered by the applicant claiming that as he had to obtain information under RTI which took some time. Facts support his assertion. Regarding ST vacancy, it was admitted by the respondents that one vacancy of the said category was carried forward but due to merger of SE (Tele) and SSE (Tele) posts, there was no ST vacancy available in 2009. In response, learned counsel for the applicant contradicted it by stating that as per reservation policy, there are 8 ST posts against 7 ST employees in SSE cadre. Thus, one ST vacancy is yet to be filled up, which was not answered by the respondents. However, the issue is not about a vacancy but of an employee promotion being antedated.

B. Thus, to be precise, the issue is as to whether an employee has to be promoted when a vacancy arises. This issue is no longer *res-integra* as the Apex

Court has specifically dealt with this point in the case of *Union of India vs N.C.*

Murali, (2017) 13 SCC 575 and held as under:-

“13. From the materials brought on the record, it is clear that there were no statutory rules governing the promotion at the relevant time. It is although desirable that DPC should be convened at regular intervals to draw panels which could be utilised for making promotions against the vacancies. But neither any rules nor any circular have been referred to by which it can be held that the promotions whenever to be effected should be effected w.e.f. the date of the vacancy. The Circular dated 10-4-1989, Paras 3.1 and 6.4.1, as reproduced above, also do not indicate that in case DPC is not held by any reason in a year, promotions on the basis of subsequent DPC has to be retrospective.

14. The judgment on which the learned counsel for the appellants has placed reliance i.e. *K.K. Vadera*, also do support the submission raised by the learned counsel for the appellants. Para 5 of the judgment states as follows:

“5. There is no statutory provision that the promotion to the post of Scientist ‘B’ should take effect from July 1 of the year in which the promotion is granted. It may be that, rightly or wrongly, for some reason or other, the promotions were granted from July 1, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientists ‘B’ should be with effect from the date of the creation of these promotional posts. **We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way, when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted.** If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”(emphasis supplied)

15. With regard to the seniority, the judgment which has been relied on is *Ashok Kumar Srivastava* in which this Court in paras 24 and 25 laid down that the retrospective seniority cannot be conferred, which read as follows:

“24. The learned Senior Counsel for the appellants has drawn inspiration from the recent authority in *Pawan Pratap Singh v. Reevan Singh* where the Court after referring to earlier authorities in the field has culled out certain principles out of which the following being the relevant are reproduced below:

‘45. (ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

* * *

(iv) **The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules.** It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.’ (*emphasis supplied*)

25. In view of the aforesaid enunciation of law, the irresistible conclusion is that the claim of the first respondent for conferment of retrospective seniority is absolutely untenable and the High Court has fallen into error by granting him the said benefit and accordingly the impugned order deserves to be lanced and we so do.”

16. The learned counsel appearing for the appellants also placed reliance on the judgment of this Court in *Nirmal Chandra Sinha v. Union of India*. Para 7 of the judgment reads as follows:

“7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide *Union of India v. K.K. Vadera, State of Uttaranchal v. Dinesh Kumar Sharma, K.V. Subba Rao v. State of A.P., Sanjay K. Sinha (2) v. State of Bihar*, etc.”

17. In view of the law laid down in the abovementioned cases, *it is clear that unless there is specific rule entitling the applicants to receive promotion from the date of occurrence of vacancy, the right of promotion does not crystallise on the date of occurrence of vacancy and the promotion is to be extended on the date when it is actually effected.* (*emphasis supplied*)

18. However, there may be cases when the promotions have to be retrospectively made with or without financial benefits. A well-known example of giving retrospective promotion is cases of sealed cover procedure when the recommendations are kept in sealed cover procedure awaiting the outcome of disciplinary proceedings. There may be other

circumstances in which a person is entitled to be given the benefit of retrospective promotion including a case where statutory rules mandates effecting promotion by particular time or on occurrence of vacancy.

19. The present is a case where admittedly DPC was not held from 1984 till October 2001. Although various reasons have been given by the appellants for not holding DPC, it is not necessary for us for the purpose of this case to enter into such reasons to find out as to whether there is any justification for not holding the DPC for the relevant years. Suffice it to say, the promotions having been effected after DPC was held and those who were entitled have been given promotions, the litigation initiated by the respondents before the Tribunal should have been closed. The directions of the Tribunal to give retrospective pro forma promotion and retrospective seniority w.e.f. the date of vacancy when they were eligible, ought not to have been issued. However, taking into consideration the fact that the said promotions were effected in 2001 and after the order of the Tribunal in 2003, the benefit of retrospective pro forma promotion was also extended by the Government in compliance with the order of the Tribunal, benefit of which order had been availed of by the respondents who were promoted and most of them having already been superannuated, at this distance of time, we are not inclined to interfere with the order of the Tribunal as affirmed by the High Court.”

B. Telescoping the above law laid down by the Apex Court on the fact of the instant case, there being no statutory rules to afford ante dated promotion from the date of availability of vacancy, the question of acceding to the claim of the applicant for retrospective promotion from the date of availability of vacancy does not arise. The OA, being devoid of merits, merits only dismissal which, we accordingly order so.

C. Rest of the issues like OA being barred by limitation, is well answered by the applicant claiming that as he had to obtain information under RTI which took some time. Facts support his assertion. Regarding ST vacancy it was admitted by the respondents that one vacancy of the said category was carried forward and that due to merger of SE(Tele) and SSE (Tele) 4 posts of SE (Tele) were reduced leading to deletion of ST roster point No. 46. Consequently, there was no ST vacancy in 2009. In response, the learned counsel for the applicant has pointed out that 7.5% of 102 posts of SSE(Tele), would work out

to 8 posts and that there are only 7 ST employees in SSE cadre still leaving one ST vacancy to be filled up. This was not answered by the respondents. However, the issue is not about a vacancy but of an employee promotion being antedated.

D. In view of the above, the OA is dismissed. However, under the circumstances, there shall be no orders as to costs.

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

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

Dated, the 22nd day of February, 2019

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