

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

Original Application No.832 of 2017

**Reserved on: 11.03.2019
Pronounced on: 26.04.2019**

Between:

G. Ramesh, Aged 45 years,
S/o. late Venkati Ramaiah,
Jeep Driver Tech. II (Group C),
H. No. 1-10-147/1, Near Wearhouse,
Girnigadda, Jangaon, Warangal District.

... Applicant

And

1. Union of India, Rep. by
The General Manager,
South Central Railway,
Rail Nilayam, 3rd Floor,
Secunderabad – 500 025.
2. Divisional Railway Manager,
South Central Railway,
Secunderabad Division, Secunderabad.
3. Sr. Divisional Personnel Officer,
South Central Railway,
Secunderabad Division, Secunderabad.
4. Sr. Divisional Engineer,
South Central Railway,
Secunderabad Division, Secunderabad.
5. Sr. Divisional Signal and Telecommunication Engineer,
South Central Railway,
Secunderabad Division, Secunderabad.

... Respondents

Counsel for the Applicant ... Mr. G. Trinadha Rao

Counsel for the Respondents ... Mrs. Vijaya Sagi, 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 challenging the order of the 2nd respondent reverting him from the post of Jeep Driver Grade II in GP Rs.2400/- to the grade of Jeep Driver Grade III in GP Rs.1900/- vide order dated 9.6.2017.

3. Applicant, while working as Trackman in the Civil Engineering Department of respondents organisation, was promoted as Jeep Driver Tech III by a duly constituted committee vide letter dated 20.1.2006. Thereafter, applicant was granted a interdepartmental transfer to S&T wing vide letter dated 13.5.2008. Further having been found fit by a Committee applicant was promoted to the post of Tech II with the grade pay of Rs 2400 and was retained as Vehicle driver vide letter dated 7.10.2015 along with 10 others. Applicant put in 11 years of service as grade III &II driver. As per the applicant version, on being promoted to the post of Jeep driver in grade II in a substantive capacity the lien of the applicant in civil engineering department seizes. However, respondents reverted the applicant to grade III with a grade pay of Rs 1900 on 9.6.2017 and repatriated him to the Civil Engineering department on grounds that the promotion to grade II was erroneously granted, without the following the minimum procedure of issue of a notice and that after rendering 11 years service as driver. Aggrieved OA has been filed.

4. Applicant asserts that reversion to a lower post cannot be done without issue of notice. Disciplinary rules are to be followed to demote an employee. Impugned order does not give reasons as to how the promotion is erroneous even after a duly constituted DPC has promoted the applicant. Thus the Impugned order was issued against the Principles of Natural Justice. Having been selected to the post of Grade III and Grade II in years 2006 and 2015 on immediate

absorption and on substantive basis applicant acquires lien against the new posts and that his lien in the Civil Engineering Department ceases. Therefore, he cannot be repatriated to the Civil Wing Department.

5. Respondents in the reply statement state that though the applicant originally belongs to the civil engineering department his seniority was erroneously maintained in Tech III of ancillary category of the S&T Department and given promotion to Jeep Driver Grade II with grade pay of Rs 2400 vide lr dated 7.10.2015 on a substantive basis. Applicant on passing the trade test was selected against the post of Jeep Driver Grade III on an adhoc basis vide letter dated 20.1.2006 and not on a substantive capacity. With the approval of DRM the applicant was transferred to S&T wing in Aug 2008 and in his place Sri Sadanandam from the S&T wing was posted in the civil Engineering dept in the grade of Jeep Driver Grade III with his lien retained in the S&T Wing. The promotion of the applicant in the S&T wing to grade II was erroneous and as per Rule 228 I & II of IREM such erroneous promotions can be rescinded. Accordingly, applicant was repatriated to Civil Engineering dept in officiating capacity in grade III. Even as per lien rules the lien of the applicant continues in the Engineering department who has been erroneously promoted to the cadre of grade II jeep driver. The action of the department is as per Principles of Natural Justice since an ineligible candidate should not be promoted and that para 228 of IREM provides for correcting erroneous orders without giving any notice. The action is not punitive. Disciplinary action would be initiated only when a Govt. servant conducts himself in a manner unbecoming of Govt. Servant, which is not the issue in the instant OA. Respondents action being in accordance with rules is maintainable.

6. Heard both the counsel and went through the documents/material papers placed on record.

7. I. The issue is about reversion of the applicant after grant of promotion to Grade II Jeep Driver with grade pay of Rs.2400. Applicant on being transferred to the S&T wing was promoted by a duly constituted DPC in 2015 in a substantive capacity. Even the earlier promotion of the applicant as Grade III driver as per memo dated 20.01.2006 of the respondents does not speak that it is an adhoc promotion. In the absence of the same, the promotion has to be treated as a regular one. Respondents cannot interpret in a way extraneous to the contents of the order. Even for a moment if we accept the respondents contention it was an adhoc appointment, it cannot go on endlessly. The very fact that the applicant, having possessed due qualifications was selected as per procedure and by the competent authority, was allowed to continue on an adhoc basis in grade III for a long period spanning nearly 9 years, would imply that the post was required regularly for operational reasons but for the inaction on part of the respondents to fill it up on a regular basis, it was continued on adhoc basis. Adhocism is repugnant to administrative efficiency and leads to litigative laterals. Law does not up hold such an arrangement as was pronounced by the Hon'ble Supreme Court in State of M.P. v. Dharam Bir, (1998) 6 SCC 165 as under:

“20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be “stopgap or fortuitous or purely ad hoc”.

Applicant has worked in Grade III and Grade II Driver for more than a decade. After working in a substantive capacity as per orders of the respondents, they reverted the applicant on the ground that the order issued is erroneous. As per

Para 240 of IREC in regard to lien, an employee on transfer to a different department on absorption basis cannot retain his lien. Further, the applicant was promoted to the post of Jeep Driver Gr. III by a duly constituted DPC in a substantive capacity. Besides, Sri Sadanandam who was transferred to the Civil & Engineering department, was shown in the seniority list of the said department and was also granted promotion as Grade –I. If Mr Sadanandam is holding lien in S&T Wing, he could not have been shown in the Civil Wing. Besides, this Tribunal has stayed the reversion of the applicant and when such an order is in vogue, the respondents did not answer as to why Mr Sadanandam was promoted when his transfer is linked to that of the applicant.

II. Respondents claimed that the order of promotion being erroneous they have reverted the applicant invoking para 228 of IREM provision which is reproduced below:

“228. Erroneous Promotions.

(I) Sometimes due to administrative errors, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:

- (i) Where a person has not been promoted at all because of administrative error, and
- (ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.”

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual

promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts.

(III) In pursuance of Rule 1326-R.II, 1987 Edition the following provisions shall govern the pay and increments of the Railway servant whose promotions or appointments in a substantive or officiating capacity to a post is later found to be erroneous on the basis of facts.

(a) The orders of notification of promotion or appointment of a railway servant should be cancelled as soon as it is brought to the notice of the appointing authority that such a promotion or appointment has resulted from a factual error and the railway servant concerned, should, immediately on such cancellation, be brought to the position which he would have held but for the incorrect orders of promotion or appointment.

In the case, however, of a railway servant, who has been erroneously promoted and appointed to a post in a substantive capacity, procedure prescribed in Board's letter No. E5O/RCI/16/3 dt. 23-7- 1954 for rescinding the irregular confirmation of a railway servant should be followed/and only thereafter the railway servant concerned should be brought down to the position which he would have held but for the erroneous promotion/ appointment by the issue of orders as mentioned above. Service rendered by the Railway servant concerned in the post to which he was wrongly promoted/appointed, as a result of the error should not be reckoned for the purpose of increments or for any other purpose in that grade/post to which he would not normally be entitled but for the erroneous promotion/appointment.

(b) Any consequential promotion or appointments of other railway servants made on the basis of the incorrect promotion or appointment of a particular

railway servant will also be regarded as erroneous and such cases also will be regulated on the lines indicated in the preceding paragraph.”

IV. Principles of Natural justice require that nobody should be condemned without being heard. Rules of Erroneous appointment state that each case has to be dealt on its own merit. In the instant case the minimum measure of issuing a notice was not followed. On the contrary respondents claim that the Principles of Natural justice would be violated, if an ineligible employee is granted a benefit which ought not to have been given as per rules. This is surprising even, if applicant were not to be given the benefit, as per law, he need to be informed as to why a given benefit is withdrawn. Claiming that para 228 of IREM does not envisage such notice is invalid in the eyes of law. The cancellation of appointment without notice in a higher grade has to be held to be invalid, in accordance with the observation of the by Hon’ble Apex Court in *Rajendra v. State of Maharashtra*,(2008) 11 SCC 90, as portrayed below:

“We also disapprove the action taken by the second respondent in abruptly cancelling the approval even without hearing the appellant or, as the case may be, the Managing Committee.”

Even the lien once created cannot be changed as per lien rule 242. Further, respondents need to question themselves as to who has issued the order. It was proper and appropriate to proceed against those who issue wrong orders and do not rectify for years on. Instead of doing so proceeding against a lower rung official like the applicant for no fault of his, is disturbing to note and that too by a model employer like the respondents organisation which is the pride of the Nation. A model employer should be fair and should not dash the hopes of the employees lest it would lead to despair. Legitimate aspirations of the employees are to be respected with sincerity and genuine concern. We are sure that the

respondents organisation would draw inspiration from the observation of the Hon'ble Apex Court in Secretary, State of Karnataka vs. Umadevi And Others, (2006) 4 SCC 1, in regard to the role of a model employer.

*53. We have stated the role of the State as a **model employer** with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a **model employer** should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more.*

V. Moreover, the applicant having worked as Jeep Driver for more than a decade in a substantive capacity can his seniority be unsettled after many years. It cannot, since it will have a far reaching impact on the career of the employee. A settled issue cannot be unsettled after lapse of many years. Applicant was promoted to the post of Jeep Driver Grade III in 2006, went on transfer to S&T wing in 2008 and got promoted as Jeep Driver Grade II in 2015. Reverting him vide Impugned order dated 09.06.2017 after much water flowed in river Ganga, is therefore incorrect. Respondents on their own volition have promoted the applicant after following rules and regulations and that too by a competent authority, in order to meet their requirement in the field. Applicant has acquired sufficient seniority in the grades. Demoting such an employee after being paid higher pay for years together and shown senior will be a difficult preposition to accept as it defies the logic of rationality. Once made Senior as per rules he shall be senior unless the applicant commits an act of misconduct which permits the respondents demote him. Admittedly respondents state that the decision is not

punitive and therefore the seniority acquired by the applicant in the grades referred to has to be respected by a Model Employer, like the respondents organisation which is a glittering jewel in the crown made of the Public Sector Organisations. We take support of the Hon'ble Apex Court in CA Nos. 7537-7541 of 2009, vide judgment dated 12.11.2009, in Shiba Shankar Mohapatra & ors Vs. State of Orissa & ors, while making the above observation, as under:

“16. The question of entertaining the petition disputing the long standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in Ramchandra Shanker Deodhar & Ors. v. State of Maharashtra & Ors. AIR 1974 SC 259, considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the Court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in Tilokchand Motichand v. H.B. Munshi, AIR 1970 SC 898, wherein it has been observed that the principle, on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under:-

“A party claiming fundamental rights must move the Court before others' rights come out into existence. The action of the Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of person moving the court.”

VI. Further, Hon'ble Supreme Court in Civil Appeal No. 2439 of 2010, between H.S. Vankani & Ors Vs. State of Gujarat & ors, observed as under:

“25. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and Government, driving the parties to acute penury. It is well known that salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further it also consumes lot of judicial time from the lowest court to the highest resulting in constant bitterness among parties at the cost of sound administration affecting public interest. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. “

Recently, Principal Bench of this Tribunal in OA No. 1313/2016, vide order dated 06.02.2019, has held as under:

“10. In so far as the issue of seniority is concerned, as already observed above, it has been raised belatedly without explaining any reason thereof and further it is well settled by various decisions of the Supreme Court that seniority questions cannot be permitted to be agitated after a lapse of a number of years. ..”

It should also not be lost sight of that the mistake was committed by the respondents and for their mistake making the applicant suffer is against the legal norm set by the Hon’ble Supreme Court in the following judgments:

(a) *A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust*, (2010) 1 SCC 287

“they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.”

(b) *Rekha Mukherjee v. Ashis Kumar Das*, (2005) 3 SCC 427:

36. *The respondents herein cannot take advantage of their own mistake.*

(b) The Apex Court has also decided on 14.12.2007 (*Union of India vs. Sadhana Khanna*, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees.

We often find that the respondents commit mistakes and claim that it is a innocuous mistake but they need to be empathetic about what goes on in the psyche of an employee who is compelled to undergo the humiliation of demotion even though he was qualified and promoted after going through the rigors of selection coupled with doing work with sincerity and commitment without a blot on his career for years together for his mother organisation. Social and peer pressures

work upon the employee leading to demoralisation and it invariably sends a wrong signal to others that any day the promotions attained by them are liable to be cancelled because somebody somewhere in the organisation has committed a mistake. It would come like a bolt from the blue before they hang up their boots as in the instant case. The officer who has granted the promotion or the Committee has to be found fault with but not the small fries like the applicant who have little knowledge of the complex rules of the respondents organisation. Instead of treating the cause respondents are treating the symptoms which is no cure whatsoever, since as long as the cause survives the symptoms keep surfacing. We say no more than this.

VII. Therefore the action of the respondents is against lien rules, arbitrary and illegal. The action of the respondents is against the observations of the Hon'ble Supreme Court cited supra. Therefore impugned order cited supra is quashed. Consequently, respondents are directed to consider as under:

- i) To treat the promotion of the applicant to the grade of Jeep Driver Grade II as regular from the date he was promoted to the said grade vide memo dt.7.10.2015.
- ii) Applicant shall continue to work in S&T wing as per seniority assigned and due to him in this wing, unless and until he is required by the respondents to have him in other wings without disturbing the promotions acquired and seniority attained till date.
- iii) OA is accordingly allowed. No order as to costs.

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

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

Dated, the 26th day of April, 2019

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