

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.763/89.

Date of Judgment 2.5.91.

D.N.Murthy

.. Applicant

Vs.

1. Asst. Mechanical Engineer,
South Central Railway,
Rajahmundry.
2. Senior Divisional
Mechanical Engineer(Loco),
South Central Railway,
Vijaywada.
3. Divisional Railway Manager,
South Central Railway,
Vijaywada.
4. General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.

.. Respondents

Counsel for the Applicant : Shri G.V.Subba Rao

Counsel for the Respondents: Shri N.R.Devaraj,
SC for Railways

CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl)

Hon'ble Shri R.Balasubramanian : Member(Admn)

[Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn)]

This application has been filed by Shri D.N.Murthy against
the Asst. Mechanical Engineer, South Central Railway, Rajah-
mundry and 3 others under section 19 of the Administrative
Tribunals Act, 1985.

2. The applicant who was serving as Driver 'A' became sick and consequently on medical grounds he was posted as Power Controller in the Loco Shed, Rajahmundry on adhoc basis for a period of six months vide Divisional Superintendent, Vijaywada letter No.B/P.535/III/4/Vol.9 dated 17.7.76. Although the period for such posting was only six months he continued there till August, 1988. It is the applicant's case that the respondents have failed to subject him to a medical examination after the expiry of six months indicated in their letter of 17.7.76 and as a result he lost the running allowance which he was getting as a Driver and which was denied to him on stationary duty as Power Controller in the Loco Shed. He made a representation on 16.9.87 requesting that he may be sent for a medical check-up to go back to his Driver's cadre. The medical examination was arranged and he was declared medically fit for Driver's duties on 18.3.88. According to him, the respondents instead of straightway posting him to the Driver's duties waited for some more time and deputed him for training in the zonal training school which he could complete in June, 1988. Thereafter, he was reverted back to the Driver's cadre on 14.8.88 and retired from service on 28.2.89. His pension was fixed taking into account the pay and running allowance he had been drawing in the ten months preceding his date of superannuation. He is aggrieved that there had been delay on the part of the respondents at every stage and as a result he had lost in terminal benefits. It is prayed that the

93

respondents fix his pay and pension in the cadre of Driver 'A' from the date he was medically found fit i.e., 18.3.88 till the date of his retirement on superannuation on 28.2.89 treating the entire period as one of continuous service rendered in the running cadre as Driver 'A' and consequently re-fix his pension taking into account the average emoluments which he would have drawn had he functioned as Driver 'A' including the running allowance.

3. The respondents opposed the prayer. It is pointed out that his posting as Power Controller was only to suit his conditions of health on medical grounds in the same scale. He was not actually medically decategorised. It is also pointed out that though the initial order was only for six months the applicant intentionally kept quiet for a period of nearly 11½ years and it was only in September, 1987 that he made the first ever representation requesting to post him back as Driver. It is also pointed out that soon thereafter they arranged for medical examination. It is contended that merely being certified medically fit would not automatically enable them to put him back into operational duties like driving, more so when he had been out of touch with such service for well over a decade. This endangers public safety and hence they had to send him for refresher course. It is also contended that even regular staff are periodically withdrawn and sent for training to undergo a refresher course. Such being the case, the need for training was all the more necessary in the case of the applicant who had been

9.2

out of touch with driving for a long time. Soon after he came out of the three week training course and as soon as a post in the Driver's cadre was available and as soon as they were in a position to post him as a Driver they had posted him as a Driver and he joined duty on 14.8.88. When he retired, his pension was fixed in accordance with the rules taking into account the average of the emoluments in the preceding ten months.

4. We have examined the case and heard the learned counsel for the applicant and the respondents. The applicant has no doubt lost on account of the running allowance not having been paid to him. If he had been in receipt of it for at least ten months preceding the date of superannuation he would have been considerably benefitted in terms of terminal benefits but that was not the case. We have now to see whether this is on account of the respondents ^{inaction.} ~~alone.~~ We find from the letter dated 17.7.76 that the applicant was posted purely on adhoc basis as Power Controller. While he was drawing Rs.675/- only as a Driver he was posted to officiate as Power Controller on a pay of Rs.750/-. The posting was for a period of six months at the end of which he was to revert to the running cadre after being declared fit by the Medical Superintendent, Vijaywada. It is seen that the applicant was not decategorised in which case the posting would have been permanent whereas in this case it was only a temporary one for six months to suit the health conditions of the applicant. It is true that the

9.3

Railway Administration did not keep track of the matter and subject him to a medical test after six months. But then, the applicant who had been losing the running allowance should have felt the pinch and should have asked for the medical examination and reversion back to the Driver's cadre if not immediately after the six months period at least after a reasonable time when he felt ~~that was~~ better to discharge the Driver's duties. He kept quiet and it was well after 11½ years he made the first representation on 16.9.87. In the application he had stated that he had been making requests off and on for being subjected to medical examination and reversion back to his post as Driver and that when there was no response then only he sent a letter on 16.9.87. The respondents deny that he ever made a representation orally. It is seen from his letter of 16.9.87 that there is no reference whatsoever to his earlier representations—~~even though~~ oral. All that the letter states is that he was due to retire shortly and to protect his retirement benefits he wanted his posting back as Mail Driver. From this it is clear that all these years he was not ^{keen} ~~anxious~~ to revert back to the Driver's post and only towards the end of his career he felt the urge to have better retirement benefits and started pressing for reverting to the post of Driver from 16.9.87 onwards. As for the training, he contends that he should not have been sent for such training at all. We do not agree with this since when the Railways ~~are~~ ^{to} impart refresher training even to the running staff

R.B.

40

it is absolutely inescapable that a person who had been out of touch ^{with} ~~for~~ running of trains should be subjected to satisfactory training in the interests of passenger safety. The applicant has been contending in the rejoinder as well as the additional affidavit that even if that was the case he should have been sent for training immediately he was declared fit in March, 1988. This is a matter of availability of seats in the Training Centre and we do not hold the respondents responsible for the short delay between March, 1988 and June, 1988. After completion of the training, the respondents had posted him back as Driver within as short a time as possible after finding out vacancy in the cadre of Drivers and after making suitable arrangement in the Power Controller's job. Thus, we cannot hold the respondents responsible for the ^{delay in the applicant reverting back to} ~~applicant not getting the benefit of the~~ the Driver's post. ~~running allowance~~

5. In the course of the hearing the learned counsel for the applicant mentioned that even though a person performs the duties of Power Controller he is still eligible for the running allowance. We asked the learned counsel for the applicant to produce any rule according to which persons discharging the duties as Power Controller are also eligible for the running allowance. The payment or otherwise of the running allowance would make a substantial difference to the applicant. The applicant has not been able to produce any order according to which he is entitled to the running allowance when he was performing the duties of Power Controller. In the additional affidavit filed by the

23


To

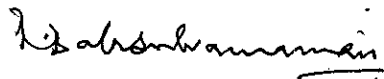
1. The Asst. Mechanical Engineer,
South Central Railway, Rajahmundry
2. The Senior Divisional Mechanical Engineer (Loco)
S.C.Railway, Vijayawada
3. The Divisional Railway Manager, S.C.Rly, vijayawada.
4. The General Manager, S.C.Rly, Railnilayam, Secunderabad.
5. One copy to Mr. G.v.Subba Rao, Advocate CAT.Hyd.
6. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
7. One copy to Hon'ble Mr.J.Narasimha Murty, (M)(J) CAT.Hyd.
8. One copy to Hon'ble Mr.R.Balasubramanain, Member(A)CAT.Hyd.
9. One spare copy.

pvm

applicant he has stated that S/Shri M.J.Raju, S.V.S.Prasad and Md. Anwar Ali who were Drivers working under the control of the Asst. Mechanical Engineer, Rajahmundry got the benefit of 55% of the running allowance when their services were utilised as Power Controllers. We are not sure whether the circumstances under which their services were utilised ^{were} ~~are~~ similar to that under which the applicant had to be posted on medical grounds. The applicant has not been able to produce any rule but has been able to cite only certain examples. Although ~~we find that~~ the applicant has not established clearly any case that the respondents had unjustly denied him the running allowance when he was functioning as Power Controller, ~~since~~ he has cited some cases. We therefore direct the respondents to re-examine the case and if the circumstances under which they had paid the running allowance to Drivers functioning as Power Controllers are the same as in the case of the applicant the benefit of the running allowance should be extended to the applicant also. The respondents are directed to complete this re-examination within three months of receipt of this order.

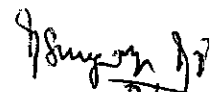
6. With the above direction, the application is disposed of with no order as to costs.


(J.Narasimha Murthy)
Member(Judl).


(R.Balasubramanian)
Member(Admn).


Dated

2nd May 91.


Deputy Registrar (5)

Xerox
8
TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH:HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA: V.C.

AND

THE HON'BLE MR. D. SURYA RAO: M(J)

AND

THE HON'BLE MR. J. NARASIMHA MURTHY: M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATED: 2nd 5-1991.

~~ORDER~~/ JUDGMENT.

M.A./R.A./C.A.No.

in

T.A.No.

W.P.No.

O.A.No.

763/89

Admitted and Interim directions
issued.

Allowed.

Disposed of with direction.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

