

(47)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 63/89.

Date of Decision : 1.8.1991.

T.A. No. -

A. Laxminarayana

Petitioner.

Shri G. Gopala Reddy

Advocate for the
petitioner (s)

Versus

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

Respondent.

Shri N.R. Devaraj,
SC for Railways

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. J. Narasimha Murthy : Member (Judl)

THE HON'BLE MR. R. Balasubramanian : Member (Admn)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgment ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HJNM
M(J)

HRBS
M(A)

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.63/89.

Date of Judgment 1.8.1991.

A.Laxminarayana

.. Applicant

Vs.

The Chief Personnel Officer,
South Central Railway,
Rail Nilayam,
Secunderabad-500371. ... Respondent

Counsel for the Applicant : Shri G.Gopala Reddy

Counsel for the Respondent : 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 A.Laxminarayana
under section 19 of the Administrative Tribunals Act, 1985
against the Chief Personnel Officer, South Central Railway,
Rail Nilayam, Secunderabad-500371.

2. The applicant joined the Railways as Asst. Inspector of
Works on 1.10.64 after apprenticeship. He was later selected
by the National Projects Construction Corporation (N.P.C.C.)
in the year 1977 and relieved on 6.10.77. He requested the
Railways to maintain his administrative lien for a period of
two years. Later, he wanted extension of this lien for
some more time. Eventually he was absorbed by the N.P.C.C.

in public interest w.e.f. 1.5.80 and the lien was suspended by the Railways w.e.f. that date. It is stated that he had been contributing for Foreign Services Contribution to the Railways. The applicant has been requesting the Railways to confirm him, since then only he can get the retirement benefits. By their impugned order No.P/E/263/Outdoor Staff dated 30.6.88 the General Manager's Office, Secunderabad informed the applicant that his request for confirmation as on 1.5.80 was not permissible in terms of instructions issued by the Railway Board under their reference No.E(NG) 56 CN 5-16 dated 19.9.59. Against this impugned order the applicant has filed this application praying that this order of 30.6.88 be quashed and that he be confirmed in the Railways prior to 1.5.80 and given all the consequential benefits.

3. The application is opposed by the respondents. It is their case that as early as in February/April, 1980 the applicant was informed that it was not possible for the Railways to confirm him for want of adequate permanent posts. The applicant has contended that his initial selection by the Railway Service Board must be against a permanent post but the respondents contend that recruitment through Railway Service Commission/Railway Recruitment Board is no indication that the candidates are recruited for permanent posts. After taking into account various factors such as number of sanctioned permanent/temporary/work-charged vacancies likely to arise in the next one or two

would be advised of the number of candidates required.

No candidate is appointed against a permanent post after completion of training. The confirmation of staff depends on availability of substantive posts and will be done in a particular order. Since the applicant could not be confirmed before 1.5.80 he was not entitled to any terminal benefits.

4. We have examined the case including the Railway records and heard the learned counsel for the applicant and the respondents. It is seen that when the applicant was selected by the N.P.C.C. he asked the respondents on 1.10.77 (A.15) to give him a lien of two years. He was relieved by the Railways by an order dated 6.10.77 (A.14). According to this order he was granted an administrative lien for a period of two years. It was also stipulated that on expiry of this period he should either return to the parent department or resign the post in the Railways if he is not permanently absorbed in the N.P.C.C. within a period of two years. By his letters dated 1.3.78 and 26.12.79 (A.13 and A.12) the applicant requested the Railways to confirm him. By their letters dated 2.2.80 and 8.4.80 (A.11 and A.10) the Railways replied him stating that it was not possible for them to confirm him since his turn for confirmation had not come. It was also intimated that there were still 157 persons senior to him and awaiting confirmation. The applicant was also reminded of the stipulation in the letter dated 6.10.77 and was informed that no retirement benefits would accrue to him from the Railways since he could not be confirmed. The Railways

came to know about the absorption w.e.f. 1.5.80 for the first time through a letter dated 2.12.81 (A.9) from the N.P.C.C. Accordingly, by a letter dated 6.4.82 (A.8) the Railways terminated the lien of the applicant w.e.f. 1.5.80. Again, on 10.9.86 (A.5) the applicant addressed the Railways pleading for confirmation even on out of turn basis as a special case simply to enable him to get the financial benefits. This was turned down by the respondents by their letter dated 1.1.87 (A.4) for the reasons already stated by them in their letters dated 2.2.80 and 8.4.80. It was also pointed out that since he had not completed 20 years of temporary service, according to the rules, he was not entitled to any terminal benefits. The applicant pursued further and it was in reply to his letter dated 22.4.88 (A.2) that the respondents issued the impugned order dated 30.6.88 (A.1).

5. The applicant is not entitled to any retirement benefits unless he has put in 20 years of temporary service or he should otherwise be confirmed. The next question is whether he could have been confirmed prior to 1.5.80 when his lien was terminated. As late as on 8.4.80, less than a month prior to the termination of his lien, the Railways have expressed their inability to confirm him because there were as many as 157 persons senior to him and awaiting confirmation. Certainly it is not possible for the Railways to confirm him on out of turn basis as a special case merely to give him the benefits he seeks. At the time of hearing on 29.7.91 the respondents stated that even

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as on date there were more than 15 persons senior to him and awaiting confirmation. Such being the position there is no possibility whatsoever of the applicant being confirmed prior to 1.5.80. In this context a reference to the Railway Board's letter No.E(NG) 56 CN 5-16 dated 19.9.59 in the impugned order dated 30.6.88 has also no relevance. This letter of 19.9.59 refers to an earlier letter of 15.7.59 which states that so long as a permanent vacancy is available before the date of actual retirement or death of an employee he could be confirmed against a permanent vacancy arising before the date of retirement or death. The main criterion in such cases should be whether the employee would have been confirmed in a post had he been on duty and if a post was available before that date. As pointed out earlier, there was no possibility of confirming the applicant before 1.5.80.

6. In view of the above, we dismiss the case with no order as to costs.

MS
(J. Narasimha Murthy)
Member(Judl).

R.Balasubramanian
(R. Balasubramanian)
Member(Admn).

Dated

1-8-91

88/89
Regd. No.

6
SM 7/8/81

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

V.C.

AND

THE HON'BLE MR.

M(J)

AND

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

AND

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

DATED: 31-8-1991

ORDER JUDGMENT

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

D.A. No. 63/89

T.A. No.

(W.P. No.)

Admitted and Interim order issued.

Allowed.

Disposed of with direction.

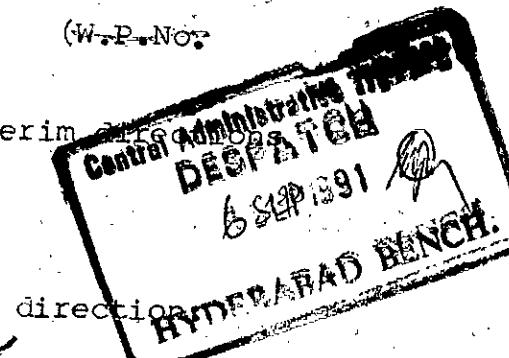
Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.



7/8/81