

56

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.888/89.

Date of Judgment 19-2-1992

1. A.Manibhushana Rao
2. M.Ramalingeswara Rao
3. E.Bhaskara Rao
4. N.Sivaprasada Rao
5. T.S.R.Sastry

.. Applicants

Vs.

1. The General Manager,
South Eastern Railway,
Calcutta.
2. The Chief Personnel Officer,
South Eastern Railway,
Calcutta.
3. The Divl. Rly. Manager,
South Eastern Railway,
Visakhapatnam.
4. Sr. Divl. Personnel Officer,
South Eastern Railway,
Visakhapatnam.
5. Sr. Divl. Mechanical Engineer,
South Eastern Railway,
Visakhapatnam.

.. Respondents

Counsel for the Applicants : Shri P.Krishna Reddy

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

CORAM:

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

Hon'ble Shri C.J.Roy : Member(J)

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

This application has been filed by Shri A.Manibhushana Rao & 4 others under section 19 of the Administrative Tribunal Act, 1985 against the General Manager, South Eastern Railway, Calcutta & 4 others with a prayer for a direction to the respondents to pay the settlement dues to them in consideration of their service in the Railways.

2. The 5 applicants joined the Railways as Diesel Cleaners on various dates between 21.8.68 and 24.8.73. Later, they were promoted to the next higher grade also. While so, they wanted to respond to a notification from the

Visakhapatnam Steel Project (V.S.P. for short) at suitable level. The Sr. Divl. Mechanical Engineer, Waltair issued no objection certificate and they got their names registered in the Regional Employment Exchange, Visakhapatnam in the year 1982. Subsequently, they applied for the jobs in the V.S.P. and the offers of appointment were sent to the applicants through the Sr. Divl. Mechanical Engineer(Diesel) on 26.11.83 and 29.12.83. The Railways obtained a declaration from all of them to the effect that in the event of their not being permanently absorbed in the V.S.P. within a period of 2 years from the dates of their appointment in the V.S.P. they shall, on the expiry of the said period of 2 years, either resign from the Railway service or revert to their parent office. After obtaining such a declaration, the Railways relieved 3 of them on 8.12.83 and 2 of them on 11.1.84. The applicants joined the V.S.P. as Technicians and they continued to be in the job till the time of filing this application. In December, 1985 and January, 1986 the applicants requested the Railways to terminate their lien and pay their settlement dues as per the rules in force. They are all permanent employees in the South Eastern Railway. Since no communication was received, they represented to the Pension Adalat on 5.9.86 and were informed by the Divl. Personnel Officer that their representations were sent to the Sr. Divl. Mechanical Engineer(Diesel) and the orders were awaited. To their utter surprise, the Sr. Divl. Mechanical Engineer (Diesel) sent a communication dated 1.12.86 informing the applicants that in view of their acceptance of clause No.28 contained in V.S.P's offer of appointment their services are terminated with effect from the dates of their release i.e., 9.12.83 and 12.1.84. It is contended that this is contrary to the declaration obtained from the applicants at the time of their release wherein 2 years lien had been ~~at~~ indicated. The applicants went a step further and obtained a letter dated 16.9.87 from the V.S.P. that they have no objection

for the Railways maintaining their lien so long as there is no financial liability for the V.S.P. The applicants pursued the matter further at various levels and not having met with *any* success they have approached this Tribunal with this application.

3. The respondents have filed a counter affidavit and oppose the application. It is stated that vide letter dated 2.11.87 the decision of the Chief Personnel Officer had been conveyed to them stating that they are not entitled to any pro-rata pension or gratuity for the service rendered by them in the Railways. It is contended that this attracts section 21 of the Administrative Tribunals Act, 1985 dealing with limitation. The facts of the case are not disputed. They rely on clause 28 of the offer of appointment letters issued by the V.S.P. and since the applicants have already accepted this clause, the question of keeping their lien in the parent department for a period of 2 years from the date of relief of the applicants does not arise. It is contended that the applicants have already been paid their provident fund contribution, leave salary and savings fund and it is contended that they are not entitled to anything beyond this.

4. We have examined the case and heard the learned counsels for both sides. The respondents have raised the question of limitation. In this case, what is required is the pensionary benefit and this is a continuous cause of action. The question of limitation does not arise ^{totally} in this case because there is continuous grievance. If any relief is to be given it can be restricted to one year prior to the date of filing this application, *limiting it to the stipulation in Sec 21 of the AT Act.*

5. At the time of hearing, the learned counsel for the applicant Shri P. Krishna Reddy informed across the bar that the applicants were absorbed straightaway into the V.S.P. from the very date of their joining the organisation.

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~~Normally,~~ The purpose of a lien is to protect the interests of the officials during the interregnum when they are in the

new organisation ~~and~~ yet to be absorbed. At the time of relieving, the Railways have obtained a declaration to the effect that within a period of 2 years if they are not absorbed in the V.S.P. they shall either resign from the Railways or have to revert. Evidently, in the case of the applicants this question ~~does~~ ^{did} not arise because they have straightaway been absorbed from the date of joining the V.S.P.

6. We have seen para 28 of the offer of appointment issued by the V.S.P. It only states that the appointment in the V.S.P. shall be as a direct recruit and the V.S.P. shall not bear any liability on account of leave salary, pension contribution etc. It also states that they will not be allowed to retain any lien on their previous appointment even by payment of contribution. It is not clear how this clause relied upon by the respondents operates against the applicants when there is absolutely no lien whatsoever. We have also seen the letter No.P/S/Pension Adalat dated 12.10.87 from the CPO/GRC to the DRM(P)/Waltair, S.E.Rly (annexure R.1 to the counter). On the obverse side of the letter we find a copy of circular Estt.Srl.No.5/76 dated 16.1.76 issued by the Railways. It has been clearly stated in that circular that according to the Railway Board circular dated 2.8.72 a permanent Railway servant who has been appointed in a public sector undertaking on the basis of his own application shall, on his permanent absorption in such public sector undertaking, be entitled to the same retirement benefits in respect of the past service in the Railways as are admissible to a permanent Railway servant on deputation to a public sector undertaking on his permanent absorption therein. In the same circular it is also stated that ~~whatever~~ ^{this benefit} facility is given in respect of a public sector undertaking was extended to autonomous bodies also and V.S.P is an autonomous body. From this letter it is seen that the distinction between those who are sent on deputation and absorbed and those who go to the autonomous body

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on their own and get absorbed, is removed. From all these letters it is absolutely clear that by no means can the Railways deny the applicants the pensionary benefits.

7. In view of the above, we direct the respondents to pay all the terminal benefits due to the applicants, reckoning their services in the Railways till the dates of termination of their services indicated in the office order No.BU.II/B/DLS dated 10.12.86 issued by the DRM(P), Waltair (material paper 6 to the application). In respect of pension, the payment shall however commence only from 6.11.88 i.e., one year prior to the date of filing this application, in view of the limitation question that has been dealt ^{with} in para 4 above. All the benefits ordered in this application should be paid to the applicants within a period of three months from the date of receipt of this order. There is no order as to costs.

R. Balasubramanian
(R. Balasubramanian)
Member(A).

C. J. Roy
(C. J. Roy)
Member(J).

Dated 19th February, 1992.

Dy. Registrar(Judl.)

Copy to:-

1. The General Manager, South Eastern Railway, Calcutta.
2. The Chief Personnel Officer, South Eastern Railway, Calcutta.
3. The Divisional Railway Manager, South Eastern Railway, Visakhapatnam.
4. Sr. Divisional Personnel Officer, South Eastern Railway, Visakhapatnam.
5. Senior Divisional Mechanical Engineer, South Eastern Railway, Visakhapatnam.
6. One copy to Shri. P. Krishna Reddy, Advocate, CAT, Hyd.
7. One copy to Shri. N.R. Devraj, SC for Rlys, CAT, Hyd.
8. Copies to reporters as per the standard list of CAT, Hyd.
9. One copy to Deputy Registrar(Judl.), CAT, Hyd.
10. One spare copy.

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O.A. 888/89

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

~~THE HON'BLE MR.~~ V.C.

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

~~THE HON'BLE MR. T. CHANDRASEKHAR REDDY :~~
M(JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

DATED: 19/2/1992

~~ORDER~~/JUDGMENT: ✓

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

in

O.A.No. 888/89

~~T.A.No.~~ (W.P.No.)

Admitted and interim directions
issued.

☒ Allowed

☐ Disposed of with directions.

☐ Dismissed

☐ Dismissed as withdrawn

☐ Dismissed for Default.

☐ M.A. Ordered/ Rejected

☒ No order as to costs.

16/3/92

