

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

34

O.A. No. 116/90

Date of Decision : 4-3-1992

~~Ex.No.~~

Mr. E.Devadanam

Petitioner.

Mr. G.V. Subba Rao

Advocate for the  
petitioner (s)

Versus

Union of India and another

Respondent.

Mr. NR Devaraj

Advocate for the  
Respondent (s)

CORAM :

THE HON'BLE MR. T. Chandrasekhara Reddy, Member (Judl.)

THE HON'BLE MR. --

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?
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)

HTCR  
M(J)

JUDGMENT OF THE SINGLE MEMBER BENCH DELIVERED BY THE  
HON'BLE SHRI T.CHANDRASEKHARA REDDY, MEMBER(J)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 to direct the respondents to refix the pay of the applicant in the post of Senior Clerk taking into account the 14 years of Military service rendered by him with all consequential benefits such as arrears of pay and allowances etc.,

2. The facts giving rise to this application in brief may be stated as follows:-

The applicant originally was recruited as Combatant Clerk for general duties on 23.8.1969 in the Civilian Military Service. He was discharged from Military service on 31.8.1984 after fulfilling conditions at the time of enrolment for discharge. The applicant had put in a total service of 15 years and 9 days of Military service. The applicant also rendered active war service during this period for a short duration. On being discharged from Military service, the applicant acquired B.A. degree qualification as an external candidate from the Osmania University. The applicant applied for the post of Guard/Senior Clerk in the Railway Service Commission as against ex-servicemen quota on 31.8.1984 and was directed for training. After

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO.116 of 1990

M.A.No. 66 of 1990.

DATE OF JUDGMENT: 4-3-1992.

BETWEEN:

Mr. E.Devadanam

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Applicant

AND

1. Union of India, represented by  
The Secretary (Est),  
Railway Board, Rail Bhavan,  
New Delhi.

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

.. Respondents

COUNSEL FOR THE APPLICANT: Mr. G.V.Subba Rao

COUNSEL FOR THE RESPONDENTS: Mr. N.R.Devaraj, SC for Railways

CORAM:

Hon'ble Shri T.Chandrasekhara Reddy, Member (Judl.)

T. Chandrasekhara Reddy

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dents in refixing his pay after taking into consideration his period of service in the Military. The order<sup>in not</sup>/taking into consideration his service in the Military and consequently refixing his pay ~~is~~ was passed on 24.10.1988. Aggrieved by the said order, the applicant<sup>had</sup>/filed the present OA for the reliefs ~~as~~ already indicated above.

3. The respondents have opposed the application on two grounds viz., (i) on the point of limitation, and (ii) that the benefit of the instructions contained in the Railway Board letter No.E(NG)63-RE1/22, dated 25.7.1963 cannot be given to the applicant ~~is~~ as he had been recruited directly as Senior Clerk and not as Junior Clerk. In the counter filed by the respondents it is ~~specifically~~ pleaded that the impugned order dated 24.10.1988 is only repetition of earlier ~~letters~~ letters dated 19.2.1988 and 8.9.1988 rejecting the request of the applicant and even if the impugned letter dated 24.10.1988 is taken as first letter of rejection of the applicant's representation, the applicant ought to have filed the present OA by 23.10.1989 i.e., within one year as prescribed under the Act and as this OA is filed on 7.2.1990 that this application is barred by time.

4. ~~As there is delay in filing the O.A.,~~  
~~xxxxxxxxxxxx~~ the applicant herein has filed M.A.

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successful training, he was absorbed in Guntakal Division of South Central Railway and took over ~~the~~ independent charge of Guard 'C' on 7.8.1986. While working so, the applicant reported to Hyderabad (MG) Division on 30.12.1986 on mutual transfer from Guntakal Division. As already pointed out, the applicant had applied for the post of Senior Clerk also in the Railway service. The applicant was also selected as Senior Clerk by the Railway Service Commission in the ~~xxxxxxxxxx~~ as 20% quota of direct recruit graduates/against ex-servicemen quota. It is the case of the applicant that, in accordance with the instructions contained in Railway Board's letter No.E(NG)63-RE1/22, dated 25.7.1963, service rendered as Combatant Clerk had to be treated as equivalent to service as Clerk/Junior Clerk in Railways irrespective of pay drawn in the Armed Forces and initial pay of such persons appointed in the Railways ~~has~~<sup>to</sup> be fixed at higher stage in the scale above the minimum equal to the number of completed years of service as Combatant Clerk. In this regard, the applicant had put in a representation soon after joining in service ~~as Senior~~<sup>Clerk</sup> to fix his pay ~~correctly~~ after sanctioning advance increments for his completed period of military service. But the representation of the applicant ~~had~~ did not find favour with the respon-

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made out sufficient cause for his inability to file this application in time. So, ~~wherein~~ the M.A.No. 66/90 to condone the delay in filing this OA is liable to be allowed.

6. As already pointed out, the case of the applicant is, as per the instructions contained in Railway Board's letter No.E(NG)63-RE1/22, dated 25.7.63 that the service rendered as Combatant Clerk shall be treated as equivalent to service as Clerk/Junior Clerk in Railways irrespective of pay drawn in the Armed Forces and if the said person is absorbed in such posts in the Railways his initial pay in the post of Clerk/Junior Clerk <sup>to</sup> has~~be~~ be fixed at a higher stage in the scale above the minimum equal to the number of completed years of service as Combatant Clerk. The fact that the applicant had put in more than 15 years of service as Combatant Clerk in the Armed Forces is not in dispute. The main point argued in this OA is that the word ~~is~~ <sup>used</sup> in the said Railway Board letter dated 25.7.1963/ "clerk/Junior Clerk" has not reference to a senior clerk and it is the contention of the respondents as already pointed out that since the applicant has been directly recruited and appointed as Senior Clerk that ~~xxx~~ he cannot have the benefit of the said Railway Board letter dated 25.7.1963. In the year

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No. 66/90 to condone the delay of said three months and 15 days in filing this OA. In the affidavit accompanying the petition to condone the delay in filing the OA, it is averred that the applicant made an appeal to the Secretary, Railway Board on 19.5.1988 regarding the grant of benefit of refixation of his pay taking into consideration the Military service rendered by him in the Defence department as the applicant was appointed after selection by the Railway Service Commission against one of the reserved posts for Ex-Military candidates, that on 24.10.1988 his representation/appeal was rejected which was communicated to the applicant on 27.10.1988. It is further stated in the affidavit that his wife is employed as a Clerk in the APSEB at Warangal and that the applicant is residing alone at Hyderabad and that he has old mother and 3 children who are residing at Warangal and ~~that~~ his mother is sick due to old age and confined to bed and his children were subjected to chicken pox during the period from October 1989 to January 1990 and in the meanwhile his old uncle who was dependent on him died on 27.12.1989 and due to these domestic problems the applicant had to very frequently go to Warangal to look after his family and also his uncle who died in December 1989 and in view of the mental worries that he was facing that he could not file this OA in time.

5. We are satisfied that the applicant had

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the Ministerial staff. Admittedly, the applicant is working as Senior Clerk in the Ministerial staff. If the benefit of the said instructions contained in the said letter dated 25.7.1963 of the Railway Board is given only to Junior Clerks of Ministerial staff, then it may lead to certain discrimination. To illustrate, if a person had been appointed in the Ex-servicemen quota in the Ministerial post as Junior Clerk in the Railways, then the entire period of Military service has got to be taken into consideration for the purpose of fixation of his pay in the post of the said Junior Clerk. So, a person if had joined as Junior Clerk on the date the applicant had joined, the said Junior Clerk would be entitled in the pay scale of Rs.950-20-1150-25-1500 and by adding 15 increments to the scale of Rs.950/- and 10 increments @ Rs.20/- and 5 increments @ Rs.25/-, total emoluments of the said Junior Clerk works out to Rs.1275/- whereas the pay of the applicant would only be Rs.1200/-. So, a Junior Clerk appointed in the Ministerial staff belonging to the Ex-Military service would be put in advantageous position monetarily than a Senior Clerk appointed in the said Ministerial staff in the quota of ex-Military servicemen. So, as already pointed out, this leads to discrimination which has to be avoided. It will be

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1963, there was no direct recruitment to the post of Senior Clerk. It is only in 1980 that the Government of India, Ministry of Railways (Railway Board) have reserved for graduates 20% vacancies of Senior Clerks to be filled up by recruitment of ex-servicemen as against their quota. Fixation of pay for ex-servicemen is done in the initial recruitment grade. In the year 1963 and afterwards till the year 1980 as already pointed-out, there was no recruitment of Senior Clerk. The benefit of the letter dated 25.7.1963 of the Railway Board used to be given only to a Junior Clerk. Now, from the year 1980 onwards, as direct recruitment is made for Senior Clerks by the Railway Service Commission, the question is whether the benefit of the said instructions contained in the Railway Board letter dated 25.7.1963 can be extended to Senior Clerks also who are directly recruited like the applicant herein in the quota of ex-servicemen. We do not see any clarification being issued by the Railway Board subsequent to the year 1980 that the benefit of the said letter dated 25.7.1963 of the Railway Board had got to be given only to "Junior Clerks". The benefit of the said instructions of the letter admittedly has got ~~xxxxxx~~ to be extended only to a "Clerk" ~~xxxxxx~~ working in

T. C. N.

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which is a non-ministerial cadre post. As a Railway Guard, naturally the applicant should have been earning every month considerable amount towards running allowance. But no such allowance the applicant can claim in the present ministerial post of Senior Clerk. So, from this point of view also, it will be reasonable to take into consideration ex-military service of the applicant for the purpose of fixation of his pay. It will be worthy to note in this context, a decision of the Punjab and Haryana High Court in "Dr. Jagmohan Singh and another Vs. The State of Punjab and others" (1980(3) SLR p.400), wherein it is held as follows:-

"xxxxxxxxx      xxxxxxxxxxx      xxxxxxxxxxx  
The object of granting these concessions was to compensate the ex-service personnel by relaxing the upper age limit and educational qualifications at the time of admissions to civil posts and services and by counting the period of approved military service towards seniority, promotion, increments and pensions etc. To restrict these concessions, to the first appointment only after the release from the armed forces does not in any manner promote the object. It rather defeats the same."

7. In an another decision of the Punjab and Haryana High Court in "Harbhajan Singh Vs. State of Punjab",

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reasonable to interpret the word "clerk" as including "senior clerk" also in the said Railway Board letter dated 25.7.1963. Hence, we do not see any justification on the part of the respondents in not taking into consideration the period of military service while fixing the initial pay of the applicant as Senior Clerk in the Railways. As already pointed out while narrating the case of the respective parties, the applicant was selected and appointed as Railway Guard by the Railway Service Commission against ex-servicemen quota and he was sent for training. On successful completion of the training he was posted to Guntakal Division. When the applicant was selected to the post of Senior Clerk, he accepted the same and joined as Senior Clerk on 23.1.1987 in the Railways. It is faintly argued, as the initial appointment as Guard was in the non-ministerial cadre and to the post of Senior Clerk subsequently the applicant was appointed which is ministerial post that the applicant is not entitled to the benefit of the said instructions of the Railway Board dated 25.7.1963. There is no reason, why the appointment of the applicant as Senior Clerk cannot be treated as fresh appointment for his fixation of pay by the respondents. We do not think that there is any justification in not taking into consideration for fixing the pay of the applicant his military service as he happened to work for a short time as Railway Guard

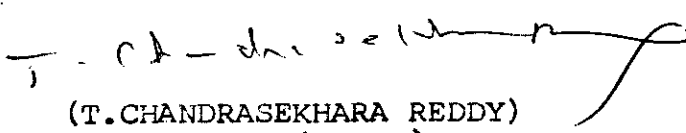
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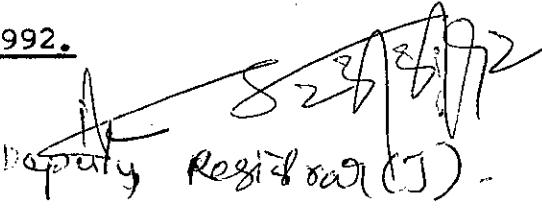
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this O.A., it will be just and equitable to restrict the monetary benefits to the applicant only from one year prior to the filing of this O.A., in view of the provisions of Section 21 of the Administrative Tribunals Act.

10. In the result, the M.A.No.66/90 that is filed by the applicant to condone the delay in filing the OA 116/90 is allowed. We set-aside the proceedings relating to the Chief Personnel Officer letter No.P/EST/481/Volume-2, dated 24.10.1988 regarding the fixation of pay of the applicant and direct the respondents to refix the pay of the applicant notionally with all consequential benefits taking into account the Military service rendered by him by treating the appointment of the applicant as Senior Clerk as first appointment. We further direct the respondents to pay the applicant the actual monetary benefit being the difference of pay and allowances to the applicant as Senior Clerk with effect from 7.2.1989 which is the date from one year prior to the filing of this O.A. The application is allowed accordingly. The parties shall bear their own costs in the circumstances of the case.

  
(T.CHANDRASEKHARA REDDY)  
Member(Judl.)

Dated: 4 March, 1992.

  
Deputy Registrar(J)

(1977(2) SLR p.180), it is laid down as follows:-

"if a person is otherwise eligible for appointment, we see no justice excluding him from appointment on the ground that he accepted some other employment in the meanwhile. It looks as if a person belonging to the category of released Armed Forces Personnel accepts an inferior post he does so on pain of losing eligibility to a superior post. If no superior post is readily available "immediately on his release from the Armed Forces" he must wait till such post becomes available and it may never become available. In the meanwhile, he is precluded from accepting an inferior post even to keep his body and soul together. Surely, that is not how we repay our debt to those that readily shed their blood for us."

So, the observations of the Punjab and Haryana High Court in both the said cases though made in different context have relevance with regard to the case on hand.

8. So, in view of the discussions above, we are of the opinion that this OA is liable to be allowed.

9. In view of the fact that we have decided to condone the delay in filing this O.A., and also to allow

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To

1. The Secretary (Est.) Union of India,  
Railway Board, New Delhi.
2. The Chief Personnel Officer, S.C.Rly, Secunderabad.
3. One copy to Mr.G.v.Subba Rao, Advocate, CAT.Hyd.
4. One copy to Mr.N.R.Devraj, SCfor Rlys, CAT.Hyd.
5. One copy to Dy.Registrar(J)CAT.Hyd.
6. Copy to All Reporters as per standard list of CAT.Hyd-
7. One spare copy.

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Done  
8/4/92

TYPED BY  
CHECKED BY

COMPARED BY  
APPROVED BY

DTJ  
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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: 4-3-1992

ORDER/JUDGMENT:

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

in

O.A.No. 116/90 with MA 66/90

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.

Central Administrative Tribunal  
DESPATCH  
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HYDERABAD BENCH

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