

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

DA No.643/91.

Dt. of Order:7-4-93.

N.F.J.Ananda Rao

....Applicant

Vs.

1. The General Manager,
SC Railway, Rail Nilayam,
Secunderabad.
2. The Chief Personnel Officer,
SC Railway, Rail Nilayam,
Secunderabad.
3. Senior Divisional Personnel Officer,
SC Railway, Vijayawada.

....Respondents

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Counsel for the Applicant : Shri J.M.Naidu

Counsel for the Respondents : Shri J.Siddaiah, SC for Riys

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CORAM:

THE HON'BLE JUSTICE SHRI V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE SHRI R.BALASUBRAMANIAN : MEMBER (A)

(Order of the Division Bench passed by
Hon'ble Justice Shri V.N.Rao, Vice-Chairman)

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While the applicant was working as machine turner,
which is ~~is~~ a Group 'C' post, he fell sick ^{on} 20-2-81. He
was medically decategorised on the basis of the report of
screening committee. The applicant was not found medically
fit for the B-1, B-2 and C-1 groups ^{post} and he was found fit
for C-2 group ^{post} as Office Clerk without cash or public deal-
ing. Then the authorities offered him an alternative job
as Peon. ~~Then, he~~ At the first instance the applicant did
not accept ^{and} the post in Class-IV, he was removed from

service. Ultimately at the instance of the applicant he was taken as a fresh entrant ⁱⁿ ~~as~~ Class-IV ~~into~~ service.

The period ~~from~~ 10-4-82 to 2-11-82 was condoned by proceedings dt.18-11-85.

2. At the time of the appointment of the applicant in Class-IV, the maximum of the pay ^{of} ~~scale~~ ^{made} applicable to the applicant ^{was} ~~is~~ Rs.232/- and the last drawn pay of the applicant as Machine Turner ^{was} ~~is~~ Rs.284/-.

3. This petition is filed praying for a direction to the Respondents to appoint him as Clerk in Group-C post and to protect his last drawn pay.

4. As the screening committee did not find the applicant suitable ^{for the post of clerk} in Group-C post, ^{as} and there is not other post in Group-C, for which the applicant can be considered, the respondents cannot be directed to appoint the applicant as a clerk. It is also urged for the applicant that if ~~so~~ his prayer for Group-C is not considered, the pay protection ~~for Group-C~~ ^{may} ~~has to~~ be considered. The same is opposed by the Respondents ^{by urging} that it is not prayed in the O.A. We are not satisfied with the said contention of the Respondents. It is always open to the Court to mould the relief on the basis of the material placed before it instead of again driving the party to the court to file another O.A. Hence the next question that arises for consideration is whether the applicant is entitled for pay protection in Group 'D'. It is manifested from para-13.13 of Indian

that pay protection has to be given in case of medical decategorisation under categories 3 to 6 in in para-5 of the Estt. Serial Circular No.103/79 dt.9-7-79, which was issued on the basis of Railway Board letter No.78/E/RLT/4 dt.22-6-79. Categories (i) and (iv) in the said para are relevant for consideration of this O.A. and they are as under :-

- "(i)Decategorisation arising out of natural causes, such as ageing process, deterioration of visual acuity, including colour perception in the ordinary course of nature
- (iv)Decategorisation arising out of contraction of an occupational disease, disease peculiar to the service in which duties are performed."


At the outset it has to be mentioned that there is no specific reference ^{about} to the categories ^{in the fitness} ~~on the basis of the~~ ^{certificate produced} ~~report of the Screening Committee~~. ^{It} ~~So it~~ may come either under category (i) or Category (iv). It is submitted for the respondents that the ~~said~~ ^{psychiatrist} report of the ~~screening~~ committee is not traced. So when a doubt arises as to whether it comes under Category (i) or category (iv), the benefit of the doubt can be given to the employee. If it comes under category (iv) ~~then~~ the applicant is entitled to pay protection under para-1313(2)(b) of Indian Railway Establishment Manual, Volume-I (revised edition-1989).

5. This O.A. was filed on 28-6-91. The period of limitation prescribed under section 21 of the Administrative Tribunals Act, 1985 is one year. As the pay fixation can be held as a continuous ^{ing} cause of action and when there

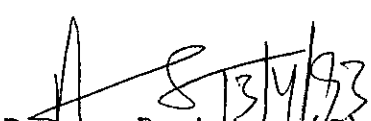
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is a delay in filing the O.A. for claiming relief in regard to payfixation ^{or} ~~for~~ pay protection, this Tribunal has taken the view that the monetary ^{or} ~~benefits~~ ^{has} ~~has~~ to be limited from one year prior to the filing of the O.A. We do not find any reason to differ ^{from} ~~from~~ the said view. Accordingly the monetary ^{or} ~~benefit~~ ^(This O.A. was filed on 28.6.91) is limited for the period from 28-6-1990, ^{on fixing the} ~~which has to be paid~~ ^{has to be fixed} The difference of pay as special pay under para-1313(2)(b) of Indian Railway Establishment Manual, Volume-I (revised edition-1989). Accordingly the O.A. is allowed partly with no order as to costs. Four months time from today is given to the Respondents for effecting the payments of arrears as indicated above.


(V.NEELADRI RAO)
Vice-Chairman


(R.BALASUBRAMANIAN)
Member (A)

Dated: 7th April, 1993.
Dictated in the Open Court.

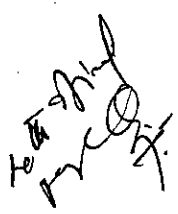

Deputy Registrar (J)

avl/

To

1. The General Manager, S.C.Rly, Railnilayam, Secunderabad.
2. The Chief Personnel Officer, S.C.Rly, Railnilayam, Secunderabad
3. The Senior Divisional Personnel Officer, S.C.Rly. Vijayawada.
4. One copy to Mr.J.M.Naidu, Advocate, 18-11, Kamalanagar, Dilsukhnagar, Hyd.
5. One copy to Mr.J.Siddaiah, SC for Rlys CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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TYPED BY _____ COMPARED BY _____
CHECKED BY (W) APPROVED BY _____

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. R. BALASUBRAMANIAN :
MEMBER (ALMN)

AND

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

DATED: 7 - 4 - 1993

ORDER/JUDGMENT

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

in

O.A.No.

643/91

T.A.No.

(W.P.No

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Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.

pvm

