

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

HYDERABAD

6A 924/91

Dt. 7-7-95

## Between

K.V. Punna Rao s/o Pitchaiah  
Head Clerk, 529/B Rly. Quarters  
Prabhatnagar, Guntakal-515801      Applicant

And

1. Divisional Personnel Officer,  
South Central Railway, Guntakal
2. Chief Personnel Officer,  
South Central Railway, Rail Nilayam,  
Secunderabad.
3. General Manager, South Central Railway,  
Secunderabad.
4. Railway Board represented by its  
Secretary, New Delhi.

... Respondents.

Counsel for the Applicant : Shri V. Rama Rao

Counsel for the Respondents: Shri D. Gopal Rao

## Coram

Hon'ble Justice Shri V. Neeladri Rao, Vice-Chairman

Hon'ble Shri A.B.Gorthi, Member (Admn.)

I AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,  
VICE-CHAIRMAN ]

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JUDGEMENT

Heard both the learned counsels.

The applicant who was working as ASM was subject to medical test on 8-10-87 and then it was found that he was fit for C2 with glasses and hence he was medically declassified for the post of ASM. Proceedings dated 6-1-88 were issued (vide sl.19 of the material papers). The applicant was absorbed in the post of ~~Clerk~~ <sup>Senior</sup> Clerk in the pay scale of Rs.1200-2040. On 7-1-88 (vide page 21 of the material papers), the applicant submitted a representation praying for his absorption in the post of Head Clerk bearing the pay scale of Rs.1400-2300 as by the date of medical declassification, he was working in the post of ASP in the pay scale of Rs.1400-2300/-. When he was relieved on 11-1-88 from the post of ASM he joined the post of Sr. Clerk by stating that he was constrained to accept the relief memo. under protest without prejudice to his contention that he shall be offered an alternative post in the pay scale of Rs.1400-2300/-, that is as Head Clerk where there is vacancy. || Para 2609 sub-para (i) IREM lays down that "alternative post to be offered to a Railway servant should be the post available for which he is suited and ensure that the loss in emoluments will not occur. .... The Railway servant must be given opportunity to choose for himself whether he should accept the offer or reject it". Para 2610 IREM is to the effect that the alternative employment must be offered in writing and on no account should be Railway servant be posted to an alternative appointment until he has accepted the post. It further

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states that the Railway servant is at liberty to refuse the offer of alternative appointment and the leave granted to him will not be terminated prematurely merely because of his refusal. The leave must run <sup>its</sup> course and he will continue ~~to~~ remain eligible for other alternative offers of appointment till his leave expires, and as such, offer of alternative employment should <sup>hence</sup> therefore continue throughout currency of his leave.

Para 2604(a) states that if the post for which the medically decategorised employee has to be appointed is not vacant, the employee can apply for six months leave and that leave was referred to in para 2610.

3. The learned counsel for the applicant submitted that there is infirmity in issuing the proceedings dated 6-1-88 whereby the applicant was appointed as Sr. Clerk without giving him an option as to whether he is going to accept it or reject it and hence he should be deemed to have been appointed in the post of Head Clerk carrying the pay scale of Rs. 1400-2300 in the vacancy which has arisen subsequent to 6-1-88.

4. It is manifest <sup>even</sup> from the representations dated 7-1-88 and the protest letter dated 11-1-88 that the claim of the applicant to the post of <sup>was</sup> Head Clerk on the basis of the assertion that there was a vacancy in the post of Head Clerk.

5. Affidavit dated 5-4-93 is filed by the Sr. Divl. Personnel officer, SC Railway to the effect that there was no vacancy in the post of Head Clerk between ~~16-10-87~~ <sup>as on</sup> to 6-1-88. But the learned counsel for the applicant was submitting

that 3 vacancies had arisen in the post of Head Clerk in December, 1987. (it is not clear as to whether any one was promoted in those posts on the basis of the recommendations of the D.P.C. given prior to 16-10-87 or on the basis of the recommendations <sup>made</sup> even subsequent to 16-10-87. Further it is also not clear whether in fact those vacancies had arisen in December, 1987 as asserted for the applicant for the same was not specifically traversed.)

6. It is ~~very~~ clear from para 2609 IREM that the alternative ~~appointment~~ has to be given in the very scale in which the employee was working ~~by~~ the date of medical decategorisation if vacancy exists in the said category and in such a case, ~~the offer of appointment in the lower pay scale is violative of para 2609.~~ So it is just and proper to give a direction to the Respondents that the applicant has to be given notional seniority in the post of Head Clerk on and from the ~~subsequent to 11-1-88~~ date on which the next immediate vacancy had arisen in the post of Head Clerk ~~on or subsequent to 11-1-88~~, if any one was promoted to the post of Head Clerk ~~between 16-10-87 and 6-1-88, on the basis of the recommendations made between 16-10-87 and 6-1-88.~~ DPC

7. While it was stated for the applicant that an ~~offer~~ as contemplated under para 2610 was not given to him, it is alleged in the reply statement that such an offer to the post of Sr. Clerk was made and the applicant rejected it. But the copy of that letter of offer was not produced and such an offer was not referred to in the proceedings dated 6-1-88. The learned counsel for the applicant submitted that even assuming that no one was posted to the post of Head Clerk between 16-10-87 and 6-1-88 to the post of Head Clerk

To

1. The Divisional Personnel Officer,  
S.C.Railway, Guntakal.
2. The Chief Personnel Officer,  
S.C.Rly, Railnilayam, Secunderabad.
3. The General Manager, S.C.Rly, Secunderabad.
4. The Secretary,  
Railway Board, New Delhi.
5. One copy to Mr.V.Rama Rao, Advocate, CAT.Hyd.
6. One copy to Mr.D.Gopala Rao, SC for Rlys, CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

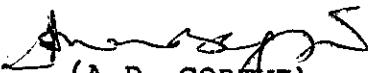
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on the basis of the recommendations of D.P.C. during that period, still the applicant should be given the notional promotion to the post of Head Clerk from the date the next immediate vacancy subsequent to 11-1-88 had arisen for if such an offer was given to the applicant, he would have rejected and he would have gone on leave especially when the anticipated vacancy was going to arise on 30-6-88. But the claim on that basis has to be rejected on the ground of latches <sup>for</sup> if the said contention for the applicant has to be accepted he will have to be given some place over those who are now shown as senior to him in the post of Head Clerk, (The applicant was promoted as Head Clerk on 19-4-90) and such a claim after 3 years cannot be entertained on the ground of delay.

8. In the result the OA is ordered as under:

If any one in this seniority unit was promoted to the post of Head Clerk between 16-10-87 and 6-1-88 on the basis of the recommendations of the D.P.C. during that period, the notional promotion has to be given to the applicant to the post of Head Clerk from the date of next immediate vacancy ~~after~~ after 11-1-88 and on that basis the applicant will be entitled to the seniority, and also the difference in salary and other emoluments if they arise from 1-9-90.

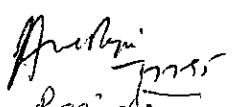
9. The OA is ordered accordingly. No costs.//

  
(A.B. GORTHI)  
Member (Admn.)

  
(V. NEELADRI RAO)  
Vice-Chairman

Dated the 7-7-95  
Open court dictation

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Deputy Registrar (S) C

THPED. BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD.

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

A N D

A. B. Gorthi

THE HON'BLE MR. R. RANGARAJAN, (M(ADMN)

DATED - 7-7-1995.

ORDER/JUDGMENT:

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

in  
OA. No.

TA. No.

924/91  
(W.P.)

Admitted and Interim directions  
issued.

Allowed.

Disposed of with directions.

Dismissed.

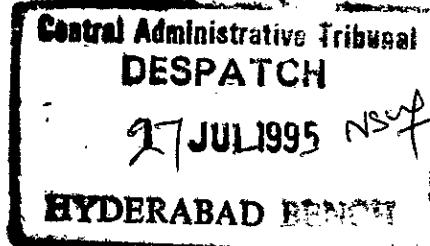
Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

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