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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 952/91.

Dt. of Decision : 23-9-94.

Ch. Venkateswara Rao

.. Applicant.

Vs

1. Union of India rep. by
General Manager, SC Rly,
Railway Nilayam, Sec'bad.
2. Divl. Railway Manager, SC Rly,
Vijayawada Division, Vijayawada.
3. Sr. Divl. Personnel Officer,
SC Rly, Vijayawada.

.. Respondents.

Counsel for the Applicant : Mr. G. Ramachandra Rao

Counsel for the Respondents : Mr. J.R. Gopal Rao, SC for Rlys.

CORAM :

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

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

OA.952/91

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, VC)

Heard Sri G. Ramachandra Rao, learned counsel for the applicant and Sri J.R. Gopal Rao, learned counsel for the respondents.

2. Consequent on restructuring of the Ministerial cadre of Civil Engineering Department, some posts of Chief Clerks were upgraded with effect from 1-10-1980. Some posts of Head clerks were upgraded ^{as chief clerks} with effect from 1-10-1980. By then the applicant was working as Head Clerk. Chargememo dated 22-10-1990 was issued to the applicant by order dated 10-7-1991 (vide annexure R-1). Some Head Clerks some of which are Juniors to the applicants were promoted as Chief Clerks on adhoc basis with effect from 1-10-1980. The applicant was not given adhoc promotion then as a disciplinary proceedings was pending against him. The applicant retired from service on 28-2-1982.

3. On the basis of the allegations which are subject matter of Charge memo dated 22-10-1980 issued to the applicant, in CC-99 of 1985 on the file of Principal Session Judge for SPE & ACB cases, Hyderabad, was filed offence under section 409 and 477 (a) IPC and Section 5(ii) and 5(i)(c) of Prevention of Corruption Act. The applicant was convicted and sentenced in the CC. But he was acquitted as per the judgement dated 24-9-1987 in Criminal Appeal No.946/86 on the file of the AP High Court. The applicant was not found guilty in CC.1/84 on the file

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of Principal Sessions Judge for CBI and SPF cases of Hyderabad as per judgement dated 30-10-1985.

4. The applicant filed OA.14/90 on the file of this Tribunal claiming terminal benefits consequent to his retirement from office. It was allowed by judgement dated 23-8-1990. Then the applicant filed OA.1084/91 claiming interest for belated payment of pension, commuted pension, provident fund and security deposit. The same was dismissed by holding that it is barred by Principle of Constructive Resjudicata.

5. This OA was filed on 4-10-1991 claiming adhoc promotion to the post of Chief Clerk from 1-10-1980, the date on which his junior was promoted by alleging that his case was not then considered in view of the pendency of disciplinary proceedings against him and he is entitled to the said benefits as those disciplinary proceedings were dropped.

6. The regular selection for the upgraded posts of Chief Clerks were conducted only after the date of retirement of the applicant. As such the question of following sealed cover procedure had not arisen even though disciplinary proceedings were pending against him. As ~~xxxx~~ the applicant retired from service, the question of directing the respondents to conduct written test and vivavoce for him does not arise.

7. The question of resjudicata does not arise as the relief in regard to this promotion was not the subject matter in the earlier OAs.

8. It is stated for the respondents that as he was out of service, he could not know as to whether any of

his juniors was regularly promoted, and hence, he could not claim such relief earlier. But he was aware with regard to the adhoc promotion of his junior while he was in service. As it is a mere case where the case of adhoc promotion of the applicant was not considered due to the pendency of disciplinary proceedings against him and as the same was dropped later, it can be treated as only a continuous right in regard to pension. So the contention for the respondents that this OA has to be dismissed on the ground of ^{limitation} ~~res-judicata~~ has to be repelled.

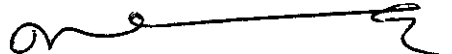
9. But as it is a case of only continuing right, monetary relief has to be ordered ^{from} ~~for~~ only one year prior to the date of presentation of this OA as is followed by this Bench in all such matters. The said relief has to be granted only from 1-10-1990 as this OA was presented on 4-10-1991.

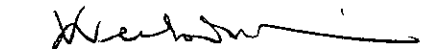
10. Hence, the only direction that has to be given is that the notional pay of the applicant as on 1-10-1980 in the grade of Chief Clerk on the basis of notional promotion has to be fixed, and thereby his pay ^{for 10 months prior to} ~~as on~~ the date of retirement has to be calculated as the same should be taken as basis for fixation of pension.

The difference in pension has to be paid from 1-10-1990. The applicant will not be entitled to the difference in DCRG, commutation of pension, if any, and the leave ~~encashment~~ salary on the basis of notional fixation of his salary on 28-2-1982 ^{to} on the date of his retirement as per this order, in view of the delay in filing the OA.

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11. The DA is ordered accordingly. No costs./


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated : 23 September, 94
Dictated in Open Court


Deputy Registrar (J)CC

To sk

1. The General Manager, Union of India,
S.C.Rly, Railnilayam, Secunderabad.
2. The Divisional Railway Manager, S.C.Rly,
Vijayawada Division, Vijayawada.
3. The Sr.Divisional Personnel Officer,
S.C.Rly. Vijayawada.
4. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.
5. One copy to Mr.J.R.Gopal Rao, SC for Rlys, CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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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. RANGARAJAN : M (A.D.N)

DATE: 23-9-1994

ORDER/JUDGMENT

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

in

O.A.No. 952/91

(T.A.No.

(W.P.NO

)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected

No order as to costs.

NO SPARE COPY

3/10/94

