

FORM NO. 21
(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

OA / TA / RA / CP / MA / PT 995 of 1997

..md:..khusa..mahiddin..... Applicants (s)

Versus

The .. Dr. Div. l. Mech. .. Engineer, Respondent (s)
Diesel shed, sc ply, A .. 3 ..

INDEX SHEET

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28/8/97

Signature of
Dealing Hand
(In Record Section)

Certified that the file is complete
in all respects.

Signature of S.O.

RECORD SECTION INDEX SHEET

Original Application No. 995 199 3a) Applicant (s) md. Kanya mohindstein
versusb) Respondent(s) The Sr. Dist. Mech. Engineer,
Chief of Secy, Anantapur & 3 mPart I

Order Sheet

Original Application dt. 11.6.93

Material Papers

~~Order dt.~~Counter Affidavit dt. 18.10.93

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" Application dt.

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" Order dt.

" Counter Affidavit dt.

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" Order dt.

Part IIIVakalat 11.6.93Notice papers 26.8.93 15.6.93
1.9.93 16.Memo of Appearance. 28.1.94 24.2.96

PSR

HT 496

(2)

Date	Office Note	Orders
		<p data-bbox="1068 462 1269 542"><u>27/11/96</u></p> <p data-bbox="834 585 1513 919">The OA is ordered with no order as to costs. Vide the orders on separate sheets.</p> <div data-bbox="971 946 1172 1134"><p data-bbox="1010 946 1091 1016">✓</p><p data-bbox="971 1016 1172 1069">HBSTP</p><p data-bbox="1010 1080 1123 1134">RCB</p></div> <div data-bbox="1318 919 1448 1134"><p data-bbox="1334 919 1416 1016">✓</p><p data-bbox="1318 1026 1448 1080">HRRN</p><p data-bbox="1334 1080 1448 1134">H(A)</p></div> <p data-bbox="847 1177 1107 1231"><u>24-7-97</u></p> <p data-bbox="863 1257 1497 1483">MA. 617/97 is ordered order vide 617/97 MA sheets. No costs.</p> <div data-bbox="987 1510 1205 1688"><p data-bbox="1010 1510 1188 1607">✓</p><p data-bbox="987 1591 1156 1645">HBSTP</p><p data-bbox="1010 1645 1123 1688">MCB</p></div> <div data-bbox="1237 1473 1416 1671"><p data-bbox="1286 1473 1416 1564">✓</p><p data-bbox="1237 1580 1393 1634">HRRN</p><p data-bbox="1237 1634 1351 1671">MCB</p></div>

①

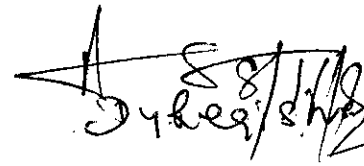




CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. NO./P.A. NO. 995/93 199

Applicant (S)

Versus

Respondent (S)

Date	Office Note	Orders
<p><u>5-11-93</u> 8-11-93</p>	<p><u>Before the D.R. (C)</u> for counter</p>	<p>Counter affidavit filed by Mr. D. Gopal Rao, SC for Rhs for Rs. 1004. Hence Post the case in usual course.</p> <p style="text-align: right;">  <u>11-11-96</u> At the request of Applicant's counsel, list it on 18-11-96. </p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">  HBSTP M(J) </div> <div style="text-align: center;">  HRRV M(A) </div> </div> <p style="text-align: center;"><u>18-11-96</u></p> <p>At the request for the Applicant's counsel, list it on 27-11-96. No further adjournment will be given</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">  HBSTP M(J) </div> <div style="text-align: center;">  HRRV M(A) </div> </div>

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

O.A. NO./T.A. NO.

995/1993

Md. Khaja Mohiuddin

Applicant (S)

Versus

The S.D.M.E, Diesel Shed,

Respondent

Sc Rly, Ananthapur

Date	Office Note	Orders
14-6-93	MA 413/93. Condonation of delay petition.	Issue Notice ^{in R.A.} 2 Post on for Counter in the M.A. meanwhile. HPTT M(A) HVNRT VC
12-7-93		Print the name of Sri D. Gopal Rao, SC for Rly/for respondents. Call on 9-8-93. HPTT M(A) By Order. In Register. HVNRT VC
10-8-93		Post on 20-8-1993, for count the RTA in in the meanwhile. HPTT M(A) By Order. In Register. Card-2 HVNRT VC

14/6

OA 995/93

Date	Office Note	Orders
20.8.93	MA 413/93 - Condone delay petition	<p>Heard both the learned Counsel. In the circumstances referred to, the delay in filing the OA is condoned. MA is accordingly allowed. Register the OA if otherwise in order and list it for admission.</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>✓</p> <p>HPTT M(A)</p> </div> <div style="text-align: center;"> <p>✓</p> <p>HUNRJ VC</p> </div> </div>
24.8.93		<p><u>Admit.</u></p> <p>Put it in the usual course for final hearing. For counter in the meanwhile.</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>✓</p> <p>HPTT M(A)</p> </div> <div style="text-align: center;"> <p>th</p> <p>HUNRJ VC</p> </div> </div>
5-10-93 19.10.93	<p>Before the Registrar For Counter. Counter filed by Mr D Gyale Raso for R/S on 18/10/93.</p>	<p>put up on 5-11-93 for further proceedings. Counter of any in the meanwhile. App. Registrar.</p>

Nr 24/8

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH - HYDERABAD

ORIGINAL APPLICATION NO.

OF 199

Shri Mr. Khaja Mynuddin Applicant (s)

Versus

Ex. Dir. and Engineer, S. & A. S. P. S.
E. 36.

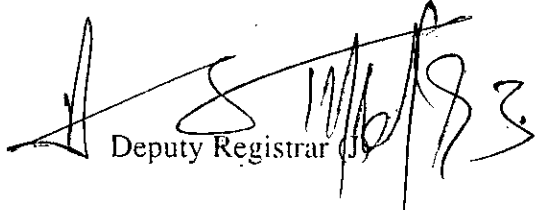
Respondent (s)

This Application has been submitted to the Tribunal

by Mr. G. V. Subba Rao Advocate under section 19 of the
Administrative Tribunals Act, 1985 and same has been scrutinised with reference to the points mentioned
in check list in the light of the provisions contained in the Administrative Tribunal (Procedure)
Rules, 1987.

The application has been in order and may be listed for admission on 6-93


Scrutiny Officer.


Deputy Registrar

8. Has the index of documents been filed and has the paging been done properly? *y*
9. Have the chronological details of representations made and the outcome of such representations been indicated in the application? *y*
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal? *y*
11. Are the application/duplicate copy/spare copies signed? *y*
12. Are extra copies of the application with annexures filed.
 - a) Identical with the original *y*
 - b) Defective *y*
 - c) Wanting in Annexures *2*
No / Page Nos
 - d) Distinctly Typed?
13. Have full size envelopes bearing full address of the Respondents been filed? *y*
14. Are the given addresses, the registered addresses? *y*
15. Do the names of the parties stated in the copies, tally with those indicated in the application? *y*
16. Are the translations certified to be true or supported by an affidavit affirming that they are true? *u*
17. Are the facts for the case mentioned under item No. 6 of the application.
 - a) Concise? *y*
 - b) Under distinct heads? *y*
 - c) Numbered consecutively? *y*
 - d) Typed in double space on one side of the paper? *y*
18. Have the particulars for interim order prayed for, stated with reasons? *u*

may be plus
9/16

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

APPLICANT (S)

mal-k. My model

RESPONDENT (S)

5) LiOME: jelly. Anantapur & 36

P.T.O.

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

INDEX SHEET (ORIGINAL)

O.A. NO. _____ of 199

CAUSE TITLE md. Khaja mohiuddin

VERSUS

The S. D. M.E., Diesel shed, Ananthapur

Sl.No.	Description of Documents	Page No.
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4.	Objection Sheet	—
5.	Spare Copies 4 (Four)	
6.	Covers 4. R	
7.	Counter Affidavit of Respondent	—

*By to sponsor the Order of Merit the Applicant is fresh entrant and to
treat him as in continuous service from the date of his initial appointment* (5)

Chronology of events in O.A.No. of 1993 filed

by Md. Khaja Myonuddin

For continuity of service

Daniel Cey

- - -

1. The applicant was appointed as a Diesel Khalesi in 1971 at Gooty. He was promoted as Fitter in 1979 and worked for nearly 14 years.
2. He was mentally deranged during the period from 10-10-84 to 19-12-1988 and underwent treatment for evil spirits in Darga near Banaganapally.
3. On 20-12-1988 he approached with a medical certificate and without taking him for duty, it was informed that his services were terminated w.e.f. 1-10-1985 and on representation he was appointed as a fresh entrant as a Khalesi which post he joined on 28-1-89.
4. He submitted a representation for continuity of service and was advised that after watching his performance to be good for one year he will be given continuity of service.
5. This assurance was later turned down.
6. The applicant was not served with the charge sheet and his penalty advice as well as the enquiry report were not given to him when he reported for duty. Principles of natural justice were violated and this O.A. is filed against the penalty of fresh appointment wiping of his 14 years service without jurisdiction.

Hyderabad,
09-06-1993.

11/2/1993
Counsel for the Applicant.



(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

Between

Md. Khaja Mohiuddin

... Applicant

and

Senior Divisional Mechanical Engineer
Diesel Shed, South Central Railway,
GOOTY, Ananthapur Dist.

... Respondents

I N D E X

S.No.	Date	Particulars	Page No.
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3.	10-07-1989	Sr.DME(DSLOGooty No.G/P./P.100 DAR	10
4.	16-04-1990	Sr.DME/DSL/GY No. G/D/P.100/DAR/ 231	11
5.	28-06-89	Mercy petition of the applicant	12
6.	29/31-1-90	Representation of the applicant	13
7.	27-01-1989	Sr. DPO/SCR/Guntakal No. G/P.535/II/ DSL	14
8.		Medical certificate	15
9.	05-01-1989	Representation of the applicant	16
10.	02-12-1992	Representation of the applicant	17 & 18
11.	- - - - -	- - - - -	- - - - -

[Signature]
Counsel for the Applicant

For Tribunal Office Use only

Date of Filing :

REGISTRATION NUMBER:

Signature of the Registrar.

*Received 20.11.93
C.R. No. 11/1993
Chakraborty*

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
at HYDERABAD

O.A.No. of 1993

Between

Md. Khaja Mynoddin
S/o Md. Nayath Hussain, aged 42 years,
Diesel Khalasi Helper, Diesel Shed,
South Central Railway,
Guntakal ... Applicant

and

1. Senior Divisional Mechanical Engineer
Diesel Shed, South Central Railway,
GOOTY, Ananthapur Dist.
2. Senior Divisional Mechanical Engineer,
Diesel Shed, South Central Railway,
Guntakal, Ananthapur District.
3. Senior Divisional Personnel Officer,
South Central Railway,
Guntakal.
4. Divisional Railway Manager,
South Central Railway,
Guntakal ... Respondents

Application under Section 19 of Central Administrative
Tribunals Act, 1985.

I. Particulars of the applicant:

The particulars of the applicant are as indicated
in the above cause title.

The address of the applicant for purpose of service
of notices etc is that of his Counsel M/S G.V. Subba Rao and
N. Ethirajulu, Advocates, H.No. 1-1-230/33, Chikkadapalli,
Hyderabad - 500020.

II. Particulars of the Respondents:

The particulars of the respondents are as mentioned
in the above cause title.

III. Particulars of the orders against which this application is made:

1. Senior Divisional Mechanical Engineer, Diesel Shed, Gooty letter No. G/P/P.100/DAR/Vol.II/231 dated 19-1-1989, reducing the removal order imposed by the Divisional Mechanical Engineer Siesel Shed, Gooty w.e.f. 1-10-1985 to one of fresh appointment as a Khalsi. P.9
2. Senior Divisional Mechanical Engineer, Diesel Shed, Gooty letter No. G/P/P.100/DAR/ date 10-7-89 advising the applicant that his case would be reviewed after one year. P.10
3. Divisional Mechanical Engineer, Siesel Shed, Gooty letter No. G/D/P.100/DAR/231 dated 16-4-90 rejecting the applicant's representation dated 29/31-1-90 for continuity of service. P.11
P.13

IV. Jurisdiction:

The applicant declares that the subject matter of the O.A. is well within the jurisdiction of this Hon'ble Tribunal under Section 14(1)(c) of the Central Administrative Tribunal Act, 1985 since he employed as Diesel Khalsi Helper in the Diesel Shed, South Central Railway, Guntakal.

V. Limitation:

The applicant's representation dated 29/31-1-90 was rejected on 16-4-90 which was actually ~~xxxxxxx~~ received on 20-4-90. In June 90 a notice was caused to be issued by his Counsel Mr. Shaik Sha Vali, Advocate, Kachiguda, Hyderabad who expired later after some time. As there was no response from the respondents the applicant a mercy petition on 2-12-92 P.13

P-17

which is not yet disposed of. If the revision petition is taken as the date against impugned order the application is within the limitation. If it is reckoned from the date of 20-4-90 there is delay of about 2 years 2 months for which the delay condonation petition is filed separately under Section 20 (3) of Central Administrative Tribunals Act 1985.

VI. Facts of the case:

The applicant humbly submits that he was appointed as Diesel Khalasi in Diesel Shed, Gooty on 24-4-1971 and later promoted as Diesel Mechanical Fitter in the same shed in the month of September 1979. He worked continuously without any break or punishments up to 19-10-84 and had put in more than 13 years continuous years of service. But unfortunately from 20-10-84, he was suddenly subjected to mental derangement due to haunting of evil spirits beyond the comprehension of the Doctors. As he was almost out of his senses his parents took him to a Darga in Banaganapalli famous for curing such mental ailments. The applicant was under the treatment of Syed Chahumeya Quadri of Darga Syed Nabasha Quadri at Banaganapalli from 20-10-84 to 19-12-88.

2. After complete recovery of his ailment he reported for duty on 20-12-88. Under extant medical rules, when an employee who was absent from duty, reports for duty with a medical certificate he is deemed to have been put back to duty and in production of duty fit certificate. Contrary to the procedure the applicant was informed by the Diesel Loco Foreman, Gooty that he was removed from service with effect 1-10-1988. Aggrieved by the non-admission of the applicant for duty, he approached the Sr. DME/DSC/Gooty with a representation on 5-1-89. The Sr. DME/BSL/Gooty

reinstated the applicant as a Khalasi on Rs. 750/- in scale Rs. 750 - 940 reducing the penalty of removal from service in the grade Fitter III to Khalasi.

3. The applicant was sent for medical examination and appointed as a Khalasi vide Sr. DPO/Guntakal letter No. G/P. 535/III/DSC dated 27-1-89 and the applicant immediately joined duty on 28-1-89.

4. The applicant submitted a representation to the Sr. DME/DSC/Gooty on 28-6-89 seeking continuity of service. The Sr. DME/DSC/Gooty advised the applicant on 10-7-89 that his performance should be watched for one year and then if found good may be granted continuity. P. 14

5. On completion of one year of service as Khalasi the applicant submitted a representation on 29/20-1-90 to the Sr. DME/DSC/Gooty. The DME/DSC/Gooty who is a subordinate authority to the Sr. DME/DSC/Gooty without considering the promise made by the Sr. DME/DSC/Gooty vide his letter No. G/D/P.100/DAR/231 dated 16-4-90 advised the applicant that the applicant is not entitled to the continuity of service which is in contradiction to earlier order of the Sr. DME/DSC/Gooty. The DME/DSC/Gooty has no jurisdiction to annul the order of the Sr. DME/DSC/Gooty who is the Appellate Authority in the case of the applicant. This letter of the DME/DSC/Gooty is arbitrary and illegal and unconstitutional. P. 13

6. It is respectfully submitted that the applicant prior to his sick absence and subsequent to his joining duty had good record of service and there is nothing adverse against him as to deny continuity of service in terms of the order passed by the Sr. DME/DSC/Gooty that after one year the punishment had to be reviewed and continuity of service to be given on his performance being good. Notwithstanding this fact the applicant is not restored to his former grade

and granted continuity of service and promotion, given along with his juniors in the respective grades from time to time.

7. Aggrieved by this arbitrary order of DME/DSC/Gooty the applicant approached his counsel Mr. Shaik She Vali Advocates, Kachiguda, Hyderabad to file a case in the Court. His counsel without straight away filing the case in this Hon'ble Tribunal, is understood to have served a legal notice on the Divisional Railway Manager, Guntakal for giving him the relief. As the applicant was not informed of the development, he tried to contact his counsel at Hyderabad who on enquiry revealed expired shortly after giving legal notice. Left with no other alternative, the applicant submitted a Mercy/Revision Petition to the Divisional Railway Manager, Guntakal requesting for restoration to his original service as Diesel Mechanical Fitter Grade III condoning the break in service. The respondents have not disposed of his representation and as such the applicant is forced to approach this Hon'ble Tribunal for redress of the grievance.

G R O U N D S

1. The Loco Foreman, Diesel Shed, Gooty orally informed the applicant that he was removed from service w.e.f. 1-10-1985 when he approached on 20-12-88 without serving him a copy of the penalty advice.

2. Neither the charge sheet nor the enquiry report nor the penalty advice and the officer who was nominated to conduct the enquiry etc were made available to him even when he reported for duty.

3. Without observing the procedure for imposing the major penalty the applicant was removed from service violating Article 311(2), 14, and 16 of the Constitution.

4. The order of the Appellate authority appointing the applicant as a fresh entrant wiping out the entire previous service is without jurisdiction.

5. The punishment as a fresh appointee is not one of the penalties mentioned in the list of penalties that can be imposed for good and sufficient reasons by the Disciplinary Authority.

6. The penalty now imposed on the applicant reads that the removal is reduced and is appointed as a fresh entrant. If it is a reduction in grade, it cannot be for an indefinite period. The subsequent order of Sr. DME is in consonance with the Railway Board's instructions that the period of reduction should be specified. Accordingly the applicant ought to have been restored to his original grade on expiry of one year. This constitutes promissory estoppel and the letter of the DME/DSC/GY without understanding the implications of Sr. DME's letter is without authority and deserves to be struck down.

7. The Central Administrative Tribunal Madras bench held that a penalty which is not provided in the Disciplinary and Appeal Rules cannot be imposed.

8. The Rules that should be followed for imposing a major penalty under such DAR 1968 have been violated and the entire proceedings are vitiated in law deserving to be quashed.

VII. RELIEF SOUGHT FOR:

In view of the facts mentioned in para VI of the O.A. the applicant prays that this Hon'ble Tribunal may be pleased to direct the respondents to produce the records pertaining to the impugned orders and quash the same by declaring the same as illegal, arbitrary and unconstitutional violative of Article 311(2), 14 and 16 of the Constitution and direct the respondents to treat the applicant as in continuous service from the date of his initial appointment with all consequential benefits such as arrears of salary and allowances and promotion, seniority etc on a par with his juniors or pass any other order or orders as may be deemed fit and proper in the circumstances of case.

VIII. INTERIM RELIEF SOUGHT FOR:

The applicant prays that the matter may be posted early for final hearing.

IX. REMEDIES EXHAUSTED:

The applicant declares that he availed all the remedies available under service rules in as much as his mercy application dated 31-1-90 was rejected on 16-4-90.

X. Matters pending with any other Court etc:

The applicant further declares that the matter regarding which this application is filed is not pending with any court of Law or any other Authority or any Bench of the Hon'ble Tribunal.

XI. Particulars of the Pay Order:

Postal Order No. 05 890314 dated 28-5-93 for Rs.50/- drawn in favour of the Registrar, Central Administrative Tribunal, Hyderabad is enclosed.

for 50/-
L.P.O./B.C./D.D./Removed

- 4 -

XII. DETAILS OF INDEX:

An index containing the particulars of material papers to be relied upon is enclosed.

XIII. LIST OF DOCUMENTS:

- (a) Postal Order No. 05 890314 dated 27-5-93
for Rs. 50/-
- (b) List of material papers to be relied upon.

V E R I F I C A T I O N

I, Md. Khaja Mynoddin, son of Sri Md. Hayath Hussain, aged 42 years, working as Diesel Khalasi Helper Diesel Shed South Central Railway, Guntakal do hereby solemnly affirm and verify that the contents of paras I and XIII are true and correct to the best of my knowledge and belief and that I have not suppressed any material fact of the case.

Hence verified on this the 9th day of June,
1993.

Md Khaja Mynoddin
APPLICANT

To
The Registrar,
Central Administrative Tribunal,
Hyderabad Bench,
HYDERABAD

H. S. Thirupathi
Counsel for the Applicant.

South Central Railway

No.G/P/P.100/DAR/Vol.II/231.

Office of the
Sr.DMV/Dsl/GY.
Dated:19.1.89.

Shri Md.Khaja Mohiddin,
Ex.Dsl.Mechanic, T.No.231,
Gooty.

Through LF/Dsl/GY.

Sub: DAR action against Shri Md.Khaja Mohiddin,
Dsl.Mechanic T.No.231/GY.

Ref: Your appeal dt. 01.01.89.

....

In terms of rule 32(2) of Railway Servants (D&A) rules 1968, the appellate authority viz. Sr.DMV/Dsl/GY has carefully considered your appeal cited with relevant records and observed as under:-

- 1) Findings of the disciplinary authority are warranted by the evidence on record.
- ii) Shri Md.Khaja Mohideen, Diesel Mechanic Gr.III T.No.231, GY had been removal from services with effect from 01.10.85 by DMV/Dsl/GY. The party preferred a mercy appeal on 05.01.89 addressed to Sr.DMV/Dsl/GY, considering the appeal I the undersigned as an appellate authority reduced the punishment as re-appointed as a Khalasi at bottom most seniority in scale Rs.750-940() on humanitarian grounds in view of considering his appeal. He continuation of seniority is granted provided the party fits in medical standard as per normal rule.

Accordingly the penalty of removal from service 01.10.85 imposed by DMV/Dsl/GY vide penalty advice No. G/P/P.100/DAR/Vol.II, dt.27/30.9.85 is reduced. You are re-appointed into service as a Diesel Khalasi on pay Rs.750/- in scale Rs.750-940 (RSRP) as a fresh entrant for all purposes. You will be placed below all the permanent and officiating khalasis on the date of your reporting to duty. You should report to Sr.DPO/GTL for medical examination and further posting to Gooty shed.

Please note and acknowledge receipt.

Sd/-
Name (L.RAMA RAO)
for DMV/Dsl/GY.

Copy to:

Sr.DAO/GY for information pl.
LP/Dsl/GY for information please. The acknowledgement of the employee may be sent to this office for record.
CC/Settlement section
CC/Mech.Dsl.Admin.Bills, DAR.
CC/Confidential call necessary, entry may please be made in SR.

112

16
10

South Central Railway

Office of the Sr. DME (DSC)
GOOTY

No. G.P/R.100/DAR

Dt. 10-07-89

To
Shri Md. Khaja Mynoddin,
Ex. Khaleesi T.No. 430,

LF/DSL/O/Goety

Through LF(DSL)GY

Sub: Mercy petition for reviewing the
punishment.

Ref: Your appeal dated 28-6-1989.

- - -

Your appeal dated 28-6-1989 for reviewing
the punishment and posting you as diesel Mechanic
Grade III in scale Rs. 950 - 1500(RSRP) has been
considered by Sr. DME(DSC)GY and minuted as under:-

His performance should be watched for one
year and then if found good may be granted continuity".

Please note

Sd.. xx xx xx
For Sr. DME/DSL/GY.

// True Copy //

115

South Central Railway

Office of the Sr. DME/DSL/
GY.

No. G/D/P.100/DAR/231

Date: 16-4-90

To
Shri Md. Khaja Mynoddin,
Diesel Khalasi T.No. 430,
LF/DSL/O/GY.

(Thro LF/DSL/GY)

Sub: Request for continuation of service

Ref: Your appeal dated 29/31-1-90

- - -

Your appeal dated 29/31-1-90 for the continuation of service has carefully be considered by Sr. DME/DSL/GY. Sr. DME/DSL/GY as the appellate authority has already considered your appeal in terms of rule No. 22(2) of RS (D&A) rules 1968 and re-appointed you into service as diesel khalasi on pay of Rs. 750/- in scale Rs. 750-940(RSRP) as a afresh entrant for all purposes inclusive of loss of your previous service vide this office letter of even No. dated 19-1-1989 and hence you are not entitled for the continuity of service.

Please note and acknowledge the receipt of this letter

Sd. xx xx xx,
(M. MALLAIAH)
DME/DSL/GY.

// True Copy //

12 (18)
Gooty

Dt. 28-6-89

From

Md. Khaja Mynoddin
Diesel Khalasi T.No. 430,
GOOTY R.S.

To

The Senior Divisional Mechanical Engineer,
Diesel,
GOOTY (R.S.)

Through : Proper Channel

Sir,

Sub: Mercy petition for posting as
Diesel Mechanic in my original
grade Rs. 950-1500
- - -

I am very much grateful to your for posting me as
Diesel Khalasi/Gooty as fresh entrant.

In this connection it is brought to your kind
notice that you know I am an ill fated employee who had
gone some where with mental trouble, without knowing
myself for which I have been punished to a lower grade,
i.e. Rs. 750 - 940 I also bring to your kind notice that
I am a man of four children with a wife, You know in these
days it is very difficult to pull on my life with
my family with the meagre salary I get.

In view of the above foregoing circumstances
I request you to show your kind mercy and charity
once again duly posting me as Diesel Mechanics and restore
my original grade for which act of kindness, myself
and my family will be ever grateful to you.

Thanking you,

Yours faithfully,
Sd. Md. Khaja Mynoddin

// True Copy //

18

13 (19)

Date: 29/31-1-1990

From
Mg. Khaja Moinuddin,
Diesel Khalasi T.No. 430,
Loco Shed, Gooty.

To
The Sr. Divl. Mechanical Engineer,
Diesel, Gooty.

Through LF: DIESEL: GOOTY

Respected Sir,

Sub: Request for continuation of service as
Diesel Mechanic in Grade 950-1500.

- - -

I beg to bring to your kind notice that your kind
enough to consider to appoint me as Khalasi in Diesel shed
as a fresh entrant on 28-1-89 vide your letter G/P.100/DAR/
Vol.II/231 of 19-1-89 for which act of kindness myself and
my children are very much grateful to you.

Sir, I have already brought to your kind notice that
the salary which I am getting is very meagre and insufficient
as the cost of living is growing day by day and unable to meet
the same.

In this connection you were also very kind enough to issue
a letter for my mercy petition stating that punishment and
posting me as Diesel Mechanic in scale 950/1500 will be
considered after my performance duly watching for the period
of one year for the continuity of my service vide Sr.DME/DSL
Gooty No. G/P.100/DAR of 18-7-89.

Sir I have now completed one year of service from 28-1-89
to 27-1-90. I am reinstated from 28-1-89.

Therefore I request you kindly grant me the continuity
of my service as Diesel Mechanic in scale 950/1500 duly
condoning break of my service for which act of kindness myself
and my family will be ever grateful to you, Sir,

Thanking you Sir,

Yours faithfully,
SS (Khaja Mynoddin)

// True Copy //

12

14
20
South Central Railway

No. Gmp:535/III/DSL

Divisional Office,
Personnel Branch,
Guntakal, Dt. 27-01-1989

OFFICE ORDER No. 7/89 of Mech DSL

MEMORANDUM

Sub: Reappoin ment of Shri M.D.Khaja Mainoddin
Ex. DSL Mechanic - GY.

Ref: Sr. DME/D/GY letter No. G./D/P.100/DAR/Vol. III/231
of 19-01-89

- - -

In terms of Sr. DME/ D/GY letter quoted above Shri M.D.
Khaja Mainoddin s/o of Shri Md. Hayeth Hussain is re-appointed
as DSL Khalasi on pay of Rs. 750/- in scale Rs. 750-940
(RSRP) as a entrant for all purposes from the date of his
joining duty and posted to DSL Shed Gooty.

He is found fit in B-I as a result of Special Medical
examination conducted by DMO/GTL vide his certificate No.RBC
315-4 dated 20-01-89.

The joining report of the employee may be advised
to all concerned

Sd. xx xx xx xx,
for Divl. Personnel Officer,
Guntakal

// True Copy //

15

15/20
SYED CHABU MEYA QADARI,
Asthe Qadariya,
Sazady Nashen
of DARGA SYED NABESHA QADARI,
BANAGANAPALLI

This is to certify that Sri Md. Kheja Mynoddin
was suffering from 'SPIRITUAL' Disease at Syed Nabisha
Khadri Dargah Sharif, Banaganapalli from 20-10-84
to 19-12-88 I have treated him well during
this period. Now he is in sound health and
he is fit for duty.

Sd. xx xx xx.xx,
(SYED CHABU MEYA QADARI,)
Asthe Qadariya,
Sazady Nashen
of Darga Syed Nabesha Qadari
BANAGANAPALLI

// True Copy //



15

Gooty.
Lt: 5-1-89.

From:
MO. RAJA MYNOLIN,
DSL Mechanic P.No.221,
G O O T Y.

To
The Sr.Divisional Mechanical Engineer,
South Central Railway,
G O O T Y.

Through proper Channel

Sir,

Sub:- MERCY APPEAL.

--:O:-

I beg to submit few lines for your kind and sympathetic consideration to take me back for duty since I was not well due to spiritual attack in my body.

In this connection it is brought to your kind notice that on 20-10-84 without my knowledge I left my house and went away leaving my family and children. I was told that I was wandering here and there and reached finally in the Dargha of SYED NABISHA QADRI at Banaganapalli.

I was also told that one Saint M. Syed Chabumeya Qadri's under took my care and came to know, that I was suffering from spiritual attack. My where abouts also not known to my family since from 20-10-84 to 19-12-88 I reported for duty on 20-12-88 and I was told by LF/GY that I was removed from Service. I was very well looked after by the Saint Janab Chabumeya Qadri and finally chased away from the spirit from my body and mind now I am alright.

In view of the above foregoing circumstances I wish to bring to your kind notice that I am a man of 4 children suffering very much financially without a job.

I request you to kindly show mercy upon my children and family by providing me my job since we are starving day by day or else my entire family will be ruined and we will become beggars of the street.

Hence I request you to kindly take me for duty only showing mercy over my children and family for which lot of kindness we will be very grateful to you.

The Certificate issued by the Saint Janab Syed Chabumeya Qadri is enclosed for your kind perusal to take me for duty.

Thanking you, Sir,

Yours faithfully,

Md. Raja Mynolin
(MO. RAJA MYNOLIN)

112

17 (23)

Guntakal,
Dt:- 02.12.1992.

From

Md. Khaja Mynoddin,
T.No. 1038,
LF/DSL/GTL.

To

The Divisional Railway Manager,
South Central Railway,
GUNTAKAL.

Through:- Proper Channel.

Sir, *Very Respected*

Sub:- ~~Merit~~ Petition, requesting for continuation of Service
as Diesel Mechanic in Scale Rs.950-1500 - Regd.

- Ref:- 1) Lr.No. G/P.100/DAR/Vol.II/23, Dt. 12.1.1989.
2) My appeal Dt. 28.6.1989.
3) Sr.DME/DSL/GV, Lr.No. G/P/P.100/DAR, Dt. 10.7.1989.

-:000:-

I beg to bring the following few lines for your
kind notice and for sympathetical consideration please.

I am a Diesel Mechanic Gr.III and was working under
LF/DSL/Gooty in Scale Rs.950-1500. Due to some health problem
I was forced to go on absent from 20.10.1984 to 19.12.1988 since
I was suffering with SPIRITUAL attack disease at Syed Nabhisha
Khadri Dargah at Benaganipalli.

I was issued with SMS on my return back to duty and as per
DAR proceedings I was removed from Service vide DME/DSL/GV
Letter No. G/P/P.100/DAR/Vol.II/231, Dt. 19.1.1989.

On my representation again Dt. 5.1.89 I was reappointed
as Diesel Khalasi on pay Rs.750/- in Scale Rs. 750-940 as a
fresh entrant for all purposes. vide Sr.DPO/GTL Lr.No.G/P.535/III/
DSL, Dt. 27.1.1989.

Expressing my gratitude to Sr.DME/DSL for having
~~reappointed me as a fresh Khalasi, I have joined in shed as~~
Khalasi from 27.01.1989.

After completion of Six Months I have again appealed Dt.
28.06-1989 expressing my present difficulties and financial
situation since I having large family consisting with six members,
and unable to pull on with the meager salary which I get now

(Contd...2....)

Very Respected
11/12/92

18 (24)

as Khalasi, as the cost of living is growing day by day.

In this connection the Sr.DME/DSL/GY was also ~~mercy~~ kind enough to issue me a letter for my mercy petition stating that the punishment of reducing me from Gr.III to Khalasi will be cancelled basing on my performance duly watched for a period one year and then if found good may be granted continuity vide his Letter No. G/D/P.100/DAR, Dt. 10.7.89. Copy enclosed.

I had a great hope that even though I suffer for some time in lower grade and lower salary, I will be able to get back my old service of Gr.III continuity and Gr.III pay.

Hence sir with great hope I therefore again humbly ^{ten months} without any remark from fresh Khalasi, to kindly go through my previous appeal and Sr.DME/DSL/GY Lr.No.G/P.100/DAR, Dt.10.7.89 and kindly, sympathetically grant me continuity of my old service of Diesel Mechanic Gr.III duly condoning of Break in Service for which act of kindness myself and all my family members will ever remain greatfull to you.

Thanking you Sir,

Yours faithfully,

Md/Khaja Mynoddin
(MD. KHAJA MYNODDIN).

11/8

(25)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT HYDERABAD
O.A. NO. 995 of 1993

BETWEEN

Md. Khaja Moynuddin

.. Applicant

And

1. Sr.Divl.Mechanical Engineer,
Diesel Shed, South Central Railway
GOOTY.

2. Sr.Divl. Mechanical Engineer,
Diesel Shed, South Central Railway
GUNTAKAL.

3. Sr.Divl.Personnel Officer,
South Central Railway,
GUNTAKAL.

4. Divisional Railway Manager,
South Central Railway,
GUNTAKAL.

.. Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENT

I, K.Thiagarajan S/o Late Krishnaswamy aged about 42 years, Occupation: Government Service, resident of ^{Guntakal} Secunderabad, do hereby solemnly and sincerely affirm and state as follows:

1) I am the Senior Divisional Personnel Officer in the South Central Railway as such I am well acquainted with the facts of the case and I am authorised to file this affidavit on its behalf.

2) I submit that I have gone through the contents of application filed by the applicant herein and hereby deny all the material allegations contained therein, except those which are specifically admitted hereunder:

1st page

Correspondent (one)

Respondent

Attested

विश्व मंडल कार्मिक अधिकारी
होम ग्रह रेलवे गुंतकल
Senior Divisional Personnel Officer
South Central Railway, Guntakal
...2

Assist. Secy. to Govt.
S. C. Railway, Sec.
S. C. Railway, Sec.

3) It is submitted that the applicant was originally appointed as Khalasi on the Pay of Rs.70.85 (A.S) w.e.f. 24.10.1971. Further the applicant was promoted up to the post of Diesel Mechanic Gr.III in the scale of Rs.950-1500 (RSRP) w.e.f. 15.9.1979 while working, as such the applicant was issued a charge sheet on 18.6.1985 for the unauthorised absence without prior sanction of leave from 20.10.1984. It is further submitted that after following the procedure laid down in D & A Rules 1968, the Disciplinary Authority imposed penalty of removal from service on 30.9.1985.

4) It is submitted that the Applicant against the order of the removal dated 30.9.1985 submitted his appeal dated 5.1.1989 to Senior Divisional Mechanical Engineer, the Appellate Authority. The Appellate Authority after considering the appeal under Rule 22 (2) of D & A Rules 1968 reduced the penalty of removal from service and re-appointed the applicant as a Diesel Khalasi into service on pay of Rs.750/- (in the scale of Rs.750-940) as a fresh entrant for all purposes with loss of previous service, dated 19.1.1989.

5) It is submitted that the applicant requested for re-appointment as a fresh entrant and the loss of previous service. The applicant joined into service on 28.1.1989, without any representation dated 28.6.1989, for consideration. Further the applicant made a representation for the continuity of service and the same was considered on 16.4.1990 stating that the appeal was considered and disposed off on merits as such the case cannot be considered once again. Subsequently the applicant issued a legal notice on 30.8.1990 and a reply has been sent to the Applicant's Advocate on 19.10.1990 stating that the case of the applicant was considered in accordance with the rules and he was re-appointed as a fresh entrant and as such re-consideration of the issue by the same appellate authority does not arise, but the applicant again submitted another letter dated 2.12.1992 which does not require any consideration.

2nd page

Corss.

हस्ताक्षरित अधिकारी
Assistant Divisional Officer,
द. म. रेलवे
S. C. Railway

Respondent

हस्ताक्षरित अधिकारी
Senior Divisional Personnel Officer
South Central Railway, Secunderabad

: 3 :

6) It is further submitted that the applicant stopped by his conduct, having preferred appeal under the provisions of D & A Rules 1968 and having accepted the re-appointment as a-fresh he cannot further claim any benefits like continuity of service. More so the appeal was disposed by the appellate authority and hence no appeal lies to the same authority.

In view of the above circumstances it is therefore prayed that this Hon^{ble} Court may be pleased to dismiss the O.A. and pass such other orders as this Hon^{ble} Court deems fit and proper in the circumstances of the case.

Sworn and signed before me

on this the 24th day of Sept. 1993

DEPARTMENT
असिस्टेंट मॉडल कामेंक अधिकारी
हा. म. रेलवे गुंतकल
Senior Assistant Personnel Officer
South Central Railway, Guntakal



Attestor

सहायक कामेंक अधिकारी

Assistant Personnel Officer,

द. म. रेलवे, गुंतकल.

S. C. Railway, Guntakal

(28)

In the Central Administrative Tribunal
Hyderabad.

O.A. No. 995 of 1993



Counter Affidavit filed by the
Respondents.

Filed on ... 18-10-93

[Handwritten signature]
18/10/93

6
19/10

Filed by ..

M/s. D. Gopal Rao
N. Rajeshwar Rao
Advocates

Standing Counsel for Railways

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.995 of 1993

Between

Md.Khaja Mynoddin

..Applicant

And

Seniro Divisional Mechanical Engineer
Diesel Shed, S.C.Railway, Gooty and
three others

..Respondents

REJOINDER

I, Md.Khaja Mynoddin, s/o Md.Hayath Hussain, aged 42 years, Diesel Khalasi Helper, Diesel Shed, S.C.Railway, Guntakal do hereby solemnly affirm and state as under:

1. I am the applicant in OA 995/93 and I am well acquaint with the facts of the case.
2. I have gone through the counter filed by the respondents Sr.Divl.Personnel Officer, S.C.Railway, Guntakal, who is respondent number 3. In para no.4 it is stated that the appellate authority after considering the appeal under rule 22(2) of the Discipline and Appeal Rule, 1968 reduce the penalty of removal from service and reappointed the applicant as a Diesel Khalasi into service on pay Rs.750/- in scale Rs.750-940/- as a fresh entrant for all purposes with loss of previous service from 19.1.1989.
3. It is submitted I never requested for appointment as a fresh entrant. The appellant authority was satisfied that the order of removal was very harsh and wanted to reinstate me into service by imposing a lesser penalty but while doing so he passed orders appointing me as a fresh entrant in lowest grade of Rs.750-940/- with the starting pay of Rs.750/- which is the minimum of the scale of Rs.750-940/-.

Re

*Running
line
18/11/96
4.1.20PM*

4. This order reads that the party preferred a mercy appeal on 5.1.89 addressed to Sr.D.M.E/Diesel Gy, considering the appeal I the undersigned as an appellate authority reduced the punishment as reappointed as a khalasi at bottom most seniority in scale Rs.750-940/- on humanitarian grounds in view of considering this appeal, his continuation of seniority is granted provided the party fits in medical standards as per normal rules and the second para reads "you are reappointed into service as a Diesel Khalasi on pay Rs.750/- in scale Rs.750-940/- as a fresh entrant for all purposes. This order is inconsistent.

5. The order of appointment as a fresh entrant is not one of the penalties provided in Rule 6 of the Disciplinary Appeal Rules of Railway Servants. Such a penalty which is not contemplated and specified in the list of penalties enumerated in para 6 is without jurisdiction, sanction of law and contrary to the principles of natural justice. The order has to be set aside in toto.

6. It is further submitted that the senior DME in his letter dt.10.7.89 stated "his performance should be watched for one year and then it found good may be granted continuity".

7. The order of penalty of reduction to the lower grade without any time limit is contrary to Railway Board's instructions and also cannot be sustained.

lu

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8. The DME, Gooty vide his letter dt. 16.4.90 stated that "I am not entitled for the continuity of service" which is contradictory to the letter dated 10.7.89 issued by the Sr. DME, who is the higher authority than the DME. This order also is contrary to rules and has to be set aside. In para No. 5 it is ^{mentioned} ~~submitted~~ that "I ~~never~~ accepted the reappointment as a fresh entrant and has not protested for the loss of previous service". In this connection I have to state that as I was out of service for a long time I had to join for my livelihood which was denied to me. The mere fact that I joined service does not constitute that I have no right to challenge an illegal order passed by the appellant authority without jurisdiction. As the order of reinstatement is contrary to law which was not taken into consideration by the appellant authority at the time of disposing of my appeal, I was left with no other alternative except make a representation against the illegal orders. Even after my representation the authorities have issued conflicting orders which are illegal and unconstitutional. It is therefore, prayed that the ~~XXXXXX XXXXXX~~ order of reinstatement into service as a fresh entrant in the bottom scale of Rs. 750-940/- may be quashed and all consequential benefits may be given to me.

9. It is submitted the Hon'ble Central Administrative Tribunal ATR 1987(1) page 80 in G. pattabhiraman Vs Union of India held that order of forfeiting past service being without authority of law is liable to be quashed. The Karnataka High Court in Nanjundaradhya Vs Enquiry Authority held that penalty of forfeiture of past service cannot be imposed (SLR 1985(3) page 592)

Me

CAT/AYD.

① A 995/93

M.D. & Raja Moine

S. D. ONE DSC Gooty

REJONDER

F. de S. leg

G. V. S. de S. Red

N. E. de S. Red

Advocate

: 4 :

10. It is respectfully submitted that the Madras Bench of the Hon'ble Tribunal and The Karnataka High Court have held the view that appointment as a fresh entrant is not one of the penalties that can be imposed on a Railway servant under the Disciple and Appeal Rules no.6 and as such, such a penalty cannot be imposed as it is without sanction of law and quash the penalty imposed by the Appellat authority, ~~The~~ and Disciplinary authority.

11. In view of the facts mentioned above, the impugned orders may be quashed and set aside directing the respondents to treat me as in incontinued service with all consequential benefits such as arrears of salary allowances and promotions, ~~etc.~~ and treating the period of absence due to sickness as leave due.

Solemnly affirm and

signed before me this

day the 17th November, 1996.

Before me


Advocate

Md Khaja Mynoddin

(DEPONENT)

II COURT.

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

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

Original Application No. 995 of 1993

~~TRANSFER APPLICATION NO..~~

~~OLD PETN.NO.~~

~~CERTIFIED~~

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consideration to the Record Room(Decided).

Dated:

4/12/94

Counter Signed.

Court Officer/Section Officer.

Signature of the Dealing Asst.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.995/93

Date of Order: 27.11.96

BETWEEN:

Md.Khaja Mynoddin

.. Applicant.

AND

1. Senior Divisional Mechanical Engineer,
Diesel Shed, S.C.Rly., Gooty,
Anantapur Dist.

2. Senior Divisional Mechanical Engineer,
Diesel Shed, S.C.Rly., Guntakal,
Anantapur Dist.

3. Senior Divisional Personnel Officer,
S.C. Rly., Guntakal.

4. Divisional Railway Manager,
S.C.Rly., Guntakal.

.. Respondents.

- - -

Counsel for the Applicant

.. Mr.G.V.Subba Rao

Counsel for the Respondents

.. Mr.V.Rajeswara Rao

- - -

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

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

* * *

J U D G E M E N T

{ Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.) }

Heard Mr.G.V.Subba Rao, learned counsel for the applicant and Mr.V.Rajeswara Rao, learned standing counsel for the respondents.

2. The applicant while working as Diesel Mechanical Fitter was removed from service ~~from 30.4.85 for~~ unauthorised absence from 20.10.84 to 19.12.88. He filed a mercy petition to R-2 by his representation dt. 28.6.89. That appeal was disposed of by Memorandum No.G/P/P.100/DAR/Vol.II/231, dt. 19.1.89 (Page-9). The appellate authority considered the




.. 2 ..

appeal and re-appointed the applicant into service as a Diesel Khalasi in the scale of pay of Rs.750-940, as a fresh entrant for all purposes.

3. This OA is filed to quash the above said impugned order of the appellate authority and for a consequential direction to the respondents to treat the applicant as if he is in continuous service from the date of his initial appointment with all benefits such as arrears of salary, allowances and promotion.

4. The applicant joined as a diesel khalasi in diesel shed on 24.4.71. He was removed from service by order dt. 30.4.85. He was reinstated as a fresh entrant by the order dt. 19.1.89. He is still in service. In a similar case where the removal was set aside and the applicant was reinstated as a fresh entrant this Tribunal held as follows in OA.281/93:-

"If an employee is removed from service and subsequently reinstated on the basis of his appeal/review or otherwise as a fresh entrant, the orders treating him as a fresh entrant in service is in disregard of recruitment rules, i.e. without considering the names of other eligible candidates for the said post. In view of this, it was further held in that OA that award of major/minor penalty, if any, at the time of taking him back into service will be in order, but he cannot be treated as fresh entrant and the period of his absence from the date of his removal to the date of his reinstatement should be treated as dies-non and not as break in service and the period earlier to his date of removal from service will have to be counted as qualifying service for purpose of pension".

5. In view of ^{the} ~~pre~~ ^{the} ~~cedence~~ ^{the} this OA is also ^{the} ~~dis~~ ^{dis}posed of on the same lines with the following direction.

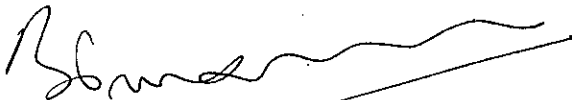
6. The applicant is entitled to count his service from the date of appointment as a Diesel Shed Khalasi i.e. 20.4.71, ^{excluding} ~~denying~~ the period if any which may not be treated as qualifying

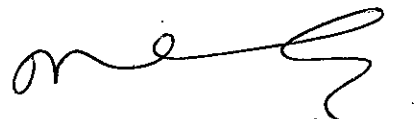
R *J*

.. 3 ..

service such as period treated as LWP/AWP. The period from 30.4.85 the date of removal from service till 19.1.89 the date of reinstatement^{as} a fresh entrant should be treated as dies-non. The seniority of the applicant should be fixed in accordance with the above direction.

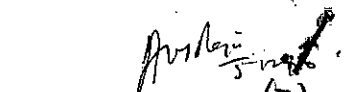
7. The OA is ordered accordingly. No costs.


(B.S. JAI PARAMESHWAR)
Member (Judl.) 27.12.96


(R. RANGARAJAN)
Member (Admn.)

Dated: 27th November, 1996

(Dictated in Open Court)


Dy. Registrar (S)

sd

: 4 :

Copy to:-

1. Senior Divisional Mechanical Engineer, Diesel Shed, S.C. Railway, Goety, Anantapur Dist.
2. Senior Divisional Mechanical Engineer, Diesel Shed, S.C.Rly, Guntakal, Anantapur Dist.
3. Senior Divisional Personnel Officer, S.C.Railway, Guntakal.
4. Divisional Railway Manager, S.C.Railway, Guntakal.
5. One copy to Sri. G.V. Subba Rao, Advocate, CAT, Hyd.
6. One copy to Sri. V. Rajeswara Rao, Addl. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

Rsm/-

(37)

112

MA-995793

Typed By
Compared by

Checked By
Approved by

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)
Hon Mr B.S. Jai prakash m/s)

DATED: 27/11/96

ORDER/JUDGEMENT
R.A/C.P./M.A.NO.

O.A.NO.

in

995793

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS
DISMISSED

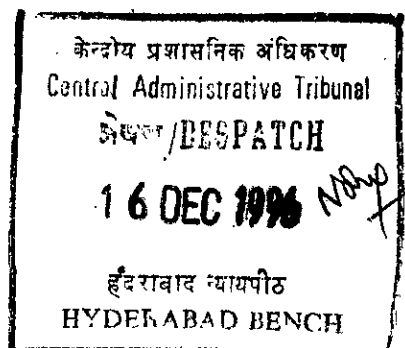
DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

YLR

II COURT



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

M.A.NO.617/97 in O.A.No.995/93

Md. Khaja Monoddin

...Applicant

And

1. Senior Divisional Mechanical Engineer, Diesel Shed, South Central Railway, Gooty, Ananthapur District.
2. Senior Divisional Mechanical Engineer, Diesel Shed, South Central Railway, Guntakal, Ananthapur District.
3. Senior Divisional Personnel Officer, South Central Railway, Guntakal.
4. Divisional Railway Manager, South Central Railway, Guntakal.

...Respondents.

Counsel for the Applicant : Mr.G.V.Subba Rao

Counsel for the Respondents : Mr.V.Rajeswara Rao

CGRAM:

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

THE TRIBUNAL MADE THE FOLLOWING ORDER:-

Heard Mr.G.V.Subba Rao for the applicant and Mr.V.Rajeswara Rao for the respondents.

2. The Applicant now submits that the date of removal is 1.10.85 and it is wrongly written as 30.4.85 in paras 2 and 6 of the judgement. This is a typographical error; hence the date 30.4.85 in para 2 and 6 are corrected as 1-10-85. ~~The Registry should make the necessary corrections and issue corrected copies to the concerned.~~

3. The MA is ordered accordingly. No costs.

Pratik
DEPUTY REGISTRAR(J)

39
1.2..

Copy to:

1. Senior Divisional Mechanical Engineer, Diesel Shed,
South Central Railway, Gooty, Ananthapur District.
2. Senior Divisional Mechanical Engineer, Diesel Shed,
South Central Railway, Guntakal, Ananthapur District.
3. Senior Divisional Personnel Officer, South Central Railway,
Guntakal.
4. Divisional Railway Manager, South Central Railway, Guntakal.
5. One copy to Mr. G. V. Subba Rao, Advocate, CAT, Hyderabad.
6. One copy to Mr. V. Rajeswara Rao, Addl. CGSC, CAT, Hyderabad.
7. One duplicate copy.

YLKR

24/7/92
TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)
AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR: M
(J)

DATED: 24/7/92

ORDER/JUDGEMENT

M.A./R.A/C.A. NO. 617/92

in

O.A. NO. 995/93

Admitted and Interim directions
Issued.

Allowed

MA
Disposed of with directions,

Dismissed

Dismissed as withdrawn

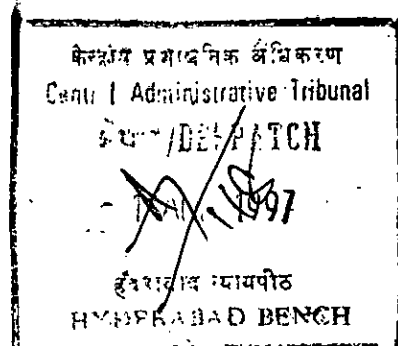
Dismissed for default

Ordered/Rejected.

No order as to costs.

YLR

II Court.



appeal and re-appointed the applicant into service as a Diesel Khalasi in the scale of pay of Rs.750-940, as a fresh entrant for all purposes.

3. This OA is filed to quash the above said impugned order of the appellate authority and for a consequential direction to the respondents to treat the applicant as if he is in continuous service from the date of his initial appointment with all benefits such as arrears of salary, allowances and promotion.

4. The applicant joined as a diesel khalasi in diesel shed on 24.4.71. He was removed from service by order dt. 30.4.85. He was reinstated as a fresh entrant by the order dt. 19.1.89. He is still in service. In a similar case where the removal was set aside and the applicant was reinstated as a fresh entrant this Tribunal held as follows in OA.281/93:-

"If an employee is removed from service and subsequently reinstated on the basis of his appeal/review or otherwise as a fresh entrant, the orders treating him as a fresh entrant in service is in disregard of recruitment rules, i.e. without considering the names of other eligible candidates for the said post. In view of this, it was further held in that OA that award of major/minor penalty, if any, at the time of taking him back into service will be in order, but he cannot be treated as fresh entrant and the period of his absence from the date of his removal to the date of his reinstatement should be treated as dies-non and not as break in service and the period earlier to his date of removal from service will have to be counted as qualifying service for purpose of pension".

5. In view of ^{the}precedence, this OA is also disposed of on the same lines with the following direction.

6. The applicant is entitled to count his service from the date of appointment as a Diesel Shed Khalasi i.e. 20.4.71, ^{excluding} denying the period if any which may not be treated as qualifying

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.995/93

Date of Order : 27.11.9

BETWEEN :

Md.Khaja Mynoddin

.. Applicant.

AND

1. Senior Divisional Mechanical Engineer,
Diesel Shed, S.O.Rly., Gooty,
Anantapur Dist.
2. Senior Divisional Mechanical Engineer,
Diesel Shed, S.C.Rly., Guntakal,
Anantapur Dist.
3. Senior Divisional Personnel Officer,
S.C. Rly., Guntakal.
4. Divisional Railway Manager,
S.C.Rly., Guntakal.

.. Respondents.

Counsel for the Applicant

.. Mr.G.V.Subba Rao

Counsel for the Respondents

.. Mr.V.Rajeswara Rao

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

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

* * *

J U D G E M E N T

{ Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.) }

Heard Mr.G.V.Subba Rao, learned counsel for the applicant
and Mr.V.Rajeswara Rao, learned standing counsel for the
respondents.

2. The applicant while working as Diesel Mechanical
Fitter was removed from service from 30.4.85 for unauthorised
absence from 20.10.84 to 19.12.88. He filed a mercy petition
to R-2 by his representation dt. 28.6.89. That appeal was
disposed of by Memorandum No.G/P/P.100/DAR/Vol.II/231, dt.
19.1.89 (Page-9). The appellate authority considered the

.. 3 ..

service such as period treated as LWP/AWP. The period from 30.4.85 the date of removal from service till 19.1.89 the date of reinstatement^{as} a fresh entrant should be treated as dies-non. The seniority of the applicant should be fixed in accordance with the above direction.

7. The OA is ordered accordingly. No costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

[Signature]

न्यायालय अधिकारी

COURT OFFICER

केन्द्रीय प्रशासनिक अधिकरण

Central Administrative Tribunal

हैदराबाद न्यायपीठ

HYDERABAD BENCH



RECORDED & INDEXED

24-7-92

11/10/92

10/10/92

10/10/92

किस संख्या
CASE NUMBER 6A728/92
निर्णय का तारीख
Date of Judgement 24-7-92
प्रति तय्यार किया गया दिन
Copy Made Ready on 30-7-92

अनुभाग अधिकारी (न्य बिक)
Section Officer (J)