

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.1196/93

DATE OF ORDER : 05-12-1996.

Between :-

M.Munaswamy

... Applicant

And

1. Chief Personnel Officer,
SC Rlys, Rail Nilayam, Sec'bad.

2. Sr.Divisional Personnel Officer,
S.C.Rlys, Guntakal.

... Respondents

.. ..

Counsel for the Applicant : Shri KSV Subba Rao

Counsel for the Respondents : Shri V.Bhimanna, SC for Rlys

.. ..

CORAM:

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

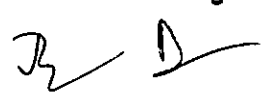
THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

.. ..

Heard Shri K.S.V.Subba Rao for the applicant and Shri
V.Bhimanna for Respondents.

2. The applicant while working as Shunting Jamadar was
medically decategorised and made fit only in B-1 category by
the medical certificate dt.29-8-85. On the basis of that
medical certificate an order was issued assigning him alter-
native job as BTC under AEN/RO vide Sr.DPO/GTL letter No.G/P 11/



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CM/VMV dt.20-12-85. Though the applicabt reported to the AEN, Renigunta for joiningⁱⁿ in that post he was not allowed to join. The applicant submits that he was regularly attending AENs Office for posting inspite of refusal for taking him on duty as BTC. Respondent No.2 made a reference to the Chief Personal Officer, i.e. the Respondent No.1 for posting the applicant elsewhere probably. On 20-11-86 applicant received letter No.GP 509/1 Sn of Jm/MM/Optg/5557 dt.19-11-86 terminating his services with effect from 10-7-86. However, the applicant came to know of his re-engagement as Care-Taker at Nandyal under ALF (R) NDL. by letter No.Sr.DPO/GTL No.G/P.11/Con/Vol.V/ dt.9-7-86. It is stated that though he represented his case for regularisation through Union no decision has been taken in this connection and he was also not paid any wages from 23-12-85 to 2-2-87 i.e. the date on which he reported to AEN, Renigunta till the date of fresh appointment as [✓]Care-Taker at Nandyal.

3. This O.A. is filed praying for a direction to respondents to regularise his services by giving the benefit of past service and revise his pay as fixed earlier while offer alternate job and for payment of wages for the period from 23-12-85 to 2-2-87.

4. A reply has been filed in this connection. The Respondents submit that the applicant was not possessing the medical eligibility to the BTC. Consequently, a reference was made to the Head Quarters about the correct medical classification of the BTC. In the meantime that BTC post was filled by somebody else. Hence the applicant could not be given the alternative job before the




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expiry of his leave. However even after the expiry of the leave the administration considered his case and offered him an alternative post of Care-Taker by memo dt.9-10-86. The applicant requested posting at Tirupati or Renigunta and not at Nandyal by his representation dt.14-8-86. Hence his services are terminated with effect from 10-7-86 treating the representation dt.14-8-86 as refusal to accept alternative post. Subsequently after the consideration of the representation submitted by the applicant he was appointed as a Care-Taker in the Grade of Rs.950-1500 as ^a the fresh entrant for all purposes fixing his pay at the lowest of the scale with effect from 2-2-87. The applicant submitted a representation through the Union to the General Manager. The General Manager on further consideration of his case cancelled the termination order and the termination orders were cancelled by order dt.22-7-91 (Annexure R-1). It was also informed to the applicant that the regularisation of the intervening period from the date of termination to the date he joined as a Care-Taker will be issued separately.

5. The reasoning given for cancelling his order as BTC can not be upheld. If he is not fit for that category, the order issued is defective. It is a costly mistake. The career of the applicant was put at a dis-advantage because of the wrong order. If his medical fitness had been examined initially itself before issuing the order as BTC there ^{was} every possibility ^{of} ~~or~~ accommodating him elsewhere in some other post before the expiry of his leave. But because of the issue of the defective order the applicant was put at a dis-advantage. Issue of the termination

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order also appears to be erroneous as the Administration must have searched for a suitable post immediately after the AEN refused to honour his posting order as BTC and should have given him some alternative job. In any case, the applicant was given the posting order ~~as~~ ^{as} the Care-Taker and the termination order was also set aside by the General Manager. Hence not much loss or inconvenience ~~had~~ ^{has} been caused to the applicant though he suffered during the intervening period from 23-12-85 to 2-2-87.

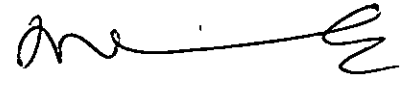
6. No posting can be given in a post for which he is not medically fit. But he should have been posted in a suitable post at the earliest. But the administration failed to take immediate action. In view of that the applicant has to be compensated by way of counting the service when he was out of service i.e. from 23-12-85 to 2-2-87. There is no rule to appoint him as a fresh entrant under the circumstances in which the applicant was placed. It has to be held that order of fresh appointment is also against rules. This view we ~~had~~ ^{also} taken ~~also~~ in OA 995/93. In view of what is stated above we feel the case has to be disposed of as follows :-

- (i) The period from 23-12-85 to 2-2-87 should be treated as leave due to him or it should be treated as leave without pay if he has no leave to his credit. But the said period should not be treated as break in service. His earlier service should be counted for all purposes like fixation of pay, seniority and other final settlements;
- (ii) Pay of the applicant when he was appointed as Care-Taker should be fixed following the directions as given above.

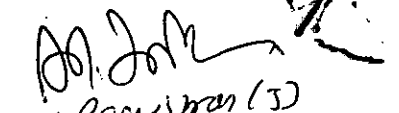
... 5.

7. The Original Application is ordered accordingly with no order as to costs. Time for compliance for fixation of pay as Care-Taker is two months from the date of receipt of a copy of this order.


(B.S. JAI PARAMESHWAR)
Member (J)


(R. RANGARAJAN)
Member (A)

Dated: 5th December, 1996.
Dictated in Open Court.


Dy Registrar (J)

avl/

(33)
01/12/96
TYPED BY
COMPILED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

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

DATED: 5/12/96

~~ORDER/JUDGEMENT~~

~~R.A./C.P/M.A.NO.~~

O.A.NO.

IN
1196/93

~~ADMITTED AND INTERIM DIRECTIONS ISSUED~~

~~ALLOWED~~

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDERED/REJECTED~~

~~NO ORDER AS TO COSTS.~~

II COURT

YLKR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

प्रेषण/DESPATCH

18 DEC 1996

हैदराबाद न्यायपीठ
HYDERABAD BENCH