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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD.
O.A.No. 1309/93

Between:

S.K. Saheb Jan,

... Applicant

And

The South Central Railway
Rep. by its General Manager,
Rail Nilayam, Secunderabad
and 2 others.

... Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENTS

1. I, K.Thiagarajan, S/o Krishnaswamy aged 43 years, Occupation Government Service, South Central Railway, Resident of Guntakal (Anantapur Dist) do hereby solemnly and sincerely affirm and state as follow:

2. That I am the respondent No.3 herein and I am working as Senior Divisional Personnel Officer, Guntakal as such I am well acquainted with the facts of the case. I am filing this Reply Statement on my behalf as well as on behalf of other respondents as I am authorised to do so.

3. I submit that I have read the contents of O.A. filed by the applicant; deny each and every allegations, and averments made there in except those which are specifically admitted here-under. The applicant is put to strict proof of all the allegations and averments. The O.A. does not disclose any valid and substantial grounds for the grant of relief prayed for and it is barred by limitation.

4. In reply to para 5 it is submitted that the cause of action arose on 30-8-1973 on which date the applicant had joined as Clerk with out any protest but not on 9-6-1993 as alleged by the applicant. The cause of action arose

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सहायक मैनिक अधिकारी
दक्षिण मध्य रेलवे गुंटकल
Asst. Personnel Officer,
S. C. Railway Guntakal

DEPONENT
वरिष्ठ मन्त्रालय क अधिकारी
दक्षिण मध्य रेलवे
Senior Divisional Personnel Officer
South Central Railway Guntakal

more than twenty years back, the applicant was not agitated and respresented the matter upto 22-7-92. The O.A. is belated and it is barred by limitation on the grounds of laches.

5. In reply to para 6(I) it is submitted that the applicant was initially appointed as temporary porter (class IV) on 27-7-1959, Again he was promoted as Assistant station Master with effect from 19-4-68, while working as Assistant Station Master he was certified medically unfit in A2 to C₁ and fitⁱⁿ C₂ as office Clerk by D.M.O/GTL. It was specifically indicated by DMO/GTL that he was fit for the post of Clerk only. On medical unfitness he was absorbed as Clerk in the lower grade (110-180/260-400) due to want of vacancies in the equivalent grade 1300-500, duly protecting his pay.

6. In reply to para 6 II it is submitted that as per rule 152 R1 and 2601, Chapter XXVI of Indian Railway Establishment Manual, a Railway Servent who fail in vision test or other wise becomes physically incapable of performing the duties of the post which he occupies, should not be discharged forthwith but every endeavour should be made to find alternative employment for him as expeditiously as possible. Such employment must be of suitable nature and on reasonable emoluments having regard to the emoluments previously drawn by the Railway Servent. There is no specific rule or stipulation that alternative employment should be provided only in the identical grade.

7. It is submitted that as per note 2 of para 2604 IREM that in the matter of absorption of medically incapacitated staff in the alternative posts, the Railway Administration should take care that the interests of staff in service

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सहायक कमिंक अधिकारी
रक्षिण मध्य रेलवे गुंतकल
Asst. Personnel Officer,
S. C. RAMESH Bhatkal

DEPONENT
रक्षिण मध्य रेलवे गुंतकल
Senior Divisional Personnel Officer
South Central Railway, Guntakal

: 3 :

are not adversely affected as far as possible and the alternative appointment should be offered only in posts which the staff can adequately fill. In accordance with those instructions and basing on the vacancy position then prevailing and as per the recommendation of the medical officer that the applicant is found fit for the post of Office Clerk only, in pay scale Rs.110-180(260-400) the applicant was offered appointment of Office Clerk. He accepted the offer without any demur and joined as Clerk in LF/O/NRE w.e.f. 30.8.1973. The applicant has not agitated in the matter till 22.7.92 i.e., for about 20 years. Therefore it is barred on the ground of laches.

8. In reply to para 6 III it is submitted that basing on the vacancy position and recommendation of medical authorities that he was fit for Office Clerk only, the applicant was offered the post of Office Clerk. Since there is no post in clerical categories (office) in grade Rs.290-400, he could not be offered post in the said grade. The applicant was absorbed as Office Clerk in scale Rs.110-180(260-400(RS)) on pay of Rs.167+3pp extending the benefit of protection of pay.

9. In reply to para 6 IV it is submitted that the contention of the applicant that facts and circumstances are similar to that of Sri G.Venkatesham Naidu who filed a case in T.A.No.773/88 is not correct: Sri G.Venkatesham Naidu has been making representation ever since 1977, whereas the applicant had not made any representation upto 22.7.92. The applicant was medically fit in "C2" only where as Sri G.Venkatesham Naidu was medically fit in C1 and C2. Sri G.Venkatesham Naidu was directly appointed as Assistant Station Master by Railway Service Commission the applicant was first appointed in Class IV category and then promoted to switchman and ASM.

Corrs:

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सहायक कमिंक अधिकारी
दक्षिण मध्य रेलवे गुंतकल
ASST. Comm. Officer,
S. C. R. Guntakal

DEPONENT

वरिष्ठ मांडल मांडल अधिकारी
दक्षिण मध्य रेलवे
Senior Divisional Officer
South Central Railway, Guntakal

In the Central Administrative

Tribunal, Hyderabad Bench

At Hyderabad.

O.A no 1309/93

Between

SK. Saheb Jan

Applicant

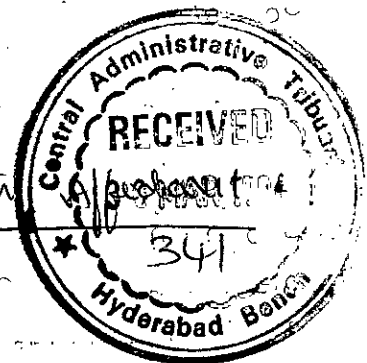
And

General Manager

Scrips and others

Respondent

Co-counsel



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30/3/94

May be first
30/3/94

Chenkala malla Reddy

standing counsel for Rags