

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

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O.A. 1310/93.

Dt. of Decision : 01-01-97]

E. Maddaiah

.. Applicant.

Vs

1. The Divl. Railway Manager,  
SC Rly, Sec'bad.
2. The Sr.Divl. Operations Manager,  
SC Rly, Sec'bad.
3. The Sr.Divl. Safety Officer,  
SC Rly, Sec'bad.
4. The Sr.Divl. Personnel Officer,  
SC Rly, Sec'bad.

.. Respondents.

Counsel for the applicant : Mr. S. Ramakrishna Rao

Counsel for the Respondents : Mr. K. Siva Reddy, SC for Rlys.

CORAM:

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

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

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ORDER

ORAL ORDER (PER HON'BLE SHRI R. RANGARAJAN : MEMBER (JUDL.)

Heard Mr.S.Ramakrishna Rao, learned counsel for the applicant. ~~Though~~ no reply has been filed in this connection Mr.K.Siva Reddy, learned counsel for the respondents argued on the basis of the materials available with him. We heard both the sides.

2. The facts of this case are as follows:-

The applicant was initially engaged as a Casual Labour on 19-4-71. He was later regularised as Gangman on 19-9-79 after screening test. On 4-3-82 he was posted as Gate Keeper at Gate No.12 near Chatkesar on his own request. The said level crossing gate was later transferred from Engineering Department to the Operating Department as it is stated that the level crossing gate was brought within the station limit and the applicant was ~~continued~~ Gate Keeper in that gate.

3. While he was working as a Gate Keeper at Gate No.12 he was placed under suspension from 19-9-85 to 1-10-85 and was later dismissed from service by R-3 vide proceedings No. CG.198.1.2 DSO.Feb.86 dated 28-4-86 after conducting the departmental enquiry. On this appeal, the dismissal from service was modified to that of removal from service vide proceedings No.CT.198.I. 13.DSO.Feb.86 at 5/11-6-86 (Annexure-A-2 to the reply). The applicant further submitted an appeal and it is stated that he was taken back ~~on~~ duty as a fresh entrant with the loss of previous service and seniority. He was given a fresh appointment on 29-10-86 as Mashal in the scale of pay of Rs.196-232/- Rs 750-940/- in the operating department and posted to Sanathnagar Railway Station vide order No.105/P.11/Ptg/Misc., dated 29-10-86 communicated through proceedings No.CP.536.P.11.Optg.Misc. dated 29-10-96 (Annexure-3 to the reply). In due course, the applicant progressed from the post of Mashal to the next higher post of Pointman 'B' in the scale of pay of Rs.800-1150/- (RSRP) in the

operating branch and was posted to Aler Railway Station where he is ~~xxxxxx~~ working now.

4. A notification was issued calling for volunteers from amongst the Gang staff of Engineering department for selection to the post of Permanent Way Maistries in the scale of Rs.1400-2300/- vide proceedings No.UP/535/Engg/PWMS/Vol.V dt. 6-8-92 (Annexure-IV to the reply). ~~One~~ of the conditions notified was that a volunteer ~~for~~ the post of PW Maistries should possess minimum of 10 years of service including 5 years service on regular basis as a Gangman with 8th Class. The candidature of the applicant was rejected on the ground that he ~~did~~ not belong to the Engineering Department, though the applicant states that he was sent even for training for the PW Maistry.

5. This OA is filed praying for setting aside the dismissal order dated 28-04-86 of the R-3 and subsequent modification of ~~2nd~~ respondent and treat him as if in ~~continuous~~ service w.e.f., 1971. The second prayer in this OA is that he should be considered for the post of PW Maistry treating him as Engineering Branch official designated as a Gangman and to post him as PW Maistry consequentially.

6. The two reliefs asked for in this OA are different. Having admitted the OA we thought it fit to dispose of this OA on the basis of the material available.

7. The first contention of the applicant is that he had been reinstated in service and the break in service should be condoned from the date of his removal till the date of ~~xxxxxx~~ reinstatement and the continuity of service should be maintained right from the time he was regularised as Gangman. Whenever a dismissal or removal order is set aside by the appellate/ reviewing authority and reinstatement is ordered ~~as~~ fresh ~~entrant~~, this Tribunal had held that the authority have no powers to reinstate him as a fresh candidate and the reinstating

him should be considered as reduction in punishment as per the reinstatement order and the continuity of service should be maintained treating the intervening period from the date of dismissal/removal to the date of reinstatement as dies-non. The above dictum of this Tribunal equally applies in this case also. In view of the above, the applicant should be treated as an employee of the railway without any break in accordance with the rules from the date of his regularisation treating the period from the date of removal/dismissal till the date of reinstatement as dies-non. The above continuity of service will be applicable for the purpose of his final settlement for pensionary benefits and promotion in the appropriate cadre if the length of service is one of the criteria for promotion.

8. The second prayer in this OA is that he should be treated as Gangman of Engineering Branch for purpose of considering him for the post of PW Maistry which was notified in terms of notification No.CP/535/Egg./PWMS/Vol.V dated 6-8-1992 and he should be considered for that post. Rejection of his candidature treating him as operating department official is not valid as he was a Gate Keeper under the Engineering Branch and he continued in <sup>that</sup> the capacity till his dismissal and posted once again in the same department after his reinstatement.

9. It is an admitted fact that the applicant was regularised in the post of Gangman in the Engineering Branch and he was later posted as a Gate Keeper 1982. When the gate was transferred to the operating branch the applicant was allowed to continue in that post of Gate Keeper even after the gate was taken over by the operating branch. The applicant submits that he <sup>was</sup> is under the bonafide impression that he is the Gate Keeper of Engineering branch and he did not suspect that his cadre has been changed from Engineering Branch to the operating Branch after gate was taken over by the operating branch. It is also submitted is that the above presumption is valid as no option was called for from him when he

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was posted as Gate Keeper after the gate was transferred to the operating branch. He also submits that in case an option was called for from him he would have given his option to go back to the Engineering Branch. As no option was given, showing him as an official of the operating department is irregular.

20. The above contention was examined. There is a force

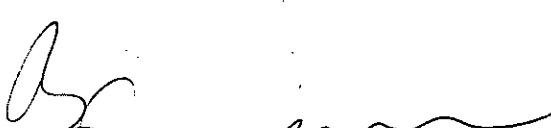
in the argument of the applicant that he was under the impression that he belongs to Engineering Branch even after the Gate was taken over by the Operating Branch. But that impression cannot remain even after his reinstatement <sup>as</sup> he was posted as a Mashal. After reinstatement he is not in an Engineering Departmental post. Post of Mashal belongs to the operating branch and even illiterate Railwayman is aware of this. He accepted the posting of Mashal without any reservation. Probably he was happy that he has been reinstated and thereby he was able to earn his livelihood. Further he was promoted as Pointman-B. When he was promoted as Pointman-B, no railwayman, even if he is illiterate, can be ignorant of the fact that the post belongs to the operating Branch. The learned counsel for the applicant submits that he was under the impression that he was on deputation to the Operating Branch and hence he did not protest. We consider this contention very strange. The applicant or his learned counsel should have first checked up whether such a deputation is valid as per the recruitment rule to the post of Mashal or the Pointman-B. No rule has been produced before us to show that the deputation is permitted as per the recruitment

rule to the post of Mashal or the Pointman from the Gangman of the Engineering Branch. In the absence of production of any recruitment rule to that effect it has to be held that the contention made by the learned counsel for the applicant as above is without any basis. Hence, the second prayer has to be rejected.

11. In the result, the following direction is given:-  
1) The services of the applicant from the date of his regularisation as Gangman should be treated as continuous one only for the purposes of the pension and other pensionary benefits, treating the intervening period from the date of dismissal/removal till the date of reinstatement as dies-non. The service rendered by him in the Operating Branch will count for his future promotion in that Branch.

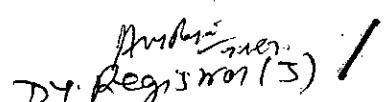
2) The second prayer is dismissed.

12. No costs.

  
(B.S. JAI PARAMESHWAR)  
MEMBER(JUDL.)

Dated : The 1st January 1997.  
(Dictated in the Open Court)

  
(R. RANGARAJAN)  
MEMBER(ADMN.)

  
D.Y. Registrar (S)

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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:

1/1/97

ORDER/JUDGEMENT

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

O.A. NO.

1307/93 <sup>in</sup>

ADMITTED AND INTERIM DIRECTIONS ISSUED  
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

YLR

