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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.NO. 1337/93

DATE OF JUDGMENT: 25.4.95

BETWEEN:

DRL Sastry

Applicant

AND

1. F.A.&C.A.O/WST,
South Central Railway,
Secunderabad-500371.

2. The Chairman,
Railway Recruitment Board,
Lallaguda,
Secunderabad-500017.

Respondents

COUNSEL FOR THE APPLICANT: SHRI P.Krishna Reddy

COUNSEL FOR THE RESPONDENTS: SHRI J.R.Gopala Rao
Sr./Addl.CGSC

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

CONTD.....

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O.A.NO.1337/93.

JUDGMENT

Dt:25.4.1995

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri P.Krishna Reddy, learned counsel for the applicant and Shri J.R.Gopala Rao, learned standing counsel for the respondents.

2. This OA was filed praying for direction to R-I to give the applicant seniority in the category of Data Entry Operator (DEO) from the date he was promoted to the said post i.e., 11.10.1988 and give him all the consequential benefits including the arrears of salary, increments and promotions in the office of Electronic Data Processing Centre/Headquarters/S.C.Railway, Secunderabad
dated 23.6.1993.

3. The applicant, while working as Senior Clerk in the confidential section under the Chairman, Railway Recruitment Board (R-2), applied as inservice candidate ^{Lx} operator notified by way of direct recruitment. He was selected for the said post. The order dated 11.10.1988 was issued appointing him to the said post. The order relieved the applicant by stating that his services are required in RRB vide letter dated 17.10.1988 (at page 14 of the material papers). Therein it was stated that the

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applicant will be relieved after completion of the work referred to therein. Again by the letter dated 21.6.1989 (vide page-12 of the material papers in the OA), it was stated that the applicant will be relieved from RRB to the EDP Centre after completion of the tenure of the then Chairman or ^{after} he gets higher assignment in the meanwhile. It is stated that the tenure of the then Chairman ~~was~~ expired on 31.10.1992 and ^{thereafter} ~~then~~ the applicant was relieved on 26.4.1993 and he joined as Data Entry Operator in the EDP Centre on 14.5.1993.

4. The applicant submitted representation dated 9.6.1993 claiming that he has to be given the difference of pay by treating that he was appointed as Data Entry Operator from 11.10.1988, the date on which the order appointing him as DEO was issued and accordingly the seniority also has to be fixed. When the same was negatived by the order dated 23.6.1993 referred to supra, the applicant preferred this OA.

5. The post of DEO is in Group 'C' (Non-gazetted). As such Chapter III of Indian Railway Establishment Manual is applicable in regard to fixation of seniority. ~~No provision is prescribed for seniority for DEO.~~ Para 303(b) states that in the case of a candidate who ~~will~~ ^{not} ~~prefers~~ ~~to~~ undergo any training in the training school,

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his seniority should be determined on the basis of the merit order assigned by RRB or any other recruitment authority. The learned counsel for the applicant is relying upon the above provision to contend that the applicant has to be given seniority on the basis of the ranking given to him at the time of selection as DEO. But the respondents are relying upon Para 305 IREM to state that if a candidate whose seniority has to be determined as per Para 303 ~~fix~~ and 304 of IREM cannot join duty within the reasonable time after the receipt of the order ~~app~~ of appointment, the appointing authority may determine his seniority by placing him below all the candidate selected in the same examination/selection and who joined within the period allowed for reporting duty, or even below the candidates selected in the subsequent examination/selection who have joined before him. It is submitted for the respondents that basing upon Para 305 of IREM the applicant was given seniority from the date on which he actually joined as DEO.

6. But it is clear from the letters addressed by the ~~earlier~~ as his services were found necessary in the RRB. Hence, there is force in the contention for the applicant that he cannot be deprived of the benefit of Para 303(b) of IREM when he was not relieved by the earlier employer due to exigencies of service.

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7. We feel that para ³⁻⁵ 2 has to be invoked only in a case where delay is at ~~the~~ ^{the candidate} his instance, and not due to the delay in relieving the candidate due to exigencies of service under the previous employer. Even in case where the delay is at the instance of the candidate, there may be instances where the delay is due to the reasons beyond his control, ^{just as sickness.} Hence, discretion was given to the appointing authority ^{whether} to fix seniority of such a candidate below all the candidates selected at the same examination and reported for duty within the period prescribed. But ~~when~~ if the delay is not due to the circumstances beyond the control of the candidate, ^{but} ~~who~~ at the same time ^{he} ~~may~~ might have ^{been} noticed that there are certain grounds for delay whereby the candidate was permitted to report for duty even though such reporting was beyond reasonable time, ~~In such case~~ the appointing authority may pass orders to the effect that his seniority has to be counted only from the date of joining. As already observed, the applicant in this case was not relieved due to the exigencies of ~~the~~ previous employer, and ^{further} especially ~~when~~ that previous employer is also under the control of the ^{Ministry of Railways.} ~~latter.~~ Hence, the applicant has to be given seniority on the basis of his ranking at the time of the selection as DEO. ~~It~~ It is stated for the applicant that he was at Sl.No.1 who is at Sl.No.2 in that list.

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8. Shri P.Krishna Reddy, learned counsel for the applicant who is present at the time of dictation of this order in the open court, submitted that the applicant will make a representation to the concerned authority about the arrears of salary etc., and hence ^{he} is not pressing the other reliefs claimed in this OA and he may be given liberty to approach this Tribunal if ultimately the order that is going to be passed on the basis of his representation in regard to the other reliefs in this OA, will be adverse to him. In the above submission we are not adverting to the other reliefs claimed in this OA.

9. In the result, this OA is disposed of as under:-

The applicant has to be given seniority over the candidate at Sl.No.2 in the select list of Data Entry Operators of 1988. The applicant is given liberty as referred to in the above para.

The OA is ordered accordingly. No costs. /

(R.RANGARAJAN) MEMBER (ADMN.)	(V.NEELADRI RAO) VICE CHAIRMAN
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DATED: 25th April, 1995.
Open court dictation.

1-5 TS
Deputy Registrar (J) CC

To

1. F.A. & C.A.O/WST, S.C.Rly, Secunderabad-371.
2. The Chairman, Railway Recruitment Board, Lallaguda, Secunderabad-
vsn
3. One copy to Mr. P.Krishna Reddy, Advocate, CAT.Hyd.
4. One copy to Mr.J.R.Gopal Rao, SC for Rlys, CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One copy spare.

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APPROVED BY

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 (ADMN)

DATED - 25-4-1995.

ORDER/JUDGMENT:

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

O.A.No. in
1337/93,

T.A.No. (W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No. order as to costs.

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