

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD.

RA.33/94 in
OA.134/93.

Date of order: 28-7-95.

Between:-

1. Union of India, rep. by the
General Manager, South Central
Railways, Secunderabad.
2. South Central Personnel Officer,
--- Secunderabad.
3. Senior Divisional Personnel Officer,
Guntakal Division, S.C. Railways,
Guntakal.

... Applicants
Respondents.

And

1. K. Altaf Hussain
2. Ch. Venkateswara Rao

... Respondent
Applicant.

Counsel for the Applicants: Mr. N. R. Devaraj, Sr. CGSC.

Counsel for the Respondents: Mr. V. Venkateswara Rao.

No. 1

No. 2 - Mr. X. Suryanarayana, Adv.

CORAM:

HON'BLE MR. JUSTICE V. NEELADRI RAO : VICE CHAIRMAN
HON'BLE SHRI R. RANGARAJAN MEMBER ADMINISTRATIVE.

RA 33/94
in
OA 134/93.

Dt. of Order: 28-7-95.

(Order passed by Hon'ble Justice Shri V.Neesadri Rao,
Vice-Chairman)

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Heard Shri N.R.Devaraj, learned counsel for the applicants/respondents and Shri V.Venkateswara Rao, learned counsel for the Respondent/applicant.

2. The applicant who was working as ASM was selected for training for Traffic Inspector against the Departmental quota and thereafter he had undergone training from 10-9-90 to 9-9-92. He was appointed as Section Controller in the pay scale of Rs.1400-2600 and he assumed the said post on 21-12-1992.

3. The notification was issued on 21-9-92 calling for application for the post of Law Assistant in the pay scale of Rs.1600-2660. All those who are in the pay scale of Rs.1600/- and below are eligible for consideration, provided they satisfy the educational qualification and other conditions prescribed in the notification. The last day for receipt of application was 15-10-92, and it was made clear therein that one had to satisfy necessary conditions as on 1-9-92.

4. The applicant applied for the said post and he was also called for interview. By alleging that he had the impression that the selection board proceeded on the basis that he was in the payscale of Rs.1400-2300 (payscale of ASM was Rs.1400-2300).

he filed this O.A. praying for declaration that the applicant was entitled to be included in the said panel treating him as belonging to the grade Rs.1600-2600 / Rs.1400-2600 with all consequential benefits such as appointment as Law Assistant in the grade of Rs.1600-2660, seniority, and arrears of salary and allowances.

5. When this O.A. had come up for consideration on 18-2-93 for admission, the learned standing counsel Sri N.R.Devaraj, submitted that he was instructed to represent that the selection Board proceeded on the basis that this applicant is in the grade of Rs.1400-2600. Basing on the said submission, we dismissed the OA on that day itself by holding that there is no basis for the apprehension of the applicant that the selection Board were treating him as an employee in the pay scale of Rs.1400-2300.

6. All the respondents in the O.A. filed this R.A. praying for review by alleging that the instruction to the learned standing counsel was on the basis of fixation of the pay of the applicant during the training period on an erroneous basis, and as per the extant rules the pay of the applicant during the period of training for the post of Trainee Traffic Apprentice had to be fixed in the post in which he was working by the date of his selection, and he is entitled to the pay scale of the selected post from the date on which he assumed charge.

7. In support of the said contention No.P(R)359/III dated 16-4-93 is ^{referred} valid upon. It shows that the benefit of Railway Board letter dt.4-2-91 enures only to the direct recruits,

and not to the higher post, and the pay of the in-service candidates during the period of training had to be fixed in accordance with the extant rules. It is stated for the respondents in the O.A. that the pay of the in-service candidates during the period of had to be fixed in the pay scale in which they were drawing pay by the date of selection.

8. The learned counsel for the applicant in the O.A. submitted that so long as the pay fixed for the applicant during the period of training is not set aside, he is entitled to draw the pay so fixed for the period of training and he had accordingly drawn it. And hence there is no error in the judgement and accordingly this R.A. has to be dismissed.

9. It is manifest that the O.A. 134/93 was disposed of only on the basis of the submissions made for the respondents in the O.A. It is now stated for the respondents in the O.A. that the said submission was made, being misled on the basis of the erroneous fixation of the pay of the applicant during the period of training.

10. As the relevant date on which the candidates have to satisfy necessary conditions is 1-9-92 and as the applicant was undergoing training by that date, it is necessary to consider relevant rules as to how the pay of the in-service candidates during the period of training had to be fixed in case of selection to higher post for the disposal of this O.A. If such a submission was not made on 18-2-1993, we would have gone into the

merits then itself. But the question as to whether in fact pay of the applicant during the training period was fixed on erroneous basis or not is itself a matter for consideration for determining as to whether the concerned authority was misled in conveying the instructions. So it has to be held that it is a case where it is necessary to decide as to whether in fact the applicant was in the pay scale of Rs.1400-2300 or in pay scale of Rs.1400-2600 / Rs.1600-2660 by 1-9-92. That question arises for consideration both in the DA and also in the R.A.

11. As it has to be stated in view of the pleas ^{of} in the applicants in R.A. i.e. respondents in the O.A., that the submission made at that time was not in accordance with the rules, it has to be held that there is an error apparent on record and hence judgement dt.18-2-93 which is on the basis of submission has to be set aside and it has to be considered on merits.

12. Whenever the employees of more than one pay scale are eligible for consideration for selection, those who were in the higher grade will be placed above those who are in the lower grade. The interse seniority of those who are in the higher pay scale are placed above those who are in the lower pay scale within the same grade. The date of entry into the cadre is taken into consideration in fixing the interse seniority if they are in the same grade. Thus, the question as to whether the applicant in DA 134/93 was in the pay scale of Rs. 1400-2300 or Rs.1400-2660 as on 1-9-92 is of importance. Hence, he had chosen to file

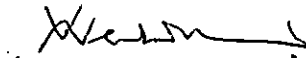
this Original Application.

13. In the result, order dt.18-2-1993 in O.A. is set aside. List the O.A. for final hearing immediately below admissions on 25-8-95. For replies in the meanwhile.

14. Review Application is ordered accordingly. No order as to costs. //



(R. RANGARAJAN)
Member (A)



(V. NEELADRI RAO)
Vice-Chairman

Dated: 28th July, 1995.
Dictated in Open Court.


Dy. Registrar (Judl)

sk/
avl/

Copy to:-

1. General Managerl, South Central Railways, Union of India, Secunderabad.
2. The Chief Personnel Officer, South Central Railways, Secunderabad.
3. Senior Divisional Personnel Officer, Guntakal Division, South Central Railways, Guntakal.
4. One copy to Mr. N. R. Devaraj, Sr. CGSC. CAT. Hyderabad.
5. One copy to Mr. V. Venkateswara Rao, Advocate, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.
8. one copy to Mr. Y. Suryanarayana. Adv.

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THPED BY _____ CHECKED BY _____

COMPARED BY _____ APPROVED BY _____

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

A N D

THE HON'BLE MR. R. RANGARAJAN: (M(ADMIN))

DATED 28/7 1995.

ORDER/JUDGMENT:

7 copies

M.A./R.A./G.A.No. 33/94

OA.No. ⁱⁿ 134/93.

TA.No. (W.P.)

Admitted and Interim directions
issued.

Allowed.

list the OA as 25/8/95

RP

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No. order as to costs.

No spare copy

