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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

O.A.No.1353/93

Date of Order: 21.11.96

BETWEEN :

M.Venkateswarlu

.. Applicant.

AND

1. Divisional Railway Manager,  
S.C.Rly., Vijayawada.

2. Divisional Railway Manager,  
S.C.Rly., Hyderabad (MG) Division,  
Secunderabad.

3. General Manager, S.C.Rly.,  
Rail Nilayam, Secunderabad.

.. Respondents.

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Counsel for the Applicant

.. Mr.G.V.Subba Rao

Counsel for the Respondents

.. Mr.C.V.Malla Reddy

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CORAM:

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

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

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J U D G E M E N T

X Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.) X

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Heard Mr.Ethyrajulu for Mr.G.V.Subba Rao, learned  
counsel for the applicant and Mr.C.V.Malla Reddy, learned  
standing counsel for the respondents.

2. The applicant while working as Assistant Guard was  
suspended from duty w.e.f. 19.5.85 based on a criminal charge  
under Section 3 (a) of R.P.(UP) Act 1966 on the file of the VIIth  
Metropolitan Magistrate for Railways at Vijayawada along with  
others for involvement in organised thefts of Railway property.

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He was discharged from the said case (was) by the said court. In the meantime the applicant compulsorily retired from service w.e.f. 8.7.86 against which he filed OA.66/86 on the file of this Bench. The order of compulsory retirement was set aside in that OA by order dt. 28.3.88. The applicant also filed OA.459/89 for a direction to the respondents to pay the applicant the salary and allowances, incremental benefits, bonus and other allowances treating the entire period as duty. In that OA it was directed to pay the arrears of salary for the period from 25.3.86 to 2.8.88 treating the entire period as duty. It is stated in the reply that the applicant's full salary and arrears have been paid. The applicant finally retired from service on 30.6.89 on attaining superannuation.

3. The applicant filed a representation dt. 16.6.92 addressed to R-2 for payment of the following dues.

- (1) Difference of subsistence allowance for suspension period.
- (2) Fixation of pay as 'C' Grade and other grades along with my juniors the date my juniors was promoted and arrears.
- (3) Refixation of salary at the time of retirement and consequential arrears in gratuity, commutation and Bonus etc.

It is stated that no reply has been given in this connection.

4. This OA is filed praying for a direction for regularising the period of suspension from 19.5.88 to 2.7.88 with all consequential benefits and to promote the applicant to the next post of Guard 'C' with effect from the date on which his immediate junior was promoted and for a further direction to pay the consequential benefits thereon with interest at 18% p.a.

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5. It is seen from the reply that the applicant was paid an amount of Rs.6,403-95 ps. through a special pay bill towards pay and allowances treating his suspension as duty. This averment is not contradicted by the applicant by filing a rejoinder.

6. The applicant was advised to attend the suitability test on 10.5.85 for adjudging his suitability for Driver 'C' post vide office letter No.B/P/282/IV/1 dt.8.5.85. He did not attend the suitability test held on 10.5.85. He was further alerted to attend the supplementary suitability test held on 11.5.85. The applicant did not attend supplementary suitability test also held on 11.5.85 and hence he was passed over for promotion.

7. The learned counsel for the applicant submits that there is no need to attend the suitability test. The suitability has to be adjudged on the basis of the records. But he has not produced any instructions to show that the suitability test is to be finalised only on the basis of records and calling the applicant for suitability test is irregular. In view of that we do not see any reason for the applicant in refusing to attend the suitability test. If he had passed the suitability test he had a good claim for promotion from the retrospective date after he was reinstated in service in terms of direction in OA.66/86. As he failed to attend the suitability test he cannot now claim promotion.

8. In view of what is stated above we find no merit in this OA, and the same is dismissed. No costs.

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

21.11.96

R. RANGARAJAN  
( R. RANGARAJAN )  
Member (Admn.)

Dated: 21st November, 1996

(Dictated in Open Court)

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F-1266..  
D.R.(S)