

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1425/93

Date of Order: 10.12.96

BETWEEN:

M.Anwar Basha

.. Applicant.

AND

1. The Chief Personnel Officer,
S.C.Rly., Sarojini Devi Road,
Rail Nilayam, Secunderabad-371.
2. The Divisional Railway Manager,
S.C.Rly., Divisional Office,
Guntakal-515 801.
3. Sr.Divisional Personal Officer,
S.C.Rly., Guntakal-801.

.. Respondents.

Counsel for the Applicant

.. Mr.M.Panduranga Rao

Counsel for the Respondents

.. Mr.K.Siva Reddy

CORAM:

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

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

J U D G E M E N T

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

Heard Mr.K.Ravi for Mr.M.Panduranga Rao, learned counsel for the applicant and Mr.K.Siva Reddy, learned standing counsel for the respondents.

2. The applicant in this OA was appointed as A.S.M. on 12.11.70 and he was confirmed in that grade on 1.1.73 in the scale of pay of Rs.330-560. He was later promoted to higher grade in the scale of pay of Rs.425-640. While the applicant was working in that capacity he was medically decategorised and he was recommended

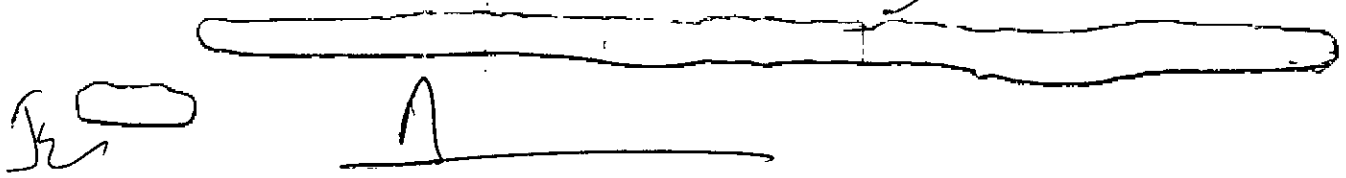
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Clerk by memo dt. 13.7.83. It is stated that the applicant ^{submitted} ~~was~~ representation for posting him in an ^{equivalent} ~~equivalent~~ post ^{equal} ~~equivalent~~ to that of Station Master in the scale of pay of Rs.425-640. His representation was rejected by proceedings No. G/P-612/I/4 Vol.II dt. 28.12.92 (A-1) on the ground that there are no vacancies available in the ^{equivalent} ~~equivalent~~ grade for fitting him. It was also informed to him that his pay in the grade of Rs.260-400 was protected to the maximum in the absorbed grade.

3. This OA is filed for setting aside the proceedings No. G/P-612/I/4 Vol.II, dt. 28.12.92 (A-1) holding it as illegal arbitrary and violative of Articles 14 and 21 of the Constitution and ^{for a} ~~further declare~~ ^{declaration} that the applicant is entitled for the absorption in the category of Senior Clerks in the grade of ³³⁰⁻⁵⁶⁰ ~~Rs.425-640~~ w.e.f. the date of invalidation i.e. 29.1.83.

4. The main contention of the applicant is that there were posts of Senior Clerks in the department in which he was absorbed as L.D.C. at the time of his medical decategorisation on 29.1.83 ~~and it is requested that the post of the respondents to post him as L.D.C. without considering his case for absorption as Senior Clerk in terms of Para-1309 of I.R.E.M. He also relies on the Supreme Court Judgement (AIR 1995 SC 519-7) & (AIR 1990 SC 680) to state that his last drawn pay in the grade from which he was medically decategorised should be protected. He also relies on~~

5. The applicant though states that he is representing his case for fixation in the higher grade it is not understood why he waited for about 9 years to approach this Tribunal. If no satisfactory reply for his representations ^{was} ~~were~~ received in time it is for the applicant to approach the appropriate judicial forum. But he fail to do so. Hence the question of limitation



has to be looked into. Be that as it may, we thought we can dispose of this case on merits. ~~Be that as it may~~.

6. When the applicant was screened and posted on 13.7.83 it is stated for the respondents that there were no posts of Senior Clerks vacant. But ^{Senior clerks} posts filled were earlier ^{to} his screening and hence the applicant cannot claim for posting against those posts. ^{unless} ~~Unless~~ his suitability is adjudged for posting as Senior Clerk. Though the applicant submits that he should have been considered against those posts no rule or instruction has been produced to consider him for the post of Senior Clerk earlier to his screening and finding him fit for posting in a particular post. The applicant has not filed any rejoinder to state that ~~that there were~~ ^{that} vacant posts of Senior Clerk ~~available~~. Hence it has to be held ^{that} at the relevant time there were no vacant posts of Senior Clerk ~~were available~~. When no posts of Senior Clerk were available the railways cannot be forced to create posts to fit him in the higher grade. If the applicant was not interested in joining the lower post he could have submitted his voluntary resignation which is provided for in the manual. But the applicant meekly submitted ^{the} ~~his~~ order and joined as Junior Clerk on 14.7.83. Thus the applicant cannot claim any vested right for consideration for posting in the higher grade.


7. The applicant submits that this Tribunal had earlier in 1986 directed the Railways to re-open such cases and fit them in the higher grade. But there are catena of judgements of this Tribunal issued ^{between} ~~in~~ 1995 and 1996 that re-opening of the cases are not necessary if the applicant has not produced any documents to show that the ^{Equivalent} ~~vacant~~ posts were ^{then} available for his absorption at the relevant time. Hence the contention ~~need~~ not be further ~~considered~~ ^{dismissed}.


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8. The applicant also relies on the judgements of the Apex Court referred to above. These two judgements in our opinion has got no relevance to the present issue. In view of what is stated above we are satisfied that the applicant has not made out any case for re-opening his case for considering him as Senior Clerk right from 14.7.83 onwards.

8. In that view this OA is liable only to be dismissed and accordingly dismissed. No costs.


(B.S. JAI PARAMESHWAR)
Member (Judl.)
10/12/96


(R. KANGARAJAN)
Member (Admn.)

Dated : 10th December, 1996

(Dictated in Open Court).

For the Registrar
Dy. Registrar (S)

sd

3/1/97

A-1425/93

TYPED BY
COMPILED BY

CHECKED BY
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: 10/12/96

ORDER/JUDGEMENT

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

D.A. NO.

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

YLKR

