

(22)

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

O.A. No. 1521/93

Dt. of Decision : 31.3.1994

Mohd. Khaja

.. Applicant

Vs

1. General Manager, South Central Railway,  
Rail Nilayam, Secunderabad.
2. Divisional Railway Manager (MG) Hyderabad  
Division, SC Rly, Secunderabad.
3. Senior Divisional Mechanical Engineer  
(MG) Hyderabad Division, SC Rly,  
Secunderabad.

.. Respondents.

Counsel for the Applicant : Mr. S. Lakshma Reddy

Counsel for the Respondents : Mr. V. Bhimanna, SC for Rly.

CORAM:

THE HON'BLE JUSTICE SHRI V. NEELADRI RAO : VICE CHAIRMAN

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

O.A.No.1521/93.

(27)

Date: 31.3.1994.

J U D G M E N T

{ as per Hon'ble Sri R.Rangarajan, Member(Administrative) }

Heard Sri S.Lakshma Reddy, learned counsel for the applicant and Sri V.Bhimanna, learned Standing Counsel for respondents.

2. The applicant herein was appointed as Y.K.C. on 27.5.1958. He was issued with a charge-sheet Under Rule 3(ii)(iii) of the Railway Service Conduct Rules, 1966 for the alleged <sup>misconducts</sup> offences on 25.8.1986. Though the Enquiry authority differed with the findings of the Enquiry Officer and passed orders of removal dt. 28.3.1988. Thereupon, he appealed against the orders of R-3 to R-2, who passed the orders re-instating the applicant as fresh entrant in service as Shunter in the scale of Rs.1200-2040 fixing his pay in the minimum of the scale and forfeiting his previous service. The applicant submitted a representation to R-2 and R-1 for condonation of break in service or to set aside it was rejected. The applicant retired from service on 31.8.1993. As the past services of the applicant were not counted due to reappointment, he became ineligible for pension on his retirement after superannuation after ~~the order of the respondents~~ forfeiting the whole service prior to his reinstatement/as a fresh entrant and the respondents also refused to condone the break in service, he has filed this O.A. for a direction to the respondents to treat his past service as qualifying service for fixation of his pension and other service benefits.

...3/-

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3. In O.A.No.281/93 the applicant therein was also taken as a fresh entrant, thereby his past services were not counted for pensionary and other service benefits. In that OA it was held that the authorities have no powers to issue an order of appointment without following the procedure prescribed as per recruitment rules i.e. without considering the names of other eligible candidates for the said post. Hence, the order of re-appointment of the applicant as a fresh entrant was held as in disregard

was construed as a case of passing an order of major penalty in accordance with Rule 6(v) of Railway Servants (R.S.) Rules by lowering the pay of the applicant in the category of Fitter Grade-III to the minimum of the scale i.e. Rs.260-400 and that his annual increments accrue thereafter. The period from the date of his removal till reinstatement was treated as dies-non.

4. As the present case is also similar to the one cited above, we see no reason to differ from the Judgment of this Tribunal in the above mentioned case. The following direction is given.

"Passing of order" of re-appointment of the applicant in disregard of rules. It is to be construed as an order of major penalty in accordance with Rule 6(v), by lowering the pay of the applicant ~~for~~ <sup>in</sup> the category of Shunter to the minimum of the scale i.e. Rs.1200-2040 and that the annual increments accrue thereafter. The period from <sup>31</sup>29.3.1988 the date of removal till <sup>20-6-1988</sup>26.8.1989 the date of reinstatement should be treated as 'dies-non'."

....4/-

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Modified  
as per Com Order  
dt 25-7-94.  
J. D. S.  
21/5/94

*(Handwritten initials)*

5. On the basis of the above, the qualifying service of the applicant has to be reckoned and pension of the applicant due to him has to be fixed and has to be paid from 1.4.1992 <sup>1.9.93.</sup> accordingly. It is now open to the applicant to apply for commutation of pension if he is so advised in accordance with rules. The pension amount due to the applicant from 1.4.1992 <sup>1.9.93.</sup> onwards, has to be paid within six months from the date of receipt of this order.

*modified  
as per Comptroller  
dt. 26.4.94.*

*(Signature)  
27/4/94*

6. The O.A. is ordered accordingly. No costs.

*(Signature)*  
( R.Rangarajan )  
Member (Admn.)

*(Signature)*  
Vice Chairman

Date 31/7

Grh.

*(Signature)*  
Deputy Registrar (J)CC

- To
1. The General Manager, Rail Nilayam, Secunderabad.
  2. The Divisional Railway Manager (MG) Hyderabad Division, S.C.Rly, Secunderabad.
  3. The Senior Divisional Mechanical Engineer (MG) Hyderabad Division, S.C.Rly, Secunderabad.
  4. One copy to Mr. S. Lakshma Reddy, Advocate, CAT-Hyd.
  6. One copy to Library, CAT-Hyd.
  7. One spare copy.

pvm

*(Signature)  
27/4/94*

TYPED BY

COMPARED BY

CHECKED BY

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. A. B. GORTHY : MEMBER (AD)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY  
MEMBER (JUDL)

AND

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

Dated: 31 - 3 - 1994

ORDER/JUDGMENT

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

in

O.A. No.

1521/93

T.A. No.

(w.p.)

Admitted and Interim Directions  
Issued

Allowed

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

pvm

