

(92)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 1561/93,

Dt. of Decision : 18-8-94.

Mr. N. Bondaiah

.. Applicant.

vs

1. Union of India rep. by
its Secretary,
Ministry of Railways,
New Delhi.
2. General Manager,
SC Rly, Sec'bad.
3. Divl. Railway Manager,
SC Rly, Sec'bad Division,
Secunderabad.

.. Respondents.

Counsel for the Applicant : Mr. S. Lakshma Reddy

Counsel for the Respondents : Mr. N.V.Ramana, Addl. CGSC.

CORAM:

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

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

93

O.A.No.1561/93.

Date: 18.8.1994.

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 N.V.Ramana, learned Standing Counsel for the respondents.

2. The applicant herein was appointed as Engine Cleaner in the year 1951. Subsequently he was promoted as Second Fireman and further as Diesel Driver 'C'. He was issued with a charge-sheet for his participation in an illegal strike which caused dislocation in running the trains. He was subsequently dismissed from service by orders dt. 3.6.1981 under rule 14(ii) of Railway Servants (Discipline and appeal) Rules, 1968 by R-3. The applicant preferred an appeal against the orders of dismissal of R-3 to R-1 who passed the orders of reinstatement dt.9.12.1981 reinstating the applicant as a fresh entrant in service as Diesel Driver Grade 'C' forfeiting his previous service and fixing his pay in the minimum of the scale i.e. at Rs.1200/- in the scale of Rs.1200-2040. The applicant submitted a representation to R-2 ~~and R-3~~ for condonation of break in service from 3.6.1981 to 9.12.1981 and it was rejected. The applicant retired from service on 30.9.1992 on attaining superannuation. As the past services of the applicant were not counted due to reappointment, he became ineligible for pension and other retiral benefits for his past services. Aggrieved by the order of the respondents forfeiting the whole service prior to his reinstatement by treating him as a fresh entrant and the respondents also refused to condone the break in service, he has filed this OA for a direction to the respondents to treat his past service as qualifying service for fixation of his pension and other service benefits.

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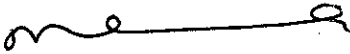
3. In O.A.No.281/93 the applicant therein was also taken as a fresh entrant, thereby his past services were not counted for pensionary and other service benefits. In that OA it was held that the authorities have no powers to issue an order of appointment without following the procedure prescribed as 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 of rules. The order of fresh appointment in that case was construed as a case of passing an order of major penalty in accordance with Rule 6(v) of Railway Servants (D&A) 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-

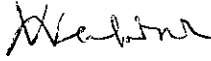
4. As the present case is also similar to the one cited above, we see no reason to differ from the judgment of this Tribunal in the above referred O.A. Hence, the following direction is given:

"Passing of order of reappointment of the applicant herein as Diesel Driver Grade 'C' as a fresh entrant has to be held as 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 in the category of Diesel Driver Grade 'C' to the minimum of the scale i.e. Rs.1200-2040 ~~xxxx~~ and that the annual increments accrue thereafter. The period from 3.6.1981 the date of dismissal till 9.12.1981 the date of reinstatement should be treated as 'dies-non'.


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 1.10.1992 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 him from 1.10.1992 has to be paid within six months from the date of receipt of this order.

6. The OA is ordered accordingly. No costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated 18th August, 1994.


1994
Deputy Registrar (J) CC

Grh.

To

1. The Secretary, Union of India, Ministry of Railways, New Delhi.
2. The General Manager, S.C.Rly, Secunderabad.
3. The Divisional Railway Manager, S.C.Rly, Secunderabad Division, Secunderabad.
4. One copy to Mr. S. Lakshma Reddy, Advocate, CAT. Hyd.
5. One copy to Mr. N. V. Ramana, SC for Rlys, CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

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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

AND

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

DATE: 18-8-1994

~~ORDER~~/JUDGMENT

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

in

O.A.No. 1561/93.

(T.A.No. (W.P.NO

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected

No order as to costs.

pvm

Central Administrative Tribunal
DESPATCH
25 AUG 1994
HYDERABAD BENCH.