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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1572/93

Date of Order. 10.2.1994

BETWEEN :

K.Venkateswara Rao

.. Applicant.

A N D

1. General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. Divisional Superintendent,
S.C.Railway, Vijayawada.
3. Deputy Chief Engineer (Construction),
South Eastern Railway,
Visakhapatnam. ~~Waltay~~.
4. Senior Personnel Officer (Construction),
South Eastern Railway,
Visakhapatnam.
5. Admiral Superintendent,
Naval Dock Yard,
Visakhapatnam.

.. Respondents.

Counsel for the Applicant

.. Mr. K.K.Chakravarthy

Counsel for the Respondents

.. Mr.D.Gopal Rao
for R1 to R4
Mr.K.Bhaskara Rao
for R5.

CORAM :

HON'BLE ~~Mr.~~ JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN

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


(21)
Date of order dated 10.2.94

OA 1572/93

Judgement

(AS PER JUSTICE SHRI V. NEELADRI RAO,
VICE-CHAIRMAN)

Heard Shri K.K. Chakravarthy,
learned counsel for the applicant and also
Shri D. Gopal Rao, Sr. Standing counsel for
Respondents 1 to 4 and Shri K. Bhaskar Rao,
for
Standing counsel/Respondent 5.

2. This application was filed praying
for a direction to the Respondents 1 to 3 to
issue necessary certificate counting the
service of the applicant from 27.3.61 to
13.7.67 as qualifying service for the 
purpose of pension, DCRG, ^{and} to direct Respondent 5
to take into consideration the above service
of the applicant in the Railways as a continuity
of service for the purpose of pension and DCRG
and ^{for} further direct ^{in the} the Respondent 5 to fix
the pension and DCRG on that basis and for
payment of the same.

3. The facts which give rise to this OA
are as under:

The applicant alleges that he worked
in DBK Project, Railways from 28.3.61 to 13.7.67
and ^{when} ~~that~~ the said Project work was closed, The
applicant was found surplus and he was offered
the post of Ticket Collector in Vijayawada
division. He further alleges that as he had

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become sick and he was already under treatment in the Railway hospital at Vijayawada till 6.10.67 and even before that date i.e. on 1-10-67, his resignation from the Railway was accepted. The applicant joined service under Respondent 5 on 13.10.67. Sub rule (2) under the head forfeiture of service on resignation in the chapter Railway Pension & retirement benefits in the Railway Manual for pension which is relevant for consideration of this OA is as under:-

" A resignation shall not entail forfeiture of past service if it has been submitted to take up, with the proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. "

It was pleaded for the applicant that he sent his application seeking job under Respondent 5 through Railways. It was not so stated in the lawyer notice dated 25.11.91 given by the applicant.

It is manifest from the relevant provision referred to that there will not be any forfeiture of the service in the Railways when the employee joined another organisation, if the resignation was accepted permitting the employee to seek appointment in another organisation. Whenever such permission is given, it will be referred to in the proceedings accepting the resignation with an indication that the benefit under CSR 418 (b) rule 26(2) will be admissible to such an employee. It is not the case of the applicant that it was so mentioned in the order whereby his resignation was accepted.

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It is now contended for the applicant that the copy of the order whereby his resignation was accepted was not available with him. In such a case, the applicant cannot assert that the said rule was referred to in the said order. In the reply dated 16.6.93 it is stated by the Sr. Project Manager, S.C. Railway, Waltair that the old records of the D.B.K. Project are not available, in their office and ^{it is} not possible to certify the service particulars of the applicant as required by the applicant. No adverse inference can be drawn when the records are not available and when request for such record was made after more than 20 years. It can be noted that as the D.B.K. Railway Project was wound up and as it is not stated that even after winding up, the record in regard to the resignation has to be preserved, no adverse inference can be drawn when it is stated that the said record is not traceable.

When the benefit of the service in the Railways can be counted for the purpose of pension in the case of the employee joining another organisation, it depends upon the ^{permission that has to} condition. ~~That condition should~~ be given for joining another organisation and when the same is not established, the applicant is not entitled to claim that his alleged service in the Railways should be counted for calculation of pension and DCRG.

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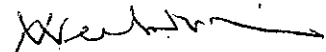
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6. Hence in these circumstances, the OA
is liable to be dismissed.

it is dismissed. No costs.



Member (Admin)



(V. NEELADRI RAO)

(Open court dictation)

16-3-74
Deputy Registrar (J.P.C.)

To

1. The General Manager, S.C. Railway,
Railnilayam, Secunderabad.
2. The Divisional Superintendent,
S.C. Railway, Vijayawada.
South Eastern Railway, (Construction),
4. The Senior Personnel Officer (Construction),
South Eastern Railway, visakhapatnam.
5. The Admiral Superintendent, Naval Dock Yard, visakhapatnam.
6. One copy to Mr. K.K. Chakravathy, Advocate, CAT. Hyd.
7. One copy to Mr. D. Gopal Rao, SC for Rlys, CAT. Hyd.
9. One copy to Library, CAT. Hyd. Addl. CGSC. CAT. Hyd.
10. One spare copy.

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