

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL-APPLICATION-NO.1124-OF-1994

DATE-OF-ORDER:-6th-June,-1997

BETWEEN:

VENKATA NARASIMHULU

.. APPLICANT

AND

1. The Divisional Railway Manager,
South Central Railway, Vijayawada,
 2. The Divisional Personnel Officer, Coordination,
S.C.Railway, Vijayawada,
 3. The Sr.Divisional Electrical Engineer (M),
S.C.Railway, Vijayawada.
- .. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.P.KRISHNA REDDY

COUNSEL FOR THE RESPONDENTS:Mr.V.RAJESWARA RAO, Addl.CGSC

CORAM:

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

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

ORDER

ORAL ORDER (PER HON'BLE SHRI B.S.JAI PARAMESHWAR,
MEMBER (JUDL.)

Heard Mr.P.Krishna Reddy, learned counsel for the
applicant and Mr.V.Rajeswara Rao, learned standing counsel
for the respondents.

2. The applicant while working as Electrical Fitter
Grade I, Guntur was prematurely retired from service by the
proceedings No.B/P.Con.579/II.Elec.M/VN/92 dated 21.12.92

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issued by the Sr.DEE(M)/BZA. The Sr.DEE made the said order in exercise of the power under Rule 1802 (a) of the Indian Railway Establishment Code Vol.II (6th Edition 1987) read with Para 620(ii) of Manual of Pension Rules, 1950. Against the said order the applicant filed an appeal dated 28.12.92 which was disposed of by rejecting the same, as can be seen from the letter No.B/P.Con.579/II/Elec.M/VN/92 dated 6.10.93. In the letter dated 6.10.93, it was stated that the premature retirement has been done under the provisions of Rule 2046 R-II.

3. This OA is filed challenging the memos dated 21.12.92 and 6.10.93 of the disciplinary and the appellate authorities and for consequential benefits to reinstate him into service with back wages, increments, promotions etc.

4. The main contention of the applicant in this OA is that under Rule 1802(a) of the Indian Railway Establishment Code Vol.II read with Para 620(ii) of the Manual of Pension Rules, 1950, the applicant could not have been retired prematurely from service. Para 620(ii) of the Manual of Pension Rules, 1950 has been set-aside by the Apex Court on 17.10.89 i.e, earlier to the issue of the order dated 21.12.92 and the same was reported in AIR 1990 SC 450 (Union of India v. Shaik Ali). Further, Rule 1802(a) of the Indian Railway Establishment Code, Volume II, is applicable to Group-C employees only if they cross the age of 55 years. On the date of issue of the memo dated 21.12.92, the applicant was only 54 years and 6 months old and hence the Rule quoted itself is a wrong rule and cannot be sustained.

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5. In this connection, the learned counsel for the respondents brought to our notice the Annexure IV to the reply. In the Annexure IV, the Rule quoted is 1803(a) of IREC Vol.II (6th Edition 1987). The figure 2 in 1802 has been corrected as 3 to read as 1803(a). In order to verify whether the memo dated 21.12.92 was issued to the applicant quoting Rule 1802(a) or 1803(a), we have perused the ^{original} memo handed over to the applicant. That memo clearly shows that the applicant was retired prematurely only under rule 1802(a) of IREC Vol.II (6th Edition, 1987). Hence it has to be held that the applicant had retired under a wrong rule i.e, 1802(a) of IREC Vol.II and under that rule the applicant could ^{not} have been prematurely retired.

6. In the appellate order, the rule quoted for prematurely retiring the applicant is Rule 2046 R-II. On the date of issue of the memo dated 21.12.92, Rule 2046 RII had been deleted from the rule book. Hence the appellate authority could ^{not} have been prematurely retired the applicant under a wrong rule. This clearly goes to prove that the appellate authority has not applied his mind while passing the appellate order. Hence this appellate order is also liable to be set-aside.


7. The applicant is now directed to file a detailed representation to the appellate authority quoting the various contentions as indicated in this OA and if such a representation is received, the appellate authority should consider the facts in the appeal and pass a reasoned speaking order. If the applicant is prematurely retired


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under a wrong rule, then the appellate authority should examine the same and take a necessary corrective action. Merely correcting the memo served on the applicant will not be considered as a proper application of mind and that will not serve any purpose.

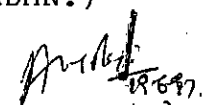
8. In the result, the impugned appellate order conveyed to the applicant by the letter No. OA) is set-aside. The applicant, if so advised, may submit a detailed representation to the appellate authority in this connection. If such a representation is received by the appellate authority, then that representation should be disposed of within a period of two months from the date of receipt of the representation keeping in view the observations made by us as above.

9. The OA is ordered accordingly. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)
6.6.97


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED:-6th-June,-1997
Dictated in the open court.


Dy. Registrar (3)

vsn

8/7/97
(7)

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR: M
(J)

DATED 6/6/97

ORDER/JUDGEMENT

M.A./R.A/C.A.NO.

O.A.NO.

in
1124/ay

Admitted and Interim directions
Issued.

Allowed

Disposed of with directions,

Dismissed

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

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II Court.

