

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.124/94

Date of Order: 2.1.96

BETWEEN:

K. Suryanarayana

.. Applicant.

A N D

1. General Manager, S.E.Railway,
Garden Reach, Calcutta -43.
2. Divisional Railway Manager (P)
S.E.Railway, Visakhapatnam.
3. Chief Hospital Superintendent,
S.E.Railway, Garden Reach,
Calcutta - 43.
4. Chief Medical Superintendent
S.E.Railway, Main Hospital,
Visakhapatnam.
5. Divisional Mechanical Engineer,
S.E.Railway. Visakhapatnam

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Counsel for the Applicant

.. Mr.K.Srinivas Kumar

Counsel for the Respondents

.. Mr.N.R.Devraj

- - -

CORAM:

HON'BLE SHRI JUSTICE V.NEEELADRI RAO : VICE CHAIRMAN

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

- - -

GA 124/94.

Dt. of Order: 2-1-96.

(Order passed by Hon'ble Justice Shri V.Neeladri Rao,
Vice-Chairman).

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The applicant joined the South ~~Eastern~~ Railway as Shed Kalasi on 31-7-1954. In due course he got various promotions and by 11-4-91, the date on which he was considered as medically unfit, he was working as Goods Driver. The applicant was found unfit at the time of periodical medical examination. Then the applicant was referred to Chief Medical Superintendent, S.E.Railway, Garden Reach, Calcutta, and the said authority confirmed by order dt.21-9-91 that the applicant was not fit in A-I category for discharging his duties as Driver on the basis of letter dt.21-9-91. The Medical Superintendent of Waltair informed Respondent No.5 that the applicant is unfit in the category to continue as Driver and Respondent No.5 was asked to initiate necessary action for alternate employment. A copy of this order was also docketed for information to the officer, under whom the applicant was directly working. On son is going to be given job on compassionate grounds. But treating it as ~~an~~ a conditional one, the applicant was screened for the post of material clerk, and offer was made as per letter dt.29-1-92, But the applicant had not expressed his willingness to join the said post. The applicant was given his retiral benefits by treating his retirement as on 31-3-94, the date on which he would have retired on attaining the age of superannuation as Goods Driver. Accordingly the DCRG and Pension ^{was} ~~was~~ fixed on

the basis that he was retired on 31-3-94 and DCRG was paid and
pension was being paid from 1-4-94. The applicant was applied
for commutation of pension ^{and} as the same was paid on 4-2-94.

2. The applicant was informed by letter dt.3/9-11-92
on the basis of ^{his} representation of the applicant that he
will be given the alternate post, to which he is screened
as and when it is available and till such time he had to be on
leave. When the applicant pleaded in para-6(c) that he was
not traversed in the reply statement.

3. This O.A. is filed praying for a declaration that the
action of the respondents in treating the applicant as Medically
decategorised and the order dt.3/9-11-92 ^{one} illegal and arbi-
trary and without jurisdiction and to set aside the same and
for a direction to treat the applicant as on duty from 11-4-91
as Goods Driver and as A Grade Driver from June, 1991, and to
pay the arrears of salary and other attendant benefits till
31-3-94 and to calculate his retirement benefits on the basis
of his pay as on 31-3-94 and to pay the arrears accordingly;

OR

In the alternate, to direct the respondents to treat
the applicant as discharged from service on 11-4-91 and to
pay the arrears of monthly pension from April, 1991 to March,
1994 and to provide suitable job to Mr. Radha Krishna, the
second son of the applicant on compassionate grounds as per
Railway Board Circular dt.12-12-90.

JR

M 11-4-91

4. At the time of routine medical examination, the applicant was found unfit for the post of Goods Driver, which is in A-I medical category. Accordingly he was not entrusted the job of ~~from 11-4-91~~ Goods Driver as envisaged in para-1304 (a) of IREM. Hence the period of six months leave as ~~envisaged~~ ^{stipulated} in para-1304(a) has to be counted from 11-4-91. ^{said} Thus the period expired on 11-10-91. Eventhough the Chief Medical Superintendent, SE Railway, Calcutta ~~M 21-4-91~~, where by the applicant was held as unfit on 11-4-91, the same was communicated to the concerned Loco Shed only by 25-11-91. Hence there cannot be any question of retirement on medical grounds before that date.

5. The leave referred to in para-1304(a) is intended to enable the administration to identify an alternate job ^{similar} to the decategorised Railway employee ~~may be suitable~~. But there was no obligation or compulsion on the part of the decategorised employee to accept the alternate job. At no time the applicant expressed his desire to have the alternate job. Even by representation dt. 2-1-92 the applicant expressed his willingness to resign if his son is going to be given compassionate grounds appointment. That was also brought to the notice of the Screening Committee when the applicant was screened for the post of material clerk.

6. Para-1315 states that if the Medically decategorised Railway servant refuses to accept one or more alternate appointments, he will retire finally on the expiry of leave ⁶⁶ granted

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to such employee as stated in para-1304 of IREM. The maximum leave including six months leave without allowances will be total leave due on allowances + 6 months extra ordinary leave.

7. Any how when the medically decategorised employee cannot be compelled to accept the alternate job and when such employee states that he was not interested in alternate job, then the administration to identify an alternate job or to screen that employee for that job. But any how there cannot be any retirement before the order of Chief Medical Superintendent, Calcutta, SC Railway, was communicated on 25-11-91.

8. We feel that L. held that the applicant retired on medical grounds with effect from the AMR afternoon of 30-11-91 and accordingly the respondents have to be directed to pay leave salary, if there is any further leave available to the applicant by 30-11-91.

9. ~~As there~~ ^{There} will not be any change in regard to the fixation of pension or DCRG, for he was having total qualifying service even by 30-11-91 and as no increments accrued subsequent to 11-4-91. Hence the only other direction that had to be given for payment of arrears of pension from 1-12-91 till 31-3-94.

10. As DCRG was paid only after 31-3-94, when it was payable by 1-3-92 i.e. after expiry of three months from the date of retirement, it is just and proper to direct Respondents to pay interest on the gratuity amount at the rate of 10% from 1-3-92 till the date of cheque that was issued in regard to the

To

1. The General Manager, SE.Rly,
Garden Reach, Calcutta-43.
2. The Divisional Railway Manager(P)
S.E.Rly, Visakhapatnam.
3. The Chief Hospital Superintendent,
S.E.Rly, Garden Reach, Calcutta-43.
4. The Chief Medical Superintendent,
SE Rly, Main Hospital, Visakhapatnam.
5. The Divisional Mechanical Engineer.
6. One copy to Mr.K.Srinivas Kumar, Advocate, CAT.Hyd.
7. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
8. One copy to Library, CAT.Hyd.
9. One spare copy.

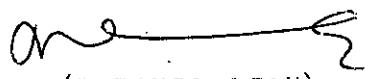
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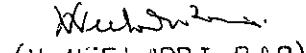
Death-cum-retirement gratuity.

11. When the applicant was working as Goods Driver by 11-4-91, he was in Grade 'C' only and hence there could not have any promotion from grade 'C' Driver to Grade 'A' Driver. Any how there was no need to further advert to the same as promotion cannot be given effective during the leave and it will come into effect only after expiry of leave. ^{and as} ~~as~~ the applicant could not join ~~to~~ the duty again as Driver after 11-4-91, the question of further promotion from the post of

12. The applicant can make a representation to the concerned authorities for compassionate appointment of his son in view of his retirement on medical grounds and if such representation is going to be given by sending it by Registered Post with Acknowledgement Due by the end of February, 1996, the same had to be considered in accordance with rules. It is needless to ^{that} say if ultimately the order to be passed in regard to the same is going to be adverse to him, he is free to move this Tribunal under section 19 of the A.T.Act, 1985.

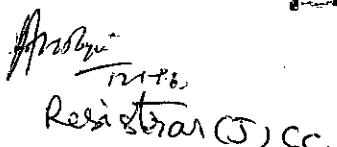
13. O.A. is ordered accordingly. No order as to costs. //


(R. RANGARAJAN)
Member (A)


(V. NEELADRI RAO)
Vice-Chairman

Dated: 2nd January, 1996.
Dictated in Open Court.

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Deputy Registrar (S) CC

C.C. SECY
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I COURT

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

AND

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

Dated: 2 - 1 - 1996

~~ORDER/JUDGMENT~~

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

in
O.A.No. 124/96

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.

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