

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD.

* * *

O.A. 397/94.

Dt. of Decision : 7.4.1994.

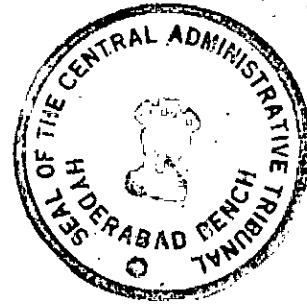
Gulam Dastagiri

.. Applicant

Vs

1. Union of India Rep. by its General Manager, Rail Nilayam, South Central Railway, Secunderabad.
2. Divisional Railway Manager (MG) South Central Railway, Hyderabad Division at Secunderabad.
3. Senior Divisional Mechanical Engineer, (MG) South Central Railway, Hyderabad Division at Secunderabad.

.. Respondents.



Counsel for the Applicant : Mr. S. Lakshma Reddy

Counsel for the Respondents: Mr. D. Gopal Rao, Addl.CGSC.

CORAM:

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

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

Hence, we come to the conclusion that the observation made by us in para-3 above is in order.

5. The learned counsel for the respondents pleaded that the employee was taken back as a fresh entrant way back in the year 1976 and this O.A. is filed on 14.3.1994 i.e. after a lapse of about 18 years and hence the O.A. is barred by limitation. A study of the observation in para-3 above will definitely indicate that we have interpreted the orders of the appellate authority in appointing the applicant as a fresh entrant and fixing his pay at the minimum of the scale ~~and~~ and regulated his further service as above. It was interpreted by us that the order of fresh appointment is not in accordance with the Recruitment Rules and that the order of the appellate authority should be 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 Y.K.C. in the scale of Rs.196-232 and that the annual increments will accrue thereafter. The copy of the letter issued by the General Manager(P) referred to above is also in accordance with the above interpretation. As we have only interpreted the rule as it should be, the question of limitation does not arise. Hence, the contention of the learned counsel for the respondents that the O.A. is barred by limitation cannot be upheld.

6. As the present case is also similar to the case in O.A.No.281/93 cited above, we see no reason to differ from the Judgment of the Tribunal in the said O.A. Hence, the following direction is given:-

"Passing of order of re-appointment of the applicant herein as Y.K.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

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), 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. General Manager(P), South Central Railway in his letter dt. 7.4.1983 had instructed the appellate authorities that they should not pass an order of re-appointment while considering an appeal of an employee against the orders of the disciplinary authority and further said that the powers of the appellate authority Under Rule 22(2)(c)(i) and (ii) are confined only to (i) confirming; (ii) enhancing; (iii) reducing, or (iv) setting aside the penalty or remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case. The above instructions were necessitated because of a reference from the Board in a similar case of this nature. The Board in that case observed as under:-

"as regards the order of reappointment, there is no doubt that in terms of the note below rule 402 of the Estt. Code, Vol.I, the appellate authority acted without jurisdiction in making the order of reappointment.".

The above instructions are in accordance with our observations in para-3 supra.

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in accordance with Rule-6(v) by lowering the pay of the applicant in the category of Y.K.C. to the minimum of the scale i.e. Rs.196-232 and that the annual increments will accrue thereafter. The period from 7.6.1976 the date of removal till 29.12.1976 the date of reinstatement should be treated as dies-non."

On the basis of the above, the qualifying service of the applicant has to be reckoned for future pensionary benefits.

7. The O.A. is ordered accordingly at the admission stage itself. No costs.

CERTIFIED TO BE TRUE COPY

Date.....

Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

Copy to:-

1. General Manager, Rail Nilayam, South Central Railway, Union of India, Secunderabad.
2. Divisional Railway Manager (MG), South Central Railway, Hyderabad Division at Secunderabad.
3. Senior Divisional Mechanical Engineer, (MG) South Central Railway, Hyderabad Division at Secunderabad.
4. One copy to Sri. S. Lakshma Reddy, advocate, CAT, Hyd.
5. One copy to Sri. D. Gopal Rao, SC for Railways, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

15/6/77
D. Gopal Rao