

(28)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

- -

O.A. 500/94.

Dt. of Decision : 13.6.94.

S. RAMACHANDER RAO

.. Applicant.

Vs

1. Union of India rep. by its
General Manager,
SC Rly, Rail Nilayam,
Secunderabad.

2. The Senior Divisional Personnel
Officer, S C Rly,
Hyderabad (MG) Division,
Secunderabad.

.. Respondents.

Counsel for the Applicant : Mr. T.Lakshminarayana

Counsel for the Respondents : Mr. D.Gopal Rao, SC for Rlys.

CORAM:

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

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

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J U D G M E N T

{ as per Hon'ble Sri R.Rangarajan, Member(Administrative) }

Heard Sri ~~1. Rangarajan~~ applicant and Sri D.Gopal Rao, learned Standing Counsel for Railways.

2. The applicant herein joined the Railways in Group 'D' service in the year 1955. He was promoted as Ticket Collector in ~~1977~~ ^{he} Travelling Ticket Examiner in the scale of Rs.330-560 (RS) in the year 1983. It is alleged by him that while he was employed as Travelling Ticket Examiner, a vigilance case was foisted against him and after prolonged departmental proceedings he was dismissed from service on 19.3.1983. Later on, the Additional General Manager, ~~Hyderabad~~ offered the applicant the post of Office Clerk as a fresh entrant for all purposes vide Office order dt. 25.6.1984 bearing S.O.O.No. 03/Admn./1984. The applicant joined as Office Clerk in the Hyderabad Division of South Central Railway in the scale of Rs.260-400 (RS) on 27.6.1984. His pay in the said grade was fixed at Rs.260/-. It is ~~stated~~ stated by the applicant that the period between 19.9.1983 and 26.6.1984 was treated as break in service thereby he lost the benefit of past services rendered before he was dismissed from service(i.e. he lost the service of about 28 years). He was finally retired from Railway service on 30.6.1992. The applicant, in the second spell of appointment, had put in 9 years and 9 months service and since the said service is less than 10 years qualifying service, he was not granted pension, gratuity and other pensionary benefits. He had applied for condonation of break-in-service for the period from 19.9.1983 and 26.6.1984 so that he will be able to get

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the pensionary benefits. It is stated for the applicant that if the break in service is condoned, his qualifying service will be about 38 years and thereby he will be able to get all the pensionary benefits. He represented the case for condonation of break-in-service for the period mentioned above to the concerned authorities in the Railways, but was not acceded to. Aggrieved by the same, he has filed this O.A.

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 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 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. Similar decisions were rendered in O.As.79/94 and 397/94.

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 reappointment 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

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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 Establishment Code, Vol.I, the appellate authority acted without jurisdiction in making the order of reappointment."

The above observations in para-3 supra. 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 1984 and this O.A. is filed on 2.4.1994 i.e. after a lapse of about 10 years and hence the O.A. is barred by limitation.

6. When a similar plea was taken in O.A.No.397/94 by the respondents, we had held that we have only interpreted the rule as it should be and hence the question of limitation does not arise. The same reasoning holds good here also and hence we reject the plea of the respondents that this O.A. is barred by limitation.

7. As the present case is also similar to the cases in O.A.No.281/93, 79/94 and 397/94, we see no reason to differ from the judgments of the Tribunal in the above said O.As.

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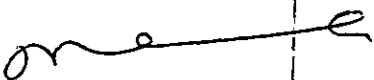
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Hence, we give the following direction:

"Passing of order of re-appointment of the applicant herein as Office Clerk, 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 Office Clerk to the minimum of the scale i.e. Rs.260-400 and that the annual increments will accrue thereon from 19.9.1983 the date of dismissal till 26.6.1984 the date of reappointment should be treated as dies-non."

On the basis of the above, the qualifying service of the applicant has to be computed ^{and} his pensionary benefits fixed on this basis.

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


(R.Rangarajan)
Member(Admn.)


(V.Neeladri Rao)
Vice Chairman

Dated 17 June, 1994.

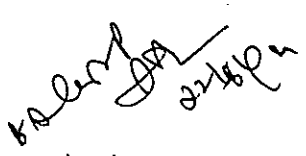

Dy.Registrar(Judl)

Grh.

Copy to:-

1. Union of India rep.by its General Manager, S.C.Railways, Rail Nilayam, Secunderabad.
2. The Senior Divisional Personnel Officer, S.C.Rlys, Hyderabad (MG)Division, Secunderabad.
3. One copy to Sri T.Lakshminarayana, Advocate.
H.No.2-2-185/54/1/D, Bagh Amberpet, Hyderabad-500 013.
4. One Copy to Sri D.Gopal Rao, S.C.for Railways, C.A.T.Hyderabad.
5. One copy to Library,
6. One spare.

kkk.


22/6/94

04-500/94

ORDERED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

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

AND

MEMBER(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER(CUDL)

AND

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

Dated: 13-6-1994.

~~ORDER~~ JUDGMENT:

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

in

O.A.No. 500/94

~~P.A.No.~~

~~(W.P.)~~

~~Admitted and Interim Directions~~
Issued.

~~Allowed~~

~~Disposed of with directions~~
Dismissed.

Dismissed as withdrawn

Dismissed for default.

~~Rejected/Ordered.~~

~~No order as to costs.~~

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