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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD.

O.A.NO.640 of 1994

Between

Dated: 20.6.1995.

G.Satyanarayana

...

Applicant

And

1. Chief Works Manager, S&T Work Shop, S.C.Railway, Mettuguda, Secunderabad.
2. Chief Personnel Officer, S.C.Railway, Railnilayam, Secunderabad.
3. Chairman, Railway Board, Union of India, New Delhi.

...

Respondents

Counsel for the Applicant

: Sri. G.V.Subba Rao

Counsel for the Respondents

: Sri. D.Francis Paul, SC for Rlys.

CORAM:

Hon'ble Mr. A.B.Gorthi, Administrative Member

Contd:....2/-

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DA 640/94.

Dt. of Order: 20-6-95.

(Order passed by Hon'ble Shri A.B.Gorthi, Member (A)).

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The applicant who served the Indian Airforce for 15 years was discharged in the rank of Sergeant Clerk in the scale of pay of Rs.1180-1560 on 13-5-1988. He was selected by the Railway Recruitment Board initially for appointment as Commercial Clerk. After he joined in that post he was also selected for appointment as Clerk Gr.I (Senior Clerk) in October, 1989. The scale of pay of Senior Clerk is Rs.1200-2040. His claim in this Original Application is that on his re-employment as a Sr.Clerk in Railways, the applicant is entitled to 15 additional increments in view of his 15 years of military service as a Combatant Clerk.

2. The Respondents oppose the claim of the applicant on the ground that the applicant was initially appointed as a Commercial Clerk and thereafter offered the post of Senior Clerk as as such he would not be entitled to claim benefit of additional increments in the latter post. The said argument is the bereft of any merit and in any case not supported by any rule or instruction. The mere fact that the applicant had applied for both the posts of Commercial Clerk and Senior Clerk and that he was initially selected as Commercial Clerk but latter selected for the post of Sr. Clerk and that he accepted the post of Commercial Clerk should not come in the way of grant of benefit of advance increments, if entitled to otherwise.

3. The main contention of the applicant is that in terms of Railway Board letter No.E(NG)63-RE1/22 dt.25-7-1963, service rendered as Combatant Clerk will have to be treated as equivalent to service as "Clerk/Jr.Clerk" in the Railways and the initial

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... 3.

pay in the posts of "Clerk/Jr.Clerk" will have to be fixed at higher stage in the scale above the minimum drawn by him adding advance increments equal to the number of completed years of service as combatant clerk. It is also the case of the applicant that a similarly situated employee viz., Sri E.Devadanam, appointed as Senior Clerk in the Railways, was given the benefit of the said Railway Board's letter dt.25-7-1963, when he approached the Tribunal in OA 116/90, on the file of the Hyderabad Bench of the Tribunal.

4. The relevant instructions governing fixation of pay on re-employment of pensioners are contained in Railway Board's letter No.E(G) 86 EMI-8 dt.21-1-87. The said letter stipulates that the provisions of Central Civil Services (Fixation of pay of re-employed pensioners) Order, 1986, promulgated by the Department of Personnel and Training would apply mutatis mutandis to cases of fixation of pay of re-employed personnel of the Indian Railways. The said Railway Board's letter further makes it clear that the said orders would be applicable to re-employed personnel in the Railways in supersession of all the previous orders on the subject. There is no dispute that the CCS (Fixation of pay of re-employed pensioners) orders, 1986, would be applicable to all Railway employees re-employed on or after 1-7-1986. The applicant admittedly was re-employed in the Railways after 1-7-1986.

5. The relevant rule in CCS (Fixation of pay of re-employed pensioners) Orders, 1986, relating to fixation of pay of ex-combatant clerks/Storemen reads as under :-

"i) In partial modification of the provisions contained in orders 4 and 5 above, ex-combatant clerks on their re-employment as Lower Division Clerks or Junior Clerks in the Civil Posts and Ex-Storemen in the Armed Forces on their re-employment as Storemen in Civil posts shall have the option to

get their pay fixed under orders 4 and 5 above in accordance with the procedure indicated in sub para (2) below. "

Explanation:

(i) xxx xxx xxx

(ii) xxx xxx xxx

(2) Service rendered as Combatant Clerks and Storemen in Armed Forces shall be treated as equivalent to service as lower division Clerks/Junior Clerks and Storemen respectively in Civil posts, irrespective of the pay drawn in those posts in the Armed Forces. The initial pay in such cases shall be fixed in the time scale of the re-employed posts at a stage equivalent to the stage that would have been reached by putting in the civil posts the number of completed years of service rendered in the posts in the Armed Forces. The pay so fixed will not be restricted to the pre-retirement pay. The fixation of pay in these cases shall be done by invoking the provisions of Fundamental Rules 27."

6. Rule 16 makes a clear departure from the contents of letter dt. 25-7-1963. While the Railway Board's letter of 25-7-1963 is to the effect that when a Combatant Clerk is re-employed as a "Clerk/Jr. Clerk" his initial pay should be fixed after giving him the advantage of additional increments for the service rendered as a Combatant Clerk, in Rule 16, however, the said benefit is extended only to such combatant clerks who are re-employed as "Lower Division Clerks or Jr. Clerks". In the instant case the applicant having been selected in the higher post of Senior Clerk (Clerk Gr. I), he cannot seek benefit under Rule 16.

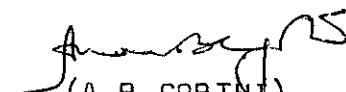
7. Shri G.V. Subba Rao, learned counsel for the applicant firstly contended that the applicant would be entitled to the

benefit of the Judgment in E.Devadanam's case, reported in SLJ 1992 (2)(CAT) 416. A careful examination of the said Judgement would reveal that it was based on the Railway Board's letter dt.25-7-1963. As the said Railway Board's letter applied to "Clerks and Junior Clerks", it was held that the benefit under the said Railway Board's letter could not be denied to senior clerks, who are also clerks. The said Railway Board's letter dt.25-7-63 stands superseded, as already noted, by the subsequent Railway Board's letter dt.21-1-1987 and the CCS (Fixation of pay of re-employed pensioners) Orders, 1986, have been made applicable, mutatis mutandis to the personnel re-employed on or after 1-7-1986 in the Indian Railways. As the applicant before me was re-employed in the Railways as a Senior Clerk in October, 1989, he cannot get the benefit under Railway Board's letter dt.25-7-1963. Accordingly the applicant will not be entitled to similar benefit as was given to E.Devadanam in OA 116/90.

8. The next point strongly urged by Sri Subba Rao, learned counsel for the applicant is that to deny the benefit of advance increments to those combatant clerks re-employed as senior clerks and to restrict such benefit to "Lower Division Clerks/Junior Clerks" is discriminatory. There is no doubt that in the Judgement in E.Devadanam's case it was observed that such denial of advance increments to senior clerks would be discriminatory. But as already noted, that was the case where the Tribunal was interpreting the contentions of Railway Board's letter dt.25-7-63 under which the benefit was to be extended to all "Clerks/Junior Clerks". It was therefore felt that Senior Clerks cannot be excluded from getting the benefit under the said Railway Board's letter. In Rule 16 of the CCS(Fixation of pay of re-employed pensioners) Orders, 1986, which is applicable to the case of the applicant, the benefit of advance increments is

restricted only to such combatant clerks who are re-employed as Lower Division Clerks or Junior Clerks. It is with a view to recognise the experience gained by a Combatant Clerk that the rule provided that in case he is re-employed in the lowest rung of the ladder in the clerical cadre, his experience as a combatant clerk should not go un-recognised. But in the Civil Department, when he has already been given re-employment in a post commensurate with the experience that he had gained as combatant clerk, the question of such an employee being granted additional increments in the higher post would not arise as it would amount to giving him undue or un-intended advantage on his re-employment. Restricting the benefit under Rule 16 to only Lower Division Clerks and Junior Clerks cannot therefore be said to be discriminatory.

9. In the aforestated facts and circumstances of the case I am unable to accede to the claim of the applicant. Accordingly the O.A. is dismissed with no order as to costs.


(A.B. GORTHI)
Member (A)

Dt. 20th June, 1995.

Dictated in Open Court. Dy. Registrar (Judl.)

avl/

Copy to:-

1. Chief Works Manager, S&T Work shop, S.C.Railway, Mettuguda, Secunderabad.
2. Chief Personnel Officer, S.C.Railway, Railnilayam, Sec'bad.
3. Chairman, Railway Board, Union of India, New Delhi.
4. One copy to Sri. G.V.Subba Rao, advocate, CAT, Hyd.
5. One copy to kx Sri. D.Francis Paul, SC for Rlys, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE SHRI A.V. HARIDASAN: MEMBER (J)

AND

THE HON'BLE SHRI A.B. GORTHY: MEMBER (.)

DATED

20/6/95

~~ORDER/JUDGMENT~~

~~M.A.NO/R.P.NO./C.P.NO.~~

O.A.NO.

in

64095

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

~~Dismissed.~~

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

YLKR

No spare copy

