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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.82/95.

Dt. of Decision : 01-00-97.

D.Balaraman

.. Applicant.

vs

1. The Sr.Divl.Personnel Officer,
SC Rly, Divl. Office, Guntakal.

SC Rly, Sec'bad.

.. Respondent

Counsel for the applicant : Mr. S.Ramakrishna Rao

Counsel for the respondents : Mr.D.F.Paul, SC for Rlys.

CORAM:

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

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

ORDER

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

Heard Mr.S.Ramakrishna Rao, learned counsel for the applicant and Mr.B.F.Paul, learned counsel for the respondents.

2. The applicant while working as a Mate met with an accident while on duty on 18-08-78 due to which he lost both ~~and~~ were amputated the legs upto knees. He was treated in the Railway Hospital upto 30-03-79. Later he was directed to the Artificial Limb Centre, Pune, for further treatment. The Hospital authorities gave him certificate on 4-7-80 stating that he was fit for duty. Hence he has approached the respondent authorities to give him alternative employment. But the respondent authorities did not ~~give~~ yield any relief to the applicant. Hence he filed W.P.No.4878/81 before ^{Hon'ble} ~~on the~~ High Court of A.P. which was transferred to this Tribunal and numbered as T.A.No.286/86. This Tribunal after hearing the case directed that 'the Screening Committee should reconsider the case the applicant having regard to all the circumstances with a view to assess his suitability in any alternative job in the Railway and 4 weeks time was given to comply with the direction. In pursuance of the direction the case of the applicant was reviewed and he was posted as a Junior Clerk in the scale of pay of Rs.950-1500/- (RSRP) by memorandum No.G/P-II/Con/Vol.XII dated 8-12-88 (Annexure-2). He joined the service on 12-12-88 and retired from service on 31-7-93 in the same capacity. Thereafter the applicant submitted a representation for condoning the break in service in between 15-12-80 and 11-12-88. But it is stated that that was not agreed to.

3. This OA is filed praying for a direction to R-2 to count the period from 15-12-80 to 31-7-93 as service for the purpose of granting of pension and other pensionary benefits

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with all consequential benefits and to set aside the proceedings No.G.P.500/IV/B-426 dated 18-8-94 (Annexure-7) whereby the break in ^{(b) & (c) and (d)} between the two spells of service was refused by holding it as illegal, arbitrary and against the rules in force and in violation of Articles 14 and 16 of the Constitution.

4. A reply has been filed in this OA. The main contention of the respondents in this OA is that the applicant is eligible for payment of pension and pensionary benefits for the service he had rendered from the date of his appointment in the year 1954 till the date of his medical decategorisation ~~as~~ on 15-12-80. But the applicant did not take advantage of it and wants the services during the break also to be counted for purpose of fixing his pension and pensionary benefits. The applicant is not entitled for pension for the later part of the service ^{as} ~~he was~~ i.e., from 12-12-88 to 31-7-93 as by that service ~~is~~ ^{that} not getting the qualifying service for purpose ~~as~~ of pension and pensionary benefits. The applicant cannot ask for regularisation of the period of his absence from 15-12-80 to 12-12-88 as the same is more than 5 years and hence condoning ~~as~~ /period is not permissible.

5. Before we analyse this OA, it is necessary to see the wording of memorandum when he was reengaged by order dated 8-12-88. This order states that the applicant was certified medically unfit to hold his present job i.e., the post of Mate, ^{as} ~~was~~ is absorbed in the alternative post ^{as} Junior Clerk in the scale of pay of Rs.950-1500/- From the word it is evident that the respondents at the time of his absorption in 1988 did not consider his second posting as a fresh posting. The order has to be read as if he was posted on being medically fit for the post of Junior Clerk. Hence we are not convinced with the reasons given for not condoning the break in service from 15-12-80 to 12-12-88.

6. While fixing the pay of the applicant by memorandum No.G/1.11/GP.dated 15-12-88 (Annexure-3) nowhere it is mentioned that he had been taken as a fresh entrant and his pay had been fixed in the pay scale of Rs.950-1500/-.. Thus the respondents have not conveyed their views in regard to the absence of the applicant from 15-12-80 to 12-12-88 either at the time of his posting him as Junior Clerk or while fixing his pay in that post. Thus it has to be held that the applicant was posted as Junior Clerk when medically found fit for that post. Hence at this juncture stating that he was taken as a fresh entrant in the year 1988 cannot be accepted.

7. In the case of employees removed from service and taken back as a fresh entrant this Tribunal had held the view that a fresh ^{entry} entrant is not in accordance with rules and hence the period which he served earlier to his removal should also be considered for purpose of counting the qualifying service at the time of retirement. Ofcourse it was held by the Tribunal that the intervening period from the date of removal till he was re-posted should be treated as dies-non. The present case is ^{higher} ~~feeling~~ ^{foot} than the case of the removed employee taken back on duty and hence it is essential that the case also should be viewed in the proper prospective and a similar direction needs to be given as given in the case of removed employee later posted back to duty. The present case is also in a better pedestal as the applicant was not removed from service but discharged ^{being an} ~~due to~~ medical unfit case. When he was taken back after he was found fit medically for the post of Junior Clerk there is no reason to deny him the period earlier to his medical unfitness for purpose of counting the qualifying service. The learned counsel for the respondents himself admits that he will get pension for the earlier period. If that be so, there is no reason ^{for now Counting partly} ~~admitting~~ later period should

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~~not be counted~~ for ~~the~~ fixing the pension at the time of his retirement in the year 1993. In view of what is stated above, the following direction is given:-

The qualifying service of the applicant should be counted up to 15-12-80 and the later service from 12-82-88 to 31-7-93 debarring the ineligible period in that spell for the purpose of ~~counting~~ ^{adding} the qualifying service. The period from 15-12-80 to 12-12-88 should be treated as ~~dis~~-non. The applicant is entitled for pension on the basis of the counting the qualifying service. The date of receipt of the order should be fixed accordingly within a period of four months from the date of receipt of a copy of this order.

8. The OA is ordered accordingly. No costs.

B.S. Jai Parameshwar
(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)

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(R. RANGARAJAN)
MEMBER (ADMN.)

Dated : The 01st October 1997.
(Dictated in the Open Court)

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D.R.(5)

OA.82/95

1. The Senior Divisional Personnel Officer, South Central Railway, Divisional Office, Guntakal.
2. The General Manager, South Central Railway, Secunderabad.
3. One copy to Mr. S. Ramakrishna Rao, Advocate, CAT., Hyd.
4. One Copy to Mr. D.F.Paul, SC for Rlys, CAT., Hyd.
5. One Copy to D.R.(A), CAT., Hyd.
6. One duplicate copy.

SRR

11/10/97

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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: 11/10/97

ORDER/JUDGMENT

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

in

D.A.NO. 82/95

Admitted and Interim Directions
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLR

II Court

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

मेयर/DESPATCH

12 OCT 1997

हैदराबाद न्यायपीठ
HYDERABAD BENCH