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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

REVIEW APPLICATION No.68 of 96
in
ORIGINAL APPLICATION No.1572 of 1995.

R. Venkateswarlu

.. Applicant.

Vs.

1. The Chief Personnel Officer,
SC Rly, Rail Nilayam,
S.D.Road, Sec'bad.
2. The Divl.Railway Manager,
SC Rly, Division Office,
Vijayawada, Krishna District.

.. Respondents.

Counsel for the Applicant : Mr. M.Panduranga Rao

Counsel for the Respondents : Mr.K.Siva Reddy

CORAM:-

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

ORDER

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

Heard Mr.Ravi for Mr.M.Pandu Ranga Rao, learned counsel for the applicant and Mr.K.Siva Reddy, learned counsel for the respondents.

2. The applicant in this OA has filed this RA for reviewing the judgement in the above said OA. The OA was dismissed mainly on the ground that the position regarding availability of the vacancy in the higher grade, the number of medically decategorised employee registered before him and also the fitness of the employee to be absorbed in the higher grade were not indicated in the affidavit. In the absence of those details no relief can be granted to the applicant.

3. This RA is filed contending that the applicant should have been absorbed because similarly situated persons were fixed in the higher grade equivalent to the post from which they were decategorised and hence absorption of the applicant in the lower grade is irregular.

4. The main reason on which the OA was dismissed was due to the fact that there are no reasons to believe that there were higher posts available at the time when the applicant was medically decategorised and there were none senior to him to be absorbed in the higher post in the department in which he was absorbed as Junior Clerk. The learned counsel for the applicant was asked to produce necessary details in regard to the availability of the higher post at the time when the applicant

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was medically decategorised and also find out whether there were any seniors registered before him for absorption due to medical decategorisation.

5. The case was adjourned number of times to enable the learned counsel for the applicant to produce those details. But no details to the satisfaction of the Bench was produced. Today the applicant submitted that one Mr.Y.Vamana Rao who was a Senior Typist when decategorised was absorbed as Sr.Clerk by the order of Chief Personnel Officer though initially he was posted as a Junior Clerk. But in my opinion that is not parallel case. The facts of that case has not been shown as exactly identical to the facts in this case. In case of absorption of medically decategorised staff, no fixed policy can be adopted. It depends upon the availability of the vacancies, fitness of the medically decategorised employee to be absorbed against that post and similar other related issues. In the present case the applicant was found fit to be absorbed as Jr.Clerk by the screening committee and hence at this distant date it cannot be said that he should have been appointed in a higher grade similar to Mr.Y.Vamana Rao.

6. The applicant relies on the Judgement of the Apex Court reported in AIR 1995 SCC 599 to state that the applicant should have been absorbed in the higher post. A study of the judgement will reveal that endeavour should be made by the administration to fix the medically decategorised employees in the appropriate grade protecting the last pay drawn by them. It is not a direction to absorb the medically decategorised employees in a higher grade even if there are no posts or they are found unfit for absorption in the higher grade. It is only a guideline and the administration should make necessary endeavours to achieve that guideline. As can be seen from the reply to the ^{previous} LOA that there is no reason to come to the conclusion that enough endeavours were not made by the administration. The administration cannot be forced to absorb him in a higher grade

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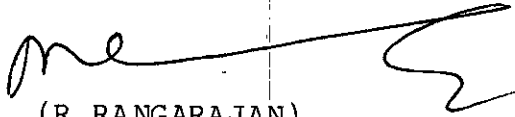
even if there are no posts. As there is no material available regarding the availability of the higher post at the time when the applicant was medically decategorised and also due to the fact that there was no material to come to the conclusion that he was found fit to be absorbed in that grade, it has to be held that the absorption of the applicant in the lower grade is in order at that point of time.

7. It is a fact that the applicant was given the maximum of the scale of pay in the grade of Rs.260-400/- when he was absorbed as a Jr.Clerk thereby protecting his pay to the maximum extent possible in accordance with rules. Hence, the applicant should not have any grievance in regard to the protection of his pay. In my opinion the administration has fully followed the guidelines given by the Apex Court in the above referred judgement.

8. The applicant also cited one more judgement of the Apex Court reported in 1995 (5) SCC 628. This judgement has no application in this case.

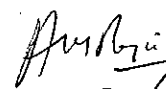
9. The applicant also relied on the judgement of this Tribunal in OA.790/94 decided on 12-6-95. It has to be said that OA was disposed of in favour of the applicant on the basis of the fact of that case. As I already said that while fixing the medically decategorised employees in the appropriate cadre, no hard and fast rule can be laid. It depends upon the circumstances as to the availability of the post and such other details. Hence, a comparison of one case with the other is not very relevant and is also not called for. For similar reason reliance on the judgement of this Tribunal in TA.773/86 decided on 18-7-89 is also not appropriate, ~~case~~.

10. In view of what is stated above, I find no merits in this RA. Hence, the RA is dismissed. No costs.


(R.RANGARAJAN)
MEMBER (ADMN.)

Dated : The 04th October 1996.
(Dictated in the Open Court)

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Dy. Registrar (3) 10/10/96

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Copy to:-

1. The Chief Personnel Officer, S.C.Railway, Railnilayam, S.D.Road, Secunderabad.
2. The Divisional Railway Manager, S.C.Railway, Division Office, Vijayawada, Krishna District.
3. One copy to Sri. M.Panduranga Rao, advocate, CAT, Hyd.
4. One copy to Sri. K.Siva Reddy, Addl. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
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9/10/96 R.A. 68796

in
O.A. 1572/95

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

DATED:

9/10/96

ORDER/JUDGEMENT

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

68796

in

O.A. NO.

1572/95

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

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