

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

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O.A. No. 1400/96.

Dt. of Decision : 26-11-96.

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.. Applicant.

Vs

1. The General Manager,  
SC Rly, Rail Nilayam,  
Secunderabad.
2. The Sr.Divl.Personnel Officer,  
SC Rly, Rail Nilayam,  
Secunderabad.
3. The Sr.Divl.Accounts Officer,  
SC Rly, Hyderabad MG Division,  
Secunderabad.

.. Respondents.

Counsel for the Applicant : Mr. S.Ramakrishna Rao

Counsel for the Respondents : Mr. V.Bhimanna, Addl.CGSC.

CORAM:

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

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

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*[Signature]*

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ORDER

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

Heard Mr.S.Ramakrishna Rao, learned counsel for the applicant and Mr.V.Bhimanna, learned counsel for the respondents.

2. The applicant was appointed in railway service as Gangman on 4-6-53. For his unauthorised absence he was removed from service on 17-06-76 by the AEN/North/Secunderabad through his proceedings No.1/B/12/66 dated 11-05-77 which was communicated to him by his immediate Controlling Supervisor viz., PWI/Medchal vide letter No.MA/16/76 dated 14-05-77 (Annexure-IV). The applicant made representation to the respondents. It is stated that his representation was considered and he was ultimately taken back to duty again as a Gangman under PW/Medchal on 17-11-77 treating him as a fresh <sup>entrant</sup> appointment. By Annexure-VI he was advised that his pay has been fixed wrongly at the time of taking him back on duty as a fresh candidate on 17-11-77 and it was subsequently rectified and his pay was fixed in the basic of Rs.230/- and that his next increment due was from 1-11-86. Thus from the above annexure it is evident that he was taken as Gangman as a fresh entrant fixing his pay at the minimum of the pay scale granting increment thereon on that basis.

3. The present application is filed to treat the entire period of service as Gangman i.e., from 4-6-53 to 16-06-77 and 17-11-77 to 30-11-87 <sup>as on 30-11-87 service</sup> when he retired from service and for consequential retiral benefits treating the intervening period ~~at~~ i.e., 11-5-77 to 17-11-77 as dies-non and recalculate the retiral benefits including pension, payment of arrears and dues for the total service of 34 years, which counts for the purpose of pensionary benefits.

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4. In similar cases where the removed employee was taken back on duty as a fresh entrant it was held by this Tribunal as follows:-

"In OA.281/93 decided on 4-2-94 it was held by this Tribunal that if an employee is removed from service and subsequently reinstated on the basis of his appeal/ review or otherwise as a fresh entrant, the orders treating him as a fresh entrant in service is in disregard of recruitment rules, i.e., without considering the names of other eligible candidates for the said post. In view of this, it was further held in that OA that award of major/ minor penalty, if any, at the time of taking him back into service will be in order, but he cannot be treated as a fresh entrant and the period of his absence from the date of his removal to the date of his reinstatement should be treated as dies-non and not as break in service and the period earlier to his date of removal from service will have to be counted as qualifying service for purposes of pension".

The present case is one such case. Hence, we see no reason to differ from the view already taken in a similar case. The learned counsel for the respondents submitted that this case is squarely covered by the judgement of this Tribunal in OA.215/94 decided on 2-3-95. However he submitted that as he was reinstated in service on 17-11-77 the Tribunal cannot exercise jurisdiction as it came into being only in 1985.

5. The cause of action arose in this case only when the applicant retired from service in 1987. From that date onwards only his pension was paid at a reduced rate taking <sup>only the</sup> second spell of service. Hence, it has to be held that the cause of action arose ~~in~~ only <sup>in</sup> 1987 and not 1977 as submitted by the respondents'

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counsel. As the Tribunal had jurisdiction to deal with cases in 1987, we do not see any reason to up-hold the contention raised as above by the respondents counsel.

6. In view of the above, the following direction is given:-

The applicant is entitled to count the period from 4-6-53 to 30-11-87 deducting the period of LWP/AWP during the period if any, as qualifying service for the purpose of calculating the pension amount. The total qualifying service shall be from 4-6-53 to 10-05-77 added to the second spell of service from 17-11-77 to 30-11-87 excluding the period of LWP/AWP during this second spell and in the first spell if any. The period from 11-5-77 and 17-11-77 shall be treated as dies-non. The pension amount due to him shall be calculated on the basis of the total qualifying service arrived at as above and paid to him. He is entitled only for arrears of pension from the date of filing of this OA i.e., 11-10-96.

7. The respondents authorities are free to check the above dates before deciding the qualifying service in accordance with the directions as given above.

8. The OA is disposed of at the admission stage itself as above. No costs.

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

(R. RANGARAJAN)  
MEMBER(ADMN.)

Dated & The 26th November 1996.  
(Dictated in the Open Court)

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Handwritten signature  
D.R. (J)

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22/11/96

TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

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

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR:  
M(J)

DATED: 26/11/96

ORDER/JUDGEMENT

R.A./C.P/M.A.No.

O.A.No. 1400/96 <sup>in</sup>

~~ADMITTED AND INTERIM DIRECTIONS ISSUED  
ALLOWED~~

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDERED/REJECTED~~

~~NO ORDER AS TO COSTS.~~

II. COURT

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