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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 635-of 1996

DATE OF JUDGEMENT: - 29th October, - 1996

BETWEEN:

K.GOKUL CHAND .. APPLICANT

AND

1. The Divisional Railway Manager,
South Central Railway, Vijayawada,
2. The Senior Divisional Personnel Officer,
S.C.Railway, Vijayawada,
3. The Chief Personnel Officer,
S.C.Railway, Secunderabad. .. Respondents

COUNSEL FOR THE APPLICANTS: SHRI G.V.SUBBA RAO

COUNSEL FOR THE RESPONDENTS: SHRI K.SIVA REDDY, Addl. CGSC

CORAM:

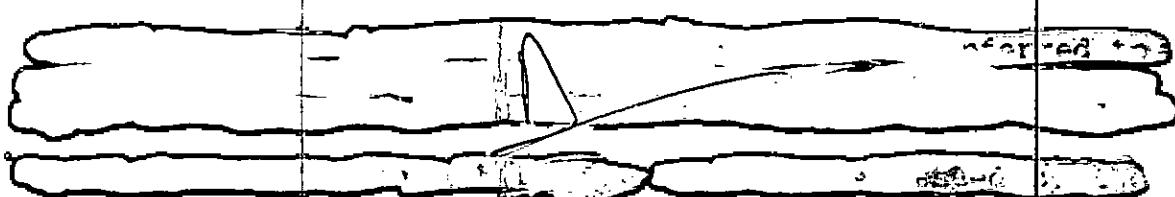
HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

JUDGEMENT

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

Heard Shri G.V.Subba Rao, learned counsel for the applicant and Shri K.Siva Reddy, learned standing counsel for the respondents.

2. The applicant in this OA joined as Probationary Assistant Station Master and underwent training for 9 months from 3.4.65 at Zonal Training School, Tiruchirapally. He was posted as Assistant Station Master in the grade of Rs.130-240 at Tenali Station and he took



independent charge on 18.1.67. Later he was transferred to Chirala in the same grade. While he was working in that grade at Chirala, he was declared medically unfit in A-2 and declared fit in A-3 by the certificate issued by the DMO, Viljayawada dated 10.2.70. At the time of his medical decategorisation he was drawing a basic pay of Rs.165/- per month in the scale of pay of Rs.130-240 in the post of ASM.

3. Consequent to the medical decategorisation he was absorbed in an alternative post of Commercial Clerk and his pay was fixed at Rs.162/- plus 3 PP in the scale of pay of Rs.110-220. It is stated by the respondents that he ~~was~~ ^{Ported} accepted the post of Assistant Booking Clerk in the grade of Rs.110-220 after obtaining his willingness and he joined in that post at Nandyal on 9.8.70. The present OA is filed by the applicant for fixing his pay in the equivalent grade of Rs.130-240 when he was medically decategorised instead of fixing his pay in the lower grade of Rs.110-220. He submitted representation dated 1.7.95 in this connection to R-1. It is disputed that no representation in this connection was filed by him.

4. This OA is filed praying for direction to the respondents to fix his pay in the equivalent grade of ASM from which post he was medically decategorised instead of absorbing him in the grade of Rs.110-180 as Commercial Clerk following the judgement of this Tribunal in OA 790/94



(V.Gopala Reddy V. Railways).

5. While admitting this application on 17.6.96, liberty was given to the respondents to take into account the question of limitation also while filing reply. A reply has been filed in this OA by the respondents. It is seen from the reply that the applicant ^{on his} volition had joined as Commercial Clerk in the grade of Rs.110-220. His emoluments which he was drawing at the time of medical decategorisation as ASM were protected by giving him personal pay. These facts are not disputed as no rejoinder has been filed in this OA inspite of adjourning this case a number of times at the request of the learned counsel for the applicant. It is a fact that the applicant was medically decategorised in the year 1970. He was also absorbed as Commercial Clerk in the grade of Rs.110-220 on 9.8.70. After a lapse of 26 years, this OA has been filed. It will be very difficult at this late stage to check reasons for absorbing him in the lower grade of Rs.110-220 even if rules provide for absorption in the higher grade. If the applicant is unwilling to join in the lower grade, rules provide for taking voluntary retirement under such circumstances. But for the reasons known to the applicant he has given his willingness to join as Commercial Clerk in the grade of Rs.110-220. Even after joining that post, he has not filed any representation to the respondents

immediately thereafter to fix him in the higher grade. He approached this Tribunal has come only in the middle of 1996 with reported submission of the representation. Hence when the respondents submit that the case is barred by limitation under Section 21(2)(A) of the Administrative Tribunals Act, 1985 it cannot be stated that such submission is irrelevant.

6. Respondents The applicant cannot expect to maintain records of 1970 when he was absorbed as Commercial Clerk in the grade of Rs.110-220 in regard to the availability of the post in the higher grade of Rs.130-240. The respondents cannot be asked to produce the documents of 1970 at this late stage as it may not be possible to preserve those old documents. Further, the applicant has not brought to the notice of that this Bench the records in this connection are to be preserved indefinitely. Normally records of the nature indicated above are to be preserved for about 10 years at the maximum. Hence asking the respondents to produce those old records at this juncture is futile and it will not give any tangible result to decide this issue.

7. The applicant when he submits that there were posts in the higher grade of Rs.130-240 available at that time in 1970 to absorb him in those posts when he was medically declassified, he cannot make such statement orally without any basis. The applicant was asked to submit those details available with him on the basis of which he made the statement as above in regard to the

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availability of higher post in the grade of Rs.130-240, the learned counsel for the applicant took time to collect this information from his client. But inspite of the repeated adjournments, he was not in a position to produce such evidence in this Court. If such evidences are ~~not~~ produced, probably on that basis ~~we~~ could have asked the respondents to get those files. As the applicant has failed to produce even iota of evidence in this connection, there is no use to ask the respondents to produce such a file which, in my opinion, will not be possible. Hence the applicant has not made out any case in this connection.

8. The applicant relies on the decision of this Bench in OA 790/94. But in a case ~~similar to this~~ ^{of} ~~type~~ records place an important part. It is not known what records were produced in that case. If the applicant has produced some evidence to come to the conclusion that the post in the higher grade was available when the applicant was medically declassified, then there may be some substance in examining his prayer. As he failed to produce any evidence in this connection, I do not find any reason to rely on any other OA disposed of by this Bench. As a matter of fact, this Bench has taken a similar view as expressed in this OA, in OA 1572/95 wherein also no documents in regard to the claim for fixation in the higher scale were produced. In this view, I do not find any merits in this OA.

9. The OA is dismissed as having no merits. No costs.

(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 29th October, 1996
Open court dictation.

vsn

Arul
Dy. Registrar (J)

18/11/96

(36)

DA 635/96

Typed By
Compared by

Checked By
Approved by

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

DATED:

29/10/96

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

D.A. NO.

635/96

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

YLKR

II COURT

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
DESPATCH

13 NOV 1996

हैदराबाद बायपरीठ
HYDERABAD BENCH