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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.No.294 OF 1997.

DATE OF ORDER:18-1-1999.

Between:

D.Parabrahmachari.

.... Applicant

a n d

1. Union of India, represented by
General Manager, Railway Electri-
fication, Allahabad.
2. Chief Project Manager,
Railway Electrification,
BZA/Vijayawada.
3. General Manager, South Central
Railway, Rail Nilayam,
Secunderabad.
4. Medical Superintendent,
Railway Hospital, BZA/Vijayawada.

.... Respondents

COUNSEL FOR THE APPLICANT :: Mr.G.V.Sekhar Babu

COUNSEL FOR THE RESPONDENTS:: Mr.N.R.Devaraj

CORAM:

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

A N D

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

: O R D E R :

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

None for the Applicant. Heard Mr.N.R.Devaraj,
learned Standing Counsel for the Respondents.

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2. The applicant in this OA was initially engaged as a Casual Labour Black Smith under I.O.W. from 1981 onwards. He was granted temporary status with effect from 1984. He ^{was} ~~is~~ working in that capacity as Black Smith till 23-8-1986 at Vijayawada Railway Station, when he met with an accident arising out of and in the course of his employment states the applicant. As he was hit by a moving Train while on duty, his left hand was amputated above elbow resulting in disability measuring about 80%. As he was medically de-categorised, he was discharged from service after paying him compensation under Workmen's Compensation Act as per his entitlement.

3. Subsequently, after discharging from Hospital, the applicant submitted representation for alternative appointment and on that basis the respondents engaged him as a Lascar in Group-D on 5-1-1987 in the lower scale of Rs.750-940/-. Though he was working in the higher grade of Rs.950-1500/- earlier as Black Smith, the contention of the applicant is that his pay and seniority have to be protected taking his pay as Black Smith, which he was drawing earlier.

4. The applicant submitted a representation in this connection dated:29-9-1993 (Annexure.A-II, page.10 to the OA) and also ^{another} ~~by his~~ representation dated:27-1-94, (Annexure.A-III, page.11 to the OA). He was replied by the impugned Order No.E.252/VBRE/3033/P., dated: 18-3-1994(Annexure.A-V, page.13 to the OA), rejecting his claim for protection of his pay as he is only a Casual Labour Black Smith earlier and he was also engaged as a Casual Labour Lascar.

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5. This OA is filed to set aside the impugned Order No.E.252/VBRE/3033/P., dated:18-3-1994, by declaring the same to be illegal, nonest and violative of rules of ^{the} Railways, including Rule 1313 2(b), 1314, and Rules in Chapter XIII of Indian Railway Establishment Manual, and for a consequential direction to the respondents to give protection of pay in the grade of Rs.950-1500/-, which the applicant was drawing before he met with an accident on 23-8-1986, with all consequential arrears of pay, allowances etc., from 5-1-1987 and also for grant of his seniority suitably.

6. A reply has been filed in this OA. The main contentions of the respondents are as follows:-

i) The impugned Order was passed on 18-3-1994, and this OA was filed only on 19-12-1996. Hence, there is a delay of One year and Nine months in filing the OA, hence, the OA is liable to be dismissed as barred by time;

ii) The applicant was initially engaged as a casual labour Black Smith. After he met with an accident and was declared unfit for continuation as a Black Smith in casual capacity, the Administration took a humanitarian view and re-engaged him as a Lascar with effect from 5-1-1987. That engagement as Lascar is to be treated as a fresh engagement and he can have no claim for the previous service as he was only a temporary status Railway Employee and not not a temporary Railway Servant. His pay has been

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fixed accordingly correctly and hence, the DA is liable to be dismissed.

7. We have gone through the DA affidavit as well as the reply. In Railways, there is a distinction between the Railway Servant and Temporary Status Railway Servant. Temporary Status Railway Servant is only a casual labour and he was brought on monthly scales of pay when he was termed as a Temporary Status Casual Labour. That temporary status will not entail ^{it} him to get all the benefits as indicated in the Railway Rules applicable to a temporary ~~status~~ Railway Servant. This is the view taken ^{as} ~~and given~~ by the Apex Court. Hence, the question of granting him the privileges and the protection of his pay ^{as} applicable to a temporary Railway Servant ^{does not arise and} cannot be extended to Temporary Status Casual Labour engaged in ^{the} Railways. Hence, we have no hesitation in saying that there is no illegality in fixing his pay in the scale of pay of Rs.750-940/-, without protecting his pay which he was drawing as a Casual Labour Temporary Status Black Smith earlier to his decategorisation.


8. As he was engaged only as a Lascar afresh with effect from 5-1-1987, the question of granting him any seniority does not arise. However, it is seen that the applicant met with an accident while on duty. Hence, his case for confirmation in Group-'D' according to his medical category should be considered sympathetically without rejecting his case ^{on the ground that} ~~as if there are~~ no vacancies for confirmation ^{are} ~~is~~ available immediately.

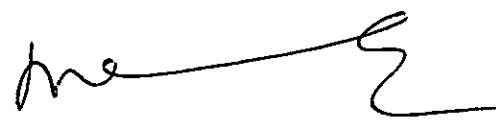
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As and when vacancies in the suitable category in which he can be confirmed arise, his case should be considered in future. We find from the reply that the respondents viz., the Senior Electrical Engineer, Railway Electrification, Vijayawada, has signed this reply statement without scrutinising the same fully in regard to the dates etc.,. A Railway Official has to be -careful while signing an Official document. As we find errors in this connection, the said Official should be more careful in future.

9. In the result, the DA is dismissed. However, confirmation in Group-'D' service in accordance with his medical category should be considered sympathetically. No costs.

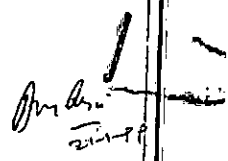

(B.S. JAI PARAMESHWAR)
18.1.1999 MEMBER (JUDL)


(R. RANGARAJAN)
MEMBER (ADMN)

DATED: this the 18th day of January, 1999

Dictated to steno in the Open Court

DSN


20-1-99

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29/1/99

1ST AND 2ND COURT

COPY TO:-

1. ~~HDHNS~~
2. ~~HHRP M(A)~~
3. ~~HDSSP M(1)~~
4. D.R. (A)
5. SPARE

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR :
VICE CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (A)

THE HON'BLE MR. B. S. JAI PARAMESWAR :
MEMBER (J)

DATED: 18-1-99

ORDER/JUDGMENT

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

In

O.A. NO. 294/97

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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(8 copies)

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal प्रेषण / DESPATCH
28 JAN 1999
HYDERABAD BENCH