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APPLICATION FILED U/S 19 OF THE
ADMINISTRATIVE TRIBUNAL'S ACT 1985

O.A.NO.

OF 1997

DATE OF FILING:

OR

DATE OF REGISTRATION:

SIGNATURE OF REGISTRAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH: AT HYDERABAD

O.A.NO. 1312 OF 1997

BETWEEN:

K.Gopinath, S/o. K.Rathanagapani, 70 years,
Retired Station Master, R/o. Hyderabad. APPLICANT

AND

1. The General Manager, South Central Railway,
Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager (MG),
South Central Railway, Rail Nilayam, Secunderabad.
3. The Chief Operating Manager,
South Central Railway, Rail Nilayam, Secunderabad.
4. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad. Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE APPLICANT: SAME AS ABOVE.

The address for service of all notices and processes on
the above named applicant is that of his counsel M/s.Nooty
Rama Mohana Rao, M.V.Krishna Mohan, KSV Subba Rao, Abhinand
K Shavili, & Siva Advocates, 204-A Brindavan Apartments,
Red Hills, Hyderabad-500 004.

2. PARTICULARS OF THE RESPONDENTS: SAME AS ABOVE

3. PARTICULARS OF THE ORDER AGAINST
WHICH THE APPLICATION IS MADE:

Passed by : Nil.

Subject in Brief: The Applicant was Removed from
service in the year 1979 (24.5.1979) On appeal against the
above order Respondent No.3 reemployed the applicant as a
fresh entrant. Pursuant to which he has joined on 6.8.79.

The Applicant has put in a total length of service of 36 years in 2 spells. However, he was not sanctioned any terminal Benefits. His representation to the 1st respondent did not evoke any response. Hence this Original Application.

4. JURISDICTION:

The Applicant declares that the subject matter against which he wants redressal is well within the jurisdiction of this Hon'ble Tribunal Under Section 14 of the Administrative tribunals Act, 1985. ~~.....~~

5. LIMITATION:

The Applicant declares that the subject matter against which he wants redressal is well within the limitation Under Section 21 of the Administrative Tribunals Act, 1985.

6. FACTS OF THE CASE:

(i) The applicant on completion of his education has to look out for a job for eking out his livelihood while the applicant was on his trials for a job, the Railway had certain jobs and it was seeking suitable candidates to man those posts. The Applicant has attended to a selection process and was one of the few fortunate individuals who were selected. He was selected as a Reserve Signaler and joined as such on 6.10.1949. The Applicant has earned promotions in his channel as Assistant Station Master and also Station Master. The Applicant has rendered a spotless and unblemished service for over 30 years. He gave absolutely no scope for any complaint either regarding his efficiency and integrity or his behaviour with his superior and colleague officers.

(ii) However, while the applicant was posted as a Station Master at Madhira, he was proceeded departmentally. The Charge that has been levelled against the applicant was that he was responsible for booking small consignments in

violation of the restrictions. The Applicant has pleaded not guilty and thus an inquiry into the charge levelled was instituted. In the inquiry, the applicant pleaded that the lapses if any, were purely unintentional and due to the fact that the instructions which were alleged to have been violated having not percolated to the Station in which the applicant was posted. Despite this, the enquiry officer has returned a finding holding the applicant guilty of the charges.

(iii) The Disciplinary Authority (R-2) agreeing with the findings returned by the Enquiry Officer has passed an order imposing a penalty of 'Removal from Service' by the proceedings in Lr.No.CON/SC/C/26/75, dt. 24.5.1979. Accordingly 30 years of the service rendered by the applicant was brought to an end without properly appreciating the line of defence put forth by him. Aggrieved by the order Dt. 24.5.1979, the applicant was constrained to question its legality and validity by filing an appeal to the 3rd respondent herein. The appeal was considered and finding that the punishment imposed by the Disciplinary Authority was too harsh and thus employed the applicant as a fresh entrant. Accordingly, the applicant was reappointed an on Assistant Station Master and was posted at Pingili Station of Hyderabad (Metre Guage)Division. The Applicant joined as such on 7.8.79. The Applicant has served in this capacity for about 6 years and retired on attaining the age of superannuation on 31.7.1985.

(iv) As the applicant has served only for a period of 6 years in his second spell of service, no terminal benefits have been paid to him. The Provident Fund together with the Government Contribution was paid to him. Since the length of service was marginal he was paid a paulyry sum under this head.

(v) The Applicant respectfully submits that as the service rendered by him prior to his reappointment was not considered for the purposes of computation of his terminal benefits, the applicant was constrained to approach this Hon'ble Tribunal by way of O.A.No.847 of 1990 seeking a direction to the respondents therein to grant him all the retirement benefits that he would be entitled considering his entire length of service i.e., 36 years, put in by him in the South Central Railway and also a declaration that the action of the respondents in passing orders Dt. 30.8.1990 denying the same as illegal. The above O.A. was contested by the Respondents therein and the Hon'ble Tribunal has dismissed the same by its judgment Dt. 30.9.1992. The main grounds on which the O.A. was dismissed was that since the applicant was reappointed as a fresh entrant, the period rendered prior to such a reemployment cannot be counted for the purpose of conferring any pensionary benefits and secondly since the applicant has not opted for the Pension and he having received the Provident Fund amount. Thus the Hon'ble Tribunal held that the applicant was not entitled for payment of Pension. The Applicant has preferred to file a Review Petition No.133/92 in O.A.No. 847/90. This application was also dismissed by the Hon'ble Tribunal by its order Dt. 30.12.1992.

(vi) Be that as it may, considering the increase in cases where the appellate authority has been ordering reappointment, the matter was referred to the Railway Board. On such reference the Board observed that Reappointment as a fresh entrant falls within the purview of Rule 402. R1 and the Appellate Authority exercising the powers under Rule 22 (C)(i) and (ii) cannot pass any order or reappointment Under Rule 402.1 of the Estt.Code.Vol.I and thus it would be on exercise without jurisdiction. It was clarified that the Appellate Authority can either (i)

Confirm, (ii) enhance, (iii) reduce or (iv) Setting aside the penalty or remitting the case to the authority which imposed the penalty while exercising the jurisdiction under Rule 22(2)(C)(i)&(ii) of the Railway Servants (D&A) Rules, 1968. This clarification was communicated by the C.P.O/SC's Lr.No.P/R/227/XI, Dt. 7.4.93 to the D.R.M./Hyderabad also. As per this circular, the action of the 3rd respondent in treating the applicant as a fresh entrant is clearly an exercise of powers without jurisdiction in terms of the Note below Rule 402 of Railway Establishment Code, Volume-I.

(vii) Employees in the Respondent Organisation similarly placed as the applicant herein have approached the Hon'ble Tribunal. In O.A.No.281 of 1993 the Hon'ble Tribunal held that the authorities have no powers to issue an order of appointment without following the procedure prescribed as per recruitment rules i.e., without considering the names of other eligible candidates for the said post. The order of fresh appointment in that case was construed as a case of passing an order of major penalty in accordance with Rule 6(V) of the Railway Servants (D&A)Rules by lowering the pay of the applicant therein. However, the period from the date of the removal till reinstatement was treated as dies-non. It was further directed that retiral benefits and pension is to be fixed taking into account the entire service rendered by the applicant therein. Following the verdict in O.A.No.281/93, the Hon'ble Tribunal has passed similar orders in O.A.Nos.186/95 and 1090/95.

(viii) The Applicant submits that he has been denied the pensionary benefit saying that he was not qualified for pension as he has not put in the minimum required service in his second spell of service. His option for pension

exercised was also not entertained on the plea that he came automatically under the Pension Scheme having been reappointed to service on 7.8.1979. The Applicant respectfully submits that he is infact prepared to refund the amount of Government's contribution drawn by him at the time of his retirement on attaining the age of Superannuation. Inspite of the readiness of the applicant to fulfil this obligation to enable him to claim pension, the respondents have not moved a little finger in this direction.

(ix) The Applicant further submits that as no action was forthcoming the applicant has submitted a very detailed representation to the first respondent on 9.8.96 specifically drawing the attention to the Letter of the C.P.O. Dt. 7.4.1993 and also the Willingness to refund the Government's contribution to Provident Fund. However, no response was received from the respondents. Hence this O.A.

(x) It is respectfully submitted that the action of the respondents in not granting the Retirement benefits computing them on the basis of the total length of service rendered by him in both the spells is clearly arbitrary. It is also against the judgments of the Hon'ble Tribunal in various O.As. The respondents herein having been a party to the judgment ought to have implemented the same in the case of the applicant also. He is similarly placed as the applicants therein. Instead of acting on the representation submitted by the applicant he is being driven to approach this Hon'ble Tribunal for the relief that has been granted to several others. The respondents ought to be a model employer and such an attitude of insisting that all similarly placed employees ought to be armed with an order of the court to get the relief that has been granted to other individuals has been deprecated by

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the Hon'ble Supreme Court. But this salutary principle has not been adhered to by the respondents herein warranting interference of this Hon'ble Tribunal.

(xi) The Applicant further submits that he has undertaken to refund the amount of the contribution of the government to the Provident Fund together with interest in order to facilitate opting out of the P.F.Scheme and thus entailing him to receive pension monthly.

(xii) The Applicant respectfully submit that he has a large family dependent on him with 3 unmarried daughters. Since the applicant has no other source of income, it is becoming absolutely difficult to make both ends meat. The applicant being aged (about 70 years) has to discharge his duty towards his children and ensure that they are married. Inview of these personal problems, it would go a long way if he is assured of some monthly income.

(XIII) The Balance of convenience rests heavily in favour of the applicant in as much as he is similarly placed as the applicants in O.A.Nos. 281/93, 186/95 and 1090/95 and thus entitled to the relief granted by this Hon'ble tribunal to them.

7. Remedies Exhausted: The Applicant further declares that he has no other alternative remedy except to approach this Hon'ble Tribunal..

8. Matters not filed or pending: The Applicant further declares that he has not filed any O.A. in this regard before this Hon'ble Tribunal.

9. Main relief: Hence it is prayed that this Hon'ble Tribunal in the interests of Justice be pleased to :-

(i) declare that the applicant is entitled to have his pension and other Terminal Benefits computed duly taking

into account the entire service rendered by him in two spells,

(ii) direct the respondents to compute the same and release all Terminal benefits including pension to the applicant within a period of 6 months,

(iii) adequately compensate the applicant for having been forced to approach this Hon'ble Tribunal instead of following the directions of this Hon'ble Tribunal in O.A.No.281 of 1993 and apply the ratio to the case of the applicant also who is similarly placed as the applicants therein,

and pass such other and further order or orders as are deemed fit and proper in the circumstances of the case.

10. Interim Relief: Hence, it is prayed that this Hon'ble Tribunal in the interests of Justice be pleased to direct the respondents to release provisional pension adjustable in the final settlement to ensure sustenance of the applicant and his dependents, pending disposal of the above Original Application, and pass such other and further order or orders as are deemed fit and proper in the circumstances of the case.

11. PARTICULARS OF THE POSTEL ORDER:-

(I) Name of the Post Office: *Khairatabad*
(ii) Postel Order Number: *812 224950* Date: *26/9/97*

12. ENCLOSURES :- VAKALAT, ANNEXURES, COVERS AND ACK.

VERIFICATION

D.O.B.C.D. Remon
7/1/850

I, K.Gopinath, S/o. K.Rathangapani, aged about 70 years, Retired Station Master, R/o. Hyderabad, do hereby verify that the above facts are true to my personnel knowledge and that I have not suppressed any material facts.

Hyderabad,
Dated:

Gopinath
Counsel for the Applicant

K.Gopinath
Signature of the Applicant

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1. Army C/I/T, M. B.M.L. A.Y.
Officer of the Divl. Mly. Manager,
Personnel Branch/RVB/BS/SC.

No. Y/P/535/Pl1/13Ms

Date: 6-8-78.

Sub:- Filling up of vacancies of SAs in scale Rs.330-560 (n3).

Shri.K.Gopinath Rao (ex. SE/SLC) who was removed from service is re-employed on humanitarian grounds as Assn. Station Master on pay Rs.330/- in scale Rs.330/- 560(n3) as a fresh entrant for all purposes and posted PIZ.

This issue is with the sanction of CPO/SC.

The date he reports for duty should be advised to this office immediately.

Asst. Per. Officer/RVB/BS/SC.

Copy forwarded for information and necessary action to:-

1. SE/PIZ. He is advised to obtain his periodical medical examination & refresher course particulars from SE/PIZ on phone. Shri. K. Rao may be directed for medical examination/refresher course if he is over due for the same.
2. ATI/PIZ. for information and he will have a close watch on the performance of the above AS.
3. SE/PIZ. He will please furnish the dates on which Shri. K. Gopinath Rao was last examined periodically in ATI, sent for refresher course to SE/PIZ on phone.
4. Shri. K. Gopinath Rao (ex. SE/SLC) for information. He will report to SE/PIZ immediately.
5. HQ./Pass./Prs./Stores/Pl. Con. (* Lr. No. C08/SC/0/26/75 dated 2.8.78 connects.).
6. Secy. CCS, Ltd./SC.

for Divl. Mly. Manager/RVB/BS/SC.

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O/W/C/CENTRAL RAILWAY 21 APR 1993
Office of the Divisional Railway Manager/Personnel.
Hyderabad Division, Secunderabad, C.R.
No. Y/C/Con/227/P/Vol. IV dt. 20/4/1993.

All Branch Officers,

Sub: Reappointment of Rly. servants removed/dismissed/compulsorily
retired from service as fresh entrants.

CPO's letter No. P/R/227/XI dt. 7.4.93 is forwarded for information,
guidance and necessary action.

B.K.Bihani

(B.K.Bihani)

Divl. Railway Manager/HYB.

Copy of CPO's Ltr. No. P/R/227/XI dt. 7.4.93 addressed to DRM/HYB & others

Sub: Reappointment of Rly. servants removed/dismissed/compulsorily
retired from service as fresh entrants.

It is generally observed that the appellate authorities are ordering
reappointment of Rly. servants, who were dismissed/removed/compul-
sorily retired from service under the Rly. servants (D&A) Rules, 1968,
as fresh entrants on consideration of their appeals under the provi-
sions of rule 22(2) of the RS(D&A) Rules, 1968.

Reappointment as a fresh entrant comes under the provisions of
Rule 402.R.1. The powers of the appellate authority under Rule 22(2)
(c) (i) and (ii) are confined only to - (i) confirming; (ii)
enhancing; (iii) reducing or (iv) setting aside the penalty or
remitting the case to the authority which imposed or enhanced the
penalty or to any other authority with such directions as it may deem
fit in the circumstances of the case.

Recently, when a case of this nature was referred to Board, the
Board observed as under:

"as regards the order of reappointment, there is no doubt that in
terms of the note below rule 402 of the Estt. Code, Vol. I, the
appellate authority acted without jurisdiction in making the
order of reappointment."

Please therefore, ensure that the appellate authority do not pass
an order of reappointment while considering the appeal of an
employee against the order of the disciplinary authority and the
above position as well as the provisions of Rule 22(2) (c) (i) and
(ii) may please be brought to the notice of all the concerned
authorities.

Please acknowledge receipt.

Sd/-R.Krishnamurthy.
Genl. Manager(P).



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

D.A. 186/95.

Dt. of Decision : 24.2.95.

Elliahs

vs

.. Applicant.

1. Union of India, rep. by the General Manager, SC Rly, Rail Nilayam, Secunderabad.
2. The Chief Personnel Officer, SC Rly, Rail Nilayam, Secunderabad.
3. The Divisional Railway Manager (MG)/Hyd Personnel Branch, Hyderabad Division at Secunderabad, SC Rly, Rail Nilayam, Secunderabad.
4. The Divl. Mechanical Engineer (MG)/Hyd, Divisional Office, Personnel Branch, SC Rly, Rail Nilayam, Secunderabad. .. Respondents.

Counsel for the Applicant : Mr. T. Panduranga Chary
Counsel for the Respondents : Mr. V. Bhimanna, Addl. CG SC.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN
THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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JUDGMENT

I as per Hon'ble Sri R.Rangarajan, Member (Administrative) I

Heard Sri T.Panduranga Chary, learned counsel for the applicant and Sri V.Bheemanna, learned Standing Counsel for the respondents.

2. The applicant herein was initially appointed as YKC on 20.2.1963. He was promoted as II Fireman on 21.7.1972 and later as Fireman 'B' on 20.3.1975 and was posted to ~~one~~ ^{one} chalam Railway Station. He was transferred to Lalguda Loco Shed, Secunderabad.

3. While applicant was working at Secunderabad as Fireman 'B', he was issued with a charge sheet on 24.6.1977 by R-4 for the alleged misconducts. The applicant had submitted his explanation on 6.10.1977 to the disciplinary authority. On considering the explanation and the material on record, the disciplinary authority dropped the charges by his orders dt. 4.11.1977. It is stated for the applicant that the Divisional Superintendent, Hyderabad Division (MC) suo moto reviewed the orders passed by the disciplinary authority dt. 4.11.1977 and appointed an Enquiry Officer by his proceedings dt. 27.1.1978 to enquire into the charges levelled against the applicant. The enquiry officer after conducting the enquiry had submitted his report dt. 31.12.1979 holding that the charges are proved. On the basis of the enquiry report, R-3 herein had passed orders dt. 4.2.1980 imposing the penalty of 'Removal from service' on the applicant with effect from 6.2.1980. The applicant preferred an appeal dt. 14.3.1980 against the orders of removal to the appellate authority (R-2). On considering the appeal R-2 modified the penalty of removal to that of re-employment of the applicant as Fireman 'B' affix with effect from 25.6.1980 by orders dt. 31.5.1980 fixing his pay in the minimum of the scale viz. Rs.260-00 while forfeiting the past service.

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It is submitted for the applicant ^{he} had submitted representations ^{for} condonation of break in service. It is further submitted that due to medical decategorisation the applicant was offered the post of Senior Parcel Porter, but he could not accept the said post offered alternatively as he was undergoing treatment. Aggrieved by the order of the respondents dt. 5.11.1993 bearing No.P.90/TR/HYD/ER/359 forfeiting the whole service prior to his reinstatement by treating him as a fresh entrant and the respondents ~~also~~ refused to condone the break in service, he has filed this OA for a direction to the respondents to treat his past service as qualifying service for fixation of his pension and other service benefits.

4. In OA 281/93 the applicant therein was also taken as a fresh entrant, thereby his past services were not counted for pensionary and other service benefits. In that OA it was held that the authorities have no powers to issue an order of appointment without following the procedure prescribed as per recruitment rules i.e. without considering the names of other eligible candidates for the said post. Hence, the order of re-appointment of the applicant as a fresh entrant was held as in disregard of rules. The order of fresh appointment in that case was construed as a case of passing an order of major penalty in accordance with Rule 6(v) of Railway Servants (D&A) Rules, by lowering the pay of the applicant in the category of Fitter Grade-III to the minimum of the scale i.e. Rs.260-400 and that his annual increments accrue thereafte. The period from the date of his removal till reinstatement was treated as dies-non.

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As the present case is also similar to the one cited above, we see no reason to differ from the judgment of this Tribunal in the above referred OA. Hence, the following direction is given:-

"passing of order of re-appointment of the applicant herein as ^{Fireman 'B'} Shunter as a fresh entrant has to be held as in dis^{regard} of rules. It is to be construed as an order of major penalty in accordance with Rule 6(v) by lowering the pay of the applicant in the category of Fireman 'B' to the minimum of the scale i.e. Rs.260-350 and that the annual increments accrue thereafter. The period from 6.2.1980 the date of removal till 25.6.1982 the date of reinstatement should be treated as 'dies-non'."

5. On the basis of the above, the qualifying service of the applicant has to be reckoned and for the purpose of fixing his pension and other retiral benefits. on his superannuation.

6. The OA is ordered accordingly. ^{at the admission stage its} No costs.

CERTIFIED TO BE TRUE COPIE

Date..... ^{15.3.82}
Court Officer
Central Administrative Tribunal
Hyderabad

CO

1. The General Manager, S.C.Rly, Railnilayam, Secunderabad.
2. The Chief Personnel Officer, S.C.Rly, Railnilayam, Secunderabad.
3. The Divisional Railway Manager (MG) / Hyd Personnel Branch, Hyderabad Division at Secunderabad, S.C.Rly, Railnilayam, Secunderabad.
4. The Divisional Mechanical Engineer (MG) / Hyd, Division Personnel Branch, S.C.Rly, Railnilayam, Secunderabad.
5. One copy to Mr. T Panduranga Chary, Advocate, 3-4-498 Barkatpura, Hyderabad.
6. One copy to Mr. V. Bhimanna, S.C.Rly, CAT. Hyd.
7. One copy to Librarian, CAT. Hyd.
8. One spare copy.

Copy: OA 186
Date: 24/3/82

సంస్కరణ ప్రాంతం (పి) నెంబర్
డస్.రె, హైదరాబాద్ నుండి ద్వారా.

19 AUG 1996

Office of the Divl. Rly. Manager (P)
S. C. Rly, Hyd. Division Sec. b.d.

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A/P

Date: 9-8-96.

To
The General Manager
South Central Railway
Rail Nilayam
Secunderabad.

Sir,

Sub: Request for condonation of 'break-in-service'
and grant of Pension - K.Gopinath, retired
Station Master, Hyderabad (MG) division.

* * *

Most humbly and respectfully, do I, the undersigned beg
to submit the following for your kind and sympathetic considera-
tion and for issue of necessary favourable orders.

2. I was originally appointed as 'Reserve Signaller' on
ex.N.S.Railway on 6-10-1949. Subsequently, I was promoted
as ASM and SM as per my seniority and merit. While I was
working as SM/Madhira, I was proceeded against departmentally
for booking smalls consignments in violation of restrictions
imposed. Though I had pleaded that the lapses on my part were
unintentional and due to ignorance of instructions concerned
due to their non receipt at my station, nevertheless, in the
enquiry held it was said that the charges framed against me
were proved and the penalty of 'removal from service' was imposed
on me by Divisional Railway Manager/HYB(MG) vide letter No.
CON/SC/C/26/75 dt. 24.5.79. However, on an appeal preferred
by me against the above orders of 'removal from service', the
Appellate Authority viz., Chief Operating Superintendent was
kind enough to modify the penalty and re-appoint me to service
as ASM as fresh entrant for all purposes. Accordingly, I was
posted as ASM at Pingli of Hyderabad (MG) division and I joined
duty there on 7.8.79. Thereafter I had continuously worked
as ASM till my retirement from service on superannuation on
31.7.85.

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3. I had made several representations to the authorities to condone the break of service between my first and second spells of service to give me the benefit of continuity of service for the purpose of retirement benefits including option for pension. As I met with no positive response, I had approached the Hon'ble Central Administrative Tribunal, Hyderabad Bench with O.A.No. 847/90. Having failed to secure justice through the said OA, I had filed a Revision petition in the same Tribunal vide Revision Petition No.133/92 against judgement dt. 30.9.92 which was disposed of on 30.12.92 saying that the only course left open to me in this matter was to approach the Hon'ble Supreme Court of India with an SLP. Left with no means to approach the Hon'ble Supreme Court, I had sent a petition dt. 7.3.94 to the Hon'ble Chief Justice of the Supreme Court of India, New Delhi to grant me condonation of 'break-in-service' as well as Pensionary benefits and this petition was disposed of by the Dy.Registrar (PR CELL) vide his letter No.2507/SC/PILC/1994 dt. 20.5.94 saying that the petition should be registered at the filing counter of the Registry of the Supreme Court either in person or through an Advocate. As I had no means I could not make the trip to Delhi to comply with the aforesaid procedure.

4. Very recently, I have come across CPO/SC's letter No. P/R/227/XI dt. 7.4.93 addressed to DRM/Hyderabad and others wherein it was stated, inter alia, that re-appointment of Railway servants removed/dismissed/compulsorily retired from service as fresh entrants comes under the provisions of Rule 402 R.I. and the powers of the Appellate authority under Rule 22(2) (C) (i) and (ii) of Railway Servants (Discipline & Appeal) Rules, 1968 are confined only to (i) confirming () enhancing (iii) reducing or (iv) setting aside the penalty or remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may seem fit in the circumstances of the case. The aforementioned letter of the CPO/SC had further stated that recently when a case of this nature was referred to Board, the Board observed as under:

" as regards the order of 're-appointment, there is no doubt that in terms of the note below rule 402 of the Estt code Vol.I, the appellate authority acted without jurisdiction in making the order of re-appointment. "

5. In the light of the foregoing, it may kindly be seen that it was not correct on the part of the Appellate Authority to have passed orders of 're-appointment' in my case as the said orders ran counter to the provisions of the Indian Railway Establishment code Volume.I.

6. Further on account of the fact that the 'break-in-service' in my case from the date of my removal on 24.5.79 and reappointment on 6.8.79 not being condoned treating it as dies non, I have not only been deprived of the satisfactory and continuous service of 29 years 8 months which I had put in prior to my removal from service for all consequential benefits but also the benefit of pension option. When I wanted to exercise pension option after my re-appointment since the option was available before my retirement, I was told that by virtue of the fact that I was re-appointed to service on 6.8.79, I was automatically governed by Pension scheme and no separate option was required. However, I could not complete minimum service required for grant of pension due to retiring on superannuation on 31.7.1985 rendering only 6 1/2 years of service in that second spell of my service.

7. I understand, sir, that consequent on introduction of Rule 107 in the Railway services(Pension) Rules, 1993, the cases of some of the employees on our Railway who were removed from service under D&A Rules and re-appointed subsequently are being reviewed for condonation of break-in-service in terms of the above rule to relieve hardship in deserving cases.

8. I most humbly submit sir, that my case is one of committing lapses unintentionally due to ignorance of the instructions issued and not at all intentional and deliberate act and I did not cause any monetary loss to the Railway Administration. There was no other complaint against me during my long service before removal.

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Even after re-appointment, I had worked to the utmost satisfaction of my superiors and I had also been promoted as SM as per the re-assigned seniority after reappointment.

9. I have large family with 3 unmarried daughters. It is more than 10 years since I have retired from service. I am pulling on the days with great difficulty with no pension and with nothing else to fall back upon. I would request your kindself to take sympathy in our plight and arrange to grant me the benefit of condonation of break-in-service as well as pension under rule 107 of Railway services (Pension)Rules,1993 considering that I was deprived of the option for pension for the reasons mentioned above. I have only been paid very paupltry amount towards settlement calculating the same on my second spell of service. I had to accept it since my request for condonation of break-in-service as well as my option for pension were not considered favourably and I had no other means to sustain myself and my large family after retirement. I am, however, ready to refund the government's contribution which I have received on my PF together with interest thereon in case my case is considered sympathetically by your kindself for grant of pension in the circumstances explained.

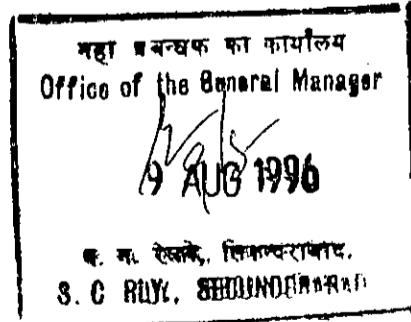
Copy to DRM M.G.HyB.

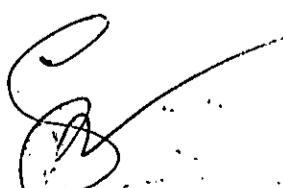
Thanking you,

Yours faithfully,


(K.GOPINATH)
Retd. SM. 58+0
PINGLI / SCB

Address
K. GOPINATH Retd SM/SCB
K. FA, Street No 2.
H.M.T. NAGAR, NAGARAY,
HYDERABAD 500076
A.B.





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CENTRAL ADMINISTRATIVE TRIBUNAL.
HYDERABAD BENCH.

O.ARGD. NO. 3136/97

Date: 30/9/97

To

Sri M.R. Rao

Sir,

I am to request you to rectify the defects mentioned below in your application within 14 days from the date of issue of this letter, failing which your application will not be registered and action under Rule 5 (4) will follow.

As per the impugned order
dt. 6.8.71 (A1) the name of
the applicant is differ.

DEPUTY REGISTRAR (JUDL)

The office is communicated the
impugned order by name Gopinatha Rao. The actual
name of the applicant is Gopinath.
Hence represented

Sir
11/10/97

Conseal for the Office

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CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

Original Application No. 1312/97

DATE OF DECISION: 3-10-1997

K. Gopinath

-----Petitioner(s)

Mr. Siva for M. N. Ram Mohan Rao

-----Advocate for the
Petitioner(s)

Versus

GM, SC Rly., & Ors.

-----Respondent(s)

Mr. V. Rajeswara Rao

-----Advocate for the
Respondent(s)

THE HON'BLE SHRI H. Rajendra Prasad, Member(A)

THE HON'BLE SHRI B.S. Jai Parameshwar, Member(J)

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether the Judgement is to be circulated to the other Benches?
av1/

Judgement delivered by Hon'ble Shri B.S.Jai Parameshwar, M

Jai

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A.1312/97

Date: 3-10-1997

Between:

K. Gopinath

.. Applicant

-versus-

1. The General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
2. The Divisional Railway Manager (MG)
South Central Railway,
Rail Nilayam,
Secunderabad.
3. The Chief Operating Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
4. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam,
Secunderabad.

.. Respondents

Counsel for the applicant : Mr. Siva for
Mr. N. Ram Mohan Rao

Counsel for the respondents : Mr. V. Rajeswara Rao

Coram:

Hon'ble Shri H. Rajendra Prasad, Member (A)

Hon'ble Shri B.S. Jai Parameshwar, Member (J)

Jan

JUDGMENT

(Per Hon'ble Shri B. S. Jai Parameshwar, M.J.)

Heard Mr. Siva for Mr. N. Ram Mohan Rao for the applicant and Mr. V. Rajeswara Rao for the respondents.

2. Admit.

3. The applicant originally appointed as Reserve Signaler on 6-10-1949. He was subsequently promoted as Asstt. Station Master and Station Master respectively in the said service. However, on account of certain disciplinary proceedings initiated against him, he was removed from service vide proceedings in letter No. CON/SC/C/26/75 dt. 24-5-1979. He had challenged the order of his removal before the appellate authority i.e. The Chief Operative Superintendent. The Chief Operative Superintendent modified the penalty of removal and re-appointed the applicant into service as an Asstt. Station Master as a fresh entrant for all purposes. Thus the applicant joined the service from 7-8-1979. Thereafter he worked as Asstt. Station Master till 31-7-1985 on which date he retired from service on attaining the age of superannuation.

4. His main grievance is that his earlier service from 6-10-1949 to 24-5-1979 has not been taken into consideration for calculating the pensionary benefits.

5. On 9-8-1996 he submitted a representation to take into consideration his past service from 24-5-79 to 6-8-79 and also to treat the said period i.e. from the date of removal to date of reappointment as dies-non. The applicant submits that his representation is still under consideration. In support of his case the applicant has relied upon the decision of this Tribunal in O.A. 186/95 decided on 24-2-95 (Ellaiah v. U.O.I)

6. Since the representation dt. 9-8-96 is pending before the respondent authorities we feel it proper to direct the respondents to dispose of the said representation taking into consideration the views expressed by this Tribunal in O.A. 186/95 decided on 24-2-1995.

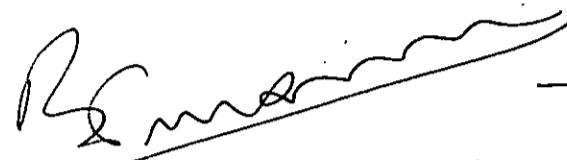
7. The respondents shall dispose of the representation dt. 9-8-1996 of the applicant in accordance with rules within two months from the date of receipt of copy of this order and

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inform the applicant accordingly.

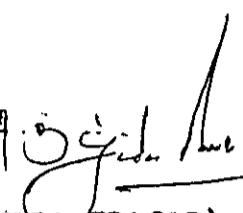
8. With the above direction the OA
is disposed of at the admission stage.

9. No order as to costs.

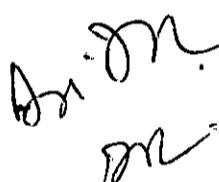

(B.S. JAI PARAMESHWAR)
Member (J)

3.10.97

MD


(H. RAJENDRA PRASAD)
Member (A)

Dated: 3rd October, 1997
Dictated in open court


Dr. M.
M.

/97.

General Manager
S.C.Rly, Railnilayam,
Secunderabad.

2. The Divisional Railway Manager (MG)
S.C.Rly, Railnilayam, Secunderabad.
3. The Chief Operating Manager,
SC Rly, Railnilayam, Secunderabad.
4. One copy to Chief Personnel Officer,
SC Rly, Railnilayam, Secunderabad.
5. One copy to Mr. N. Rammohan Rao, Advocate, CAT. Hyd.
6. One copy to Mr. V. Rajeswar Rao, Addl. CGSC. CAT. Hyd.
7. One copy to HHRP. M. (A) CAT. Hyd.
8. One spare copy.

pvm

27/10/97
I Court.

TYPED BY:

CHECKED BY:

COMPARED BY:

APPROVED BY:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE.
VICE-CHAIRMAN

And

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

THE HON'BLE MR.B.S.Janparameswar :M(C)

DATED:-

3/10/97

ORDER/JUDGMENT.

M.A./RA./C-A.No..

in

O.A.No. 1312/97

T.A.No.

(W.P.)

Admitted and Interim directions issued.

Allowed

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected

No order as to costs.

केन्द्रीय प्रशासनिक अधिकारम्
Central Administrative Tribunal

DESPATCH

27 OCT 1997

हैदराबाद न्यायपीठ
HYDERABAD BENCH