

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

CA No. 132 of 1997

(6)

Between:

B.Krishna Swamy

...Applicant

A N D

General Manager, SC Rly,
and two others.

...Respondents

I N D E X

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3.	Settlement order dated 22.12.94/ January, 1995 passed by the Sr.DAO.	II	8
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6.	Copy of the judgment in CA No. 1521/93 dated 31.3.94.	V	11 to 14

Hyderabad

Dated: 20.1.97


COUNSEL FOR APLICANT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

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Application filed under section 19 of the
Administrative Tribunals Act

OA No. of 1997

Date of Filing:

Date of Receipt
by Post :

Registration No:

Signature:
Registrar:

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

OA No. 132 of 1997

Between:

B.Krishna Swamy, S/o Rangaiah,
aged about 65 years, Retired Employee,
R/o Secunderabad.

...Applicant

AND

1. The General Manager, S.C.Railway,
Rail Nila yam, Secunderabad.
2. The Divl.Rly.Manager, M.G.Division,
S.C.Railway, Secunderabad.
3. The Sr.Divl.Personnel Officer,
MG Division, S.C.Railway,
Secunderabad.

...Respondents

DETAILS OF APPLICATION:

1. Particulars of the Applicant:

The particulars of the applicant are as mentioned in the above cause title. The address of the applicant for service is that of his counsel Mr.S.Lakshma Reddy, Advocate, Plot No. 102, Premier Plaza Apartments, Near Water Tank, Narayanaguda, Hyderabad.

2. Names, addresses and description of the respondents:

As given in the above cause title.

3. PARTICULARS OF THE ORDER AGAINST WHICH THIS IS MADE

- (i) Order No.P.500/Mech/R&M/DOP.Ref/Vol.II dated 1.1.96.
- (ii) Passed by: the first respondent.
- (iii) Subject in brief: Retirement benefits - settlement of
Regarding.

4. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the order against which he seeks redressal is within the jurisdiction of this Hon'ble Tribunal under section 14 of the Administrative Tribunals Act, 1985.

5. LIMITATION:

The applicant submits that the impugned order dated 1.1.96 is served on the applicant on 10.1.96 and immediately the applicant got a further representation made to the respondents through the National Railway Pensioners Association on 16.1.96 for which there is no response till date. Hence, the OA is within the limitation;

6. FACTS OF THE CASE:

6.1. The applicant was appointed as Yard Khalasi on 1.9.58 at Secunderabad. He has progressed in the running cadre and was promoted as Goods Driver in the year 1982 and posted to Loco Foreman/Lallaguda. Meanwhile on 18.11.79 his wife expired leaving behind 3 minor children, all daughters and in the absence of the mother, the applicant had to bring them up. Since the children were falling sick often and thus requiring his presence and assistance to lookafter the children during the period in the year 1983, he had to take several leaves spreading 3 to 5 days in a month and whenever he was forced to absent, he duly intimated the same and took the oral sanction of the Loco Foreman/LGD. Since the officer was permitting and giving oral sanction, he did not give much thought over the issue but curiously the respondents have removed the applicant from service from 12.12.1983, without issuing any notice or conducting disciplinary enquiry or serving the removal order on the applicant. The applicant

had to make several representations to the higher authorities and after a period of 3 years, the appellate authority has reinstated the applicant as Yard Khalasi and transferred him to Akola. The applicant had no choice, in view of his precarious position and joined the duties at Akola as Yard Khalasi and worked there upto December, 1987 and on transfer came back to Lalaguda, Loco Foreman. While working at Lalaguda, the applicant due to all sorts of sufferings and troubles meted out by the administration as well as in the family had lost sight of both eyes. He was admitted as inpatient in Railway Hospital, Lalaguda on 23.11.90 and finally declared the applicant unfit for all categories on 29.8.91 and accordingly his services were terminated. From 19.8.91 to 22.12.94 the applicant was not paid any settlement dues, in spite of his several representations. Finally the applicant was issued a settlement order No. Sett. Case No. 90/92-93 dated 23.12.94/Jan. 95 stating that the applicant is entitled a net amount of Rs. 1876/- for all his 33 years of service rendered in the Railways from 1958 to 1991. The applicant has then made representations to the first respondent for treating the whole period as qualifying service from 1958, to the date of termination on medical unfitness. The first respondent has communicated the impugned order No. P. 500/Mech/R&M/DOP, Ref/Vol. II dated 1.1.96 through the Chief Personnel Officer, S.C.Rly, stating that since the applicant was reinstated as fresh entrant for all purposes by the appellate authority vide order dated 5.2.86, the condonation of break-in-service for the purpose of qualifying service for pensionary benefits cannot be considered and further since the applicant is not completed 10 years of qualifying service in the second spell he is not eligible for any pension. Aggrieved by the same, the applicant has got a further representation made through the National Railway Pensioners Association to the Railway Board, New Delhi and also the first respondent on 16.1.96 and the injustice done to the applicant and for arranging to sanction the full pension for 33 years of qualifying service and other retirement benefits by treating the entire period of 33 years as continuous. The respondents have not passed any orders so far. Hence, this application.

6.2. The applicant submits that the respondents have no power to appoint the applicant as fresh entrant by way of ~~disqualification~~ penalty under the Railway Servants (Discipline & Appeal) Rules and hence the action of the respondents in treating the applicant as fresh entrant in service as Yard Khalasi from his post of Goods Driver in exercise of the appellate powers and the Railway Servants (D&A) Rules is totally illegal and without jurisdiction and ultravires of the powers of the respondents.

6.3. It is also further submitted that the respondents have no power to forfeit the past services, as a measure of penalty under the D & A Rules. Further the applicant submits that the whole procedure followed by the respondents in removing the applicant from service without conducting any disciplinary enquiry, without issuing any charge memo and without serving a removal order on the applicant is totally in utter disregard of the principles of natural justice, much less the procedure contemplated under the D & A Rules. The whole action of the respondents is totally null and void and cannot be said to produce any legal consequence so as to deprive the applicant of his legitimate entitlements accrued on rendering faithful service. The applicant submits that in similar circumstances, this Hon'ble Tribunal has held that the appellate authority ~~is~~ or the disciplinary authority has no power to order fresh appointment under the D & A Rules, as the same was construed as a case of passing an order of major penalty in accordance with the rule 6 (6) (CA No.1521/93, date of judgement 31.3.94 Md.Khaja Vs GM, S.C.Rly). The applicant is similarly situated and also entitled to be given the same benefit.

6.4. The applicant is now a totally blind person, who cannot move without the assistance of a person and he has no other source of livelihood and unless the action of the respondents is declared as illegal and without jurisdiction and consequently directed to treat the whole period of service as continuous for the purpose of qualifying service, the applicant will suffer irreparable loss and damage. The applicant has no other alternative except to approach this Hon'ble Tribunal for redressal of his grievance.

7. RELIEFS SOUGHT:

In the circumstances of the case, the applicant respectfully prays that the Hon'ble Tribunal may be pleased to declare the action of the respondents in not treating the period of service from the date of appointment to the date of termination on medical grounds i.e., from 1.9.58 to 29.8.91 on the ground that the applicant was reinstated as fresh entrant into service by the appellate authority as Yard Khalasi on 18.6.86 as per the impugned order dated 1.1.96 as totally illegal, without jurisdiction and violative of articles 14 and 16 of the Constitution and consequently direct the respondents to treat the total period of service from the date of appointment to the date of medical invalidation on 2.9.8.91 as continuous for the purpose of qualifying service and grant pensionary and other retirement benefits and such other consequential benefits and pass such other orders as may be deemed fit.

8. INTERIM RELIEF:

Pending disposal of the above OA, it is respectfully prayed that the Hon'ble Tribunal may be pleased to direct the respondents to grant pension and other retirement benefits by treating the whole service from the date of appointment to the date of medical invalidation as continuous for the purpose of qualifying service and pass such other orders as may be deemed fit.

9. Details of Remedies Exhausted:

The applicant has exhausted the remedies and is constrained to file this OA for redressal of his grievance.

10. MATTERS NOT FILED EARLIER OR PENDING:

The applicant has not filed any other OA for the reliefs prayed for in this OA except the one which is specified herein above.

11. PARTICULARS OF THE POSTAL ORDER:

(a) PO No: 812 210 414

(b) Date 29-1-97

(c) Post Office where payable - PO H-40

(d) Post office which issued:

U.P.C.A Post office
V.P.O. - 201
U.P.C.A.D.D. ROORKEE

12. Details of Index:

An index in duplicate contained the details of the documents to be relied is enclosed.

13. LIST OF ENCLOSURES:

- (a) Vakalat
- (b) Pads & Covers
- (c) Material papers

VERIFICATION

I, the applicant herein do her by declare that the contents of the above OA are true and correct to the best of my knowledge and belief and on the advice of my counsel, which I believe to be true. Hence, verified on this the 20th day of January, 1997 at Hyderabad.

TB

Signature of the Applicant



COUNSEL FOR APPLICANT

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SOUTH CENTRAL RAILWAY

Headquarters Office,
Personnel Branch,
Secunderabad.
Dt. J -01- '96.

No. P. 500/Mech/R&M/DOP Ref/Vol.II

Sri B. Krishna Swamy,
C/o B. Basanth Rao, Dsl. Driver,
Rly. Qrs. No. 759/4.
North Hallaguda,
Secunderabad - 500 017.

Sub: Request for sanction of pension.

Ref: Your representation dated 8-9-95,
addressed to Dept. of Personnel
and Public Grievances, New Delhi.

Your representation referred to above has been examined in detail and you are advised the following position.

While you were working as Goods Driver, you were removed from service w.e.f. 12-12-83 for unauthorized absence. However, on appeal against the orders of removal, you were re-appointed as Yard Khalasi in scale Rs.196-232 (RS) as a fresh entrant for all purposes vide Office Order No.11/Mech/ Cadre dated 5-2-86 and you joined on 18-6-86.

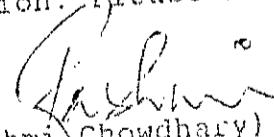
You were subsequently declared unfit for all categories of railway service vide railway medical certificate dated 30-8-91. Hence you were retired from service on medical invalidation.

In accordance with the extant instructions, condonation of break-in-service to reckon the past service for the purpose of qualifying service for pensionary benefits cannot be considered as your subsequent appointment was a fresh one for all purposes. You were replied on 21-3-95 on your appeal to the General Manager in this regard by the division concerned.

Since you have not completed 10 years of qualifying service in the second spell, you were not eligible for pension. However, your settlement dues for the service rendered in the first as well as second spell have already been paid as indicated below:

1st spell Rs.1,021 - Passed vide CO7 No.100186 of 8-12-95.
2nd spell Rs.8,202 - Paid on 22-12-94.

Since you have been settled fully as per extant rules for both the spells, you were not due any further amount consequent on your retirement on medical invalidation. Please note.


(Rashmi Chowdhary)
for Chief Personnel Officer.

T.C
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(6)

SOUTH CENTRAL RAILWAY (2)

No. Supt, Case No. 90/92-43

Sr. DDO's Office/HYB,
Secunderabad.

Date: 22.12.94

Pen. Case No.

Jan. 1995

Sub: Intimation reg. payment of sett. dues to
Sri/Smt. B. K. N. K. S. ~~Shonu~~
Dtd./V/KNB-R/Removed/Dismissed/
Died on 11/12/84

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It is to inform that the Supt.due in his/her favour has been passed for payment for Rs. ~~as detailed below and~~ the cheque has been sent to the DC(P) for arranging of the sum through the Post Master/

	Pension Details
1. State Railway Provident Fund	2219 Employee's Pension
2. Death Commutation gratuity	1796 (-) Commutation
3. Group Insurance Amount	546 Residual Pension
4. Wage Commutation of pension	Relief 3
5. Waged for the month of	Pen. + Relief
6. Leave encashment bill (No. of day)	
7. Deposit Linked Insurance	
8. Others	3541
	1
	5202

DEDUCTIONS

I. Group Insurance

1. Wages	Advances	500
2. House Rent		500
3. Misc. Charges		
4. Festival Advance		200
5. Future Dubits	Domestic Rent	5626
6. Funeral Advance		
7. Scooter Advance		
8. House Building Adv.		
9. Professional Tax		
10. RESIS		
11. Others		

Total Deductions: 6626

Net Amount Payable

Sr. DDO's Office/HYB.

A.M. 1,576/-

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27. 1. 1994

AN III (9)

To

Date: 3

The Divisional Railway Manager, (MG),
Hyderabad Division,
South Central Railway,
Secunderabad,

"Through Locoforeman/MG/SCR"

Respected Sir,

Sub: Regarding my Service settlement has not being sent to me by the Office correspondence.

I, the undersigned most humbly beg to lay the following few lines for your kind sympathetic consideration and favourable orders.

I have served the Railways as Steam Driver from 1983. Due to unavoidable circumstances, my wife was seriously sick and expired, due to this, I was mentally effected and worried to look after my three daughters and their requirements etc., including their worries.

I was absent for my duty for a period 1982 -

As per your office order No. I was revoked from Steam Driver to YKC in the year 18-6-86, and I was working as YKC in Locoshed LGD MG.

Due to my sick health, I was admitted in DMO/LGD Hospital from 23-9-1990.

The DMO/LGD has medically unfit me in all category in the year 20-9-1991 since I am completely blind.

Due to blindness, I am unable to see and walk myself without any help of any person from place to place and my daughters are working daily wages out side as private coolies for our daily food, for the same cause, I was unable to approach to the Office Correspondence and give my details of my problems.

Therefore I request your honour to kindly look into my poor appeal and settle my service settlement as early as possible, as I am facing much difficulties day by day to maintain myself and my two daughters in these hard days.

For which act of kindness, I shall be highly thankful to you and pray for your ever long life.

Thanking you, Sir

Yours faithfully,

(B. KRISHNA DASAMY)
YKC/MG/LGD/SCR.

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SOUTH CENTRAL RAILWAY

Office of the
Chief Hospital Supdt.,
Lalgadu.

No. HQ/HB/84/85

February 26, 1994.

LF/LGD.

Sub:- Unfitness of Sri B. Krishna Swamy, YKC,
T. No. 3789/10W/LGD.

Ref:- Employees' application dated 15.02.1994
forwarded by you.

It is certified that the above named employee was declared
unfit for further service vide unfit certificate no. 002043 dated
29.08.1991. The certificate was already sent to you.

This is for your information please.

C/- Sri. MS/HB.
C/- DRM/P/HB/SC.

Chief Hospital Superintendent
Refined Hospital
WFO-102-300,
MHB/SC; Forwarding
Medical Superintendent,
South Central Railway
Hyderabad-500 014

DR

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 132 of 1997

DATE OF DECISION: 11-2-97

B.Krishna Swamy, APPLICANTS

Versus

The General Manager, SC Rlys, RESPONDENTS
Railway, Sec'bad & 2 others

FOR INSTRUCTIONS

1. Whether it be referred to the
reporters or not?

2. Whether it be circulated to
all the Benches of C.A.T.
or not?


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


(R.RANGARAJAN)
Vice Chairman/Member (A)

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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Heard Shri S.Lakshma Reddy, counsel for the applicant and Shri C.V.Malla Reddy, standing counsel for the respondents.

2. The applicant in this O.A. while working as Goods Driver was removed from service with effect from 12-12-1983 by Respondent No.3 following the rules. Later he filed an appeal to Respondent No.2 who disposed of that appeal by re-instating the applicant as a fresh entrant for all purposes vide order dt.5-2-1986 as Yard Kalasi. Further the break in service during he was away from service i.e. the period/from 12-12-83 to 5-2-86 was not condoned. The services of the applicant /~~as~~ terminated on medical grounds with effect from 29-8-91. In view of the fact he is not put in/10 years less than of service from the date of his re-instatement on 5-2-86 as a fresh entrant to the date of his termination on medical grounds on 29-8-91, the applicant was informed that he is not eligible to get any pension or pensionary benefits.

3. This O.A. is filed praying for a direction to the respondents to treat the period of service from the date of appointment to the date of termination on medical grounds i.e. from 1-9-1958 to 29-8-1991 as qualifying service for the purpose of pension and other pensionary benefits.

4. This O.A. is similar to OA 1521/93 decided on 31-3-94.
In that O.A. the ~~tribunal~~ held as follows :-

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"Passing of order of re-appointment of the applicant herein as Shunter as a fresh entrant has to be held as in disregard 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 Shunter to the minimum of the scale i.e. Rs.1200-2040 and that the annual increments accrue thereafter. The period from 29-3-88 till the date of removal till 26-8-89 the date of re-instatement should be treated as 'Dies-non'."

5. In this case the applicant was taken back and reinstated as Yard Kalasi as a fresh entrant. Hence that should be treated as a Major Penalty in accordance with the Rule-6 by reverting the applicant to lower category in the scale of pay of Rs.740-950 and that the annual increment in that post will accrue thereafter. The period from 12-12-83 to 5-2-86 should be treated as Dies-non. The pensionary benefits of the applicant has to be calculated taking into account the earlier service ^{also} earlier to 12-12-83 as qualifying service.

6. The applicant was re-instated into service on 5-2-86 as a fresh entrant. At that time itself he ^{knows} ~~knows~~ that his past ^{would} services ~~would~~ not be counted. Further the applicant retired from service on 29-8-1991 on medical grounds. At that time also he was informed that he ^{was} ~~is~~ not eligible for any pension and pensionary benefits. His representation was rejected by letter dt.1-1-96. In the sequence of events given above, the applicant ^{knows} ~~knows~~ that he is not eligible for pensionary benefits in the year 1991 itself. He should have approached the Tribunal immediately thereafter. Hence it is to be held that this O.A. is barred by limitation. But the learned counsel for the applicant submitted that in such cases the arrears are paid one year prior to the filing of the OA as payment of pension is a continuous xxxx xxxx xxxx xxxx

cause of action. The above submission is reasonable and acceptable and is also followed in similar cases. Hence the applicant is eligible for the arrears of the pension only from one year prior to the filing of this O.A.

6. In the result, the following direction is given :-

The qualifying service of the applicant has to be barring the period which is to be treated as dies non reckoned right from 1-9-58/and pension ~~XXXXXX~~, ~~XXXXXX~~ due to [✓] on that basis [✓] him has to be fixed/and has to be paid from ~~1-9-91~~ accordingly.

It is open to the applicant to apply for commutation of pay if he is so advised in accordance with the rules. The pension amount due to the applicant from ~~1-9-91~~ has to be fixed on notional basis and arrears if any due to him has to be paid from one year prior to filing of this O.A. i.e. from 29-12-96 (This was O.A./filed on 29-1-97). The fixation of pension and pensionary benefits and payment of arrears ^{have} has to be done within six months from the date of receipt of ^{the} copy of this order.

7. The O.A. is ordered accordingly at ~~the~~ admission stage itself. No costs.

(B.S.JAI PARAMESHWAR)

Member (J)

11.2.97

(R.RANGARAJAN)

Member (A)

Dated: 11th February, 1997.

Dictated in Open Court.

Am/An
D.R.G

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O.A.NO.132/97

1. The General Manager, South Central Railway, Railnilayam, Secunderabad.
2. The Divisional Railway Manager, MG Division, South Central Railway, Secunderabad.
3. The Senior Divisional Personnel Officer, MG Division, South Central Railway, Secunderabad.
4. One copy to Mr.S.Lakshma Reddy, Advocate, Plot No.102, Premier Plaza Apartments, Near Water Tank, Narayanaguda, Hyderabad.
5. One copy to Mr.U.V.Malla Reddy, Addl.CGSC,CAT,Hyderabad.
6. One copy to D.R.(A), CAT, Hyderabad.
7. One copy to Library,CAT,Hyderabad.
8. One duplicate copy.

YLKR

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.DHAI PARAMESHWAR:
M(J)

DATED: 11/2/87

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

in

O.A. NO. 132/87

COMMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/~~REJECTED~~

NO ORDER AS TO CO

11 COURT

YLR

केन्द्रीय प्रशासनिक अधिकार सभा
Central Administrative Tribunal
द्वेष्टि / DESPATCH

10 MAR 1997 *Not*

HYDERABAD BENCH