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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
AT HYDERABAD

O.A.No.1449 OF 1997.

DATE OF ORDER:13-7-1999.

BETWEEN:

T.D.Harishchandra.

.....Applicant

a n d

1. The General Manager (Personnel),  
South Central Railway,  
Rail Nilayam, Secunderabad.
2. The Divisional Signal and Telecom  
Engineer(C) I, South Central Railway,  
Secunderabad.
3. The Senior Divisional Signal & Telecom  
Engineer(C)I, South Central Railway,  
Secunderabad.

.....Respondents

COUNSEL FOR THE APPLICANT :: Mr.N.Ramamohan Rao

COUNSEL FOR THE RESPONDENTS : Mr.V.Rajeshwar Rao

CORAM:

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

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

: O R D E R :

ORAL ORDER (PER HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (J) )

Heard Mr.Siva for Mr.N.Ramamohan Rao, learned  
Counsel for the Applicant and Mr.V.Rajeshwar Rao,  
learned Standing Counsel for the Respondents.

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2. While the applicant was working as Senior Stenographer in the office of the Respondent No.3, remained unauthorisedly absent from 21-2-1982 from duty.

3. While remaining unauthorisedly absent the applicant submitted a representation to the respondent-authorities to consider his case for retirement on medical grounds or compulsory retirement or otherwise. On 29-1-1993, the Respondent No.3 sent a letter to the applicant directing him to report for duty.

4. In the meanwhile the Respondent No.3 issued a Charge Memo bearing No.S&T/CN/I/DAR/TOH, dated:27-7-1993. The charge memo was served on the applicant by Registered Post.

5. The applicant reported for duty on 9-11-1993. On the same date the applicant was placed under suspension by Proceedings No.SC/S&T/C/I/E, dated:9-11-1993. The suspension was revoked on 15-12-1993.

6. A detailed enquiry was conducted into the charge of unauthorised absence of the applicant from 21-2-1982. The applicant participated in the Disciplinary Proceedings. On 29-9-1993, the Enquiry Officer submitted his report. A copy of the Enquiry Report of the Enquiry Officer was furnished to the applicant. The applicant had not submitted his representation to the report of the Enquiry Officer.

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7. The Disciplinary Authority after considering the report of the Enquiry Officer by Proceedings No.SC/S&T/CN/1/E/TDH, dated:15-12-1993 (Annexure.A-4 to the OA), imposed the penalty of compulsory retirement from service. The Disciplinary Authority subsequently modified the said Order by Proceedings No.SC/S&T/CN/I/E/94/TDH, dated:28-6-1994, (Annexure.R-V, page.15 to the reply), to take ~~into~~ <sup>the punishment</sup> effect, from 21-2-1982. Subsequently, the said Order was cancelled by Order dated: 4-1-1996 and compulsory retirement was ordered to take effect with effect from 15-12-1993. The said Order dated:4-1-1996 is at Page.47 of the File produced by the respondents.

8. The respondent-authorities determined the pension of the applicant as per the Order dated:15-12-1993.

9. The applicant being not satisfied with the determination of pension has filed this OA for a declaration that the action of the respondents in not re-fixing his pay in accordance with the revised pay scales of IV Pay Commission as on the date of order of compulsory retirement as arbitrary, illegal and unjust, and for a direction to the respondents to refix the pension of the applicant by duly taking into account the recommendations of the IV Pay Commission scales on the basis of the Pay notionally fixed of the applicant and also the respondents to pay arrears upon such fixation including Dearness Allowances and Bonus.

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10. The respondents have filed their reply and they submit that the applicant is not entitled to any of the reliefs on the grounds that the last pay drawn by the applicant was for the month of February, 1982, though he was under unauthorised absence from duty from 21-2-1982.

11. The applicant was under unauthorised absence from 21-2-1982. The applicant reported for duty with M.158 Medical Certificate issued by the Railway Hospital, Lalaguda, on 9-11-1993.

12. The applicant was placed under suspension on resuming duty to initiate Disciplinary Proceedings. On completion of the Disciplinary Proceedings, the applicant was awarded with a penalty of Compulsory Retirement with effect from 15-12-1993.

13. The period of unauthorised absence from 21-2-1982 to 8-11-1993 has been treated as dies-non.

14. The contention of the applicant that his pay should have been refixed on the basis of the IVth Pay Commission recommendations may not be correct. The pension has to be determined on the basis of the average of the actual pay drawn for 10 months preceding his date of retirement i.e., 15-12-1993. It is to be noted that 10 months preceding 9-11-1993 the applicant had not drawn any pay. He is only eligible to the subsistence

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allowance from 9-11-1993 to 15-12-1993. Further under Section 49 of the Central Civil Services(Pension) Rules, 1972 the applicant is not entitled to any increase in the pay during the period of his absence. When that is so, the contention that his pension ought to be determined taking his 10 months average pay prior to 9-11-1993 or 15-12-1993 has no substance. As the applicant has not at all worked at any time between 1-1-1986 and 9-11-1993, he cannot urge to fix his pay either notionally or otherwise on the basis of the recommended scale of pay by <sup>the</sup> IVth Pay Commission.

15. As the applicant was under suspension from 9-11-1993, the applicant is entitled to the Subsistence Allowance on the basis of the recommendations of the IV Pay Commissionscales of pay for which he is eligible.

16. The respondent-authorities treating the basic pay that was drawn by the applicant as on February, 1982, determined the pension payable to the applicant. Accordingly they have determined the pension on 5-1-1996. As on 15-12-1993, they have fixed the pay at Rs.1,560/-. Annexure.R-7 is the notional fixation of pay order in the new pay scales.

17. The fixation of pension by the respondent-authorities taking into consideration the pay as on February, 1982, and 10 months preceding thereto is

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quite in order. It is advantageous to him compared to the request made by the applicant in this OA. Hence, we feel that the Government has acted judiciously to help the applicant. We see no reasons to allow the OA.


18. However, it is to be noted that the applicant has to be paid subsistence allowance on the basis of the pay which he is entitled as per the IV Pay Commission scales of pay. His pension has to be refixed on that basis and he is entitled for that pension from 1-1-1986 onwards.

19. The respondents shall pay the subsistence allowance to the applicant for the period 9-11-1993 to 15-12-1993 as expeditiously as possible.


20. The period of absence from 21-2-1982 to 9-11-1993 may be decided by the respondent-authorities in accordance with the law and on that basis if any further relief has to be given may be decided by the respondents.

21. With the above observations, the OA is disposed off. No costs.

(The File No.E.737/Bills is perused and returned).

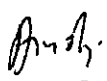
  
(B.S. JAI PARAMESHWAR)  
MEMBER (JUDL)

13.7.99

  
(R. RANGARAJAN)  
MEMBER (ADMN)

DATED: this the 13th day of July, 1999  
Dictated to steno in the Open Court

\*\*\*  
DSN

  
27.7.99

COPY TO:-

1. HDHND
2. HHPP M(A)
3. HBSJP M(J)
4. D.R. (A)
5. SPARE

TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

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 ( ADMN )

THE HON'BLE MR. R. RANGARAJAN  
MEMBER ( ADMN )

THE HON'BLE MR. O.S. JAI PARAMESHWAR  
MEMBER ( JUDL )

ORDER: Date. 13.7.99

ORDER / JUDGMENT.

MA./RA./CP.NO

IN

DA.NO. 1449/97

ADMITTED AND INTERIM DIRECTIONS  
ISSUED.

ALLOWED.

C.P. CLOSED

R.A. CLOSED.

D.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS.

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
प्रेषण / DESPATCH

- 5 AUG 1999

हैदराबाद न्यायपीठ  
HYDERABAD BENCH

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD.  
1st Floor, HAC Bhavan, Opp: Public Garden, Hyderabad. 500004. A.P.

ORIGINAL APPLICATION NO. 1449. OF 1997.

Applicant(s)

V/S

Respondent(s)

T.D. Harishchandra,  
By Advocate Shri:

The G.M., (P) S.C.Rlys, Sec'bad. &  
2 others.

N.Rama Mohana Rao.

(By/Central Govt. Standing Counsel)

To.

Mr.V.Rajeswara Rao. SC for Rlys.

1. The General Manager, (Personnel), South Central Railway,  
Rail Nilayam, Secunderabad.
2. The Divisional Signal and Telecom Engineer (C), I,  
South Central Railway, Secunderabad.
3. The Senior Divisional Signal & Telecom Engineer (C), I,  
South Central Railway, Secunderabad.

Whereas an application filed by the above named applicant under Section 19 of the Administrative Tribunal Act, 1985 as in the copy annexed hereunto has been registered and upon preliminary hearing the Tribunal has admitted the application.

Notice is hereby given to you that if you wish to contest the application, you may file your reply along with the document in support thereof and after serving copy of the same on the applicant or his Legal practitioner within 30 days of receipt of the notice before this Tribunal, either in person or through a Legal practitioner/ Presenting Officer appointed by you in this behalf. In default, the said application may be heard and decided in your absence on or after that date without any further Notice.

Issued under my hand and the seal of the Tribunal

This the Twelfth, . . . . . day of November, . . . . . 1997.

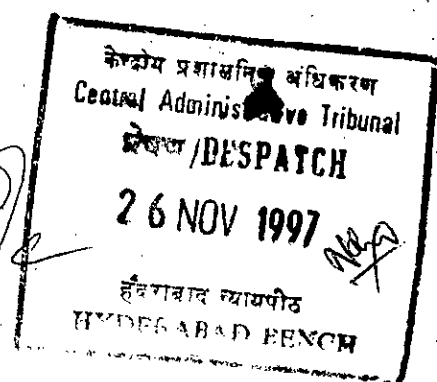
//BY ORDER OF THE TRIBUNAL//

Date: 17-11-97.

FOR REGISTRAR.



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19/11/97





*Hyderabad* DISTRICT

**In The central  
Administrative Tribunal  
HYDERABAD**

O. A. : No.

of 199

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**VAKALAT**

ACCEPTED

*No*  
*For*  
*Advocate for*  
*Siva*

Advocate for Applicant  
Respondent

Date *25/9/* 199 *7*

**M/s. N. RAMA MOHANA RAO  
~~PRATAP NARAYAN SANGH~~  
K.S.V. SUBBA RAO &  
ABHINAND K. SHAVILI**

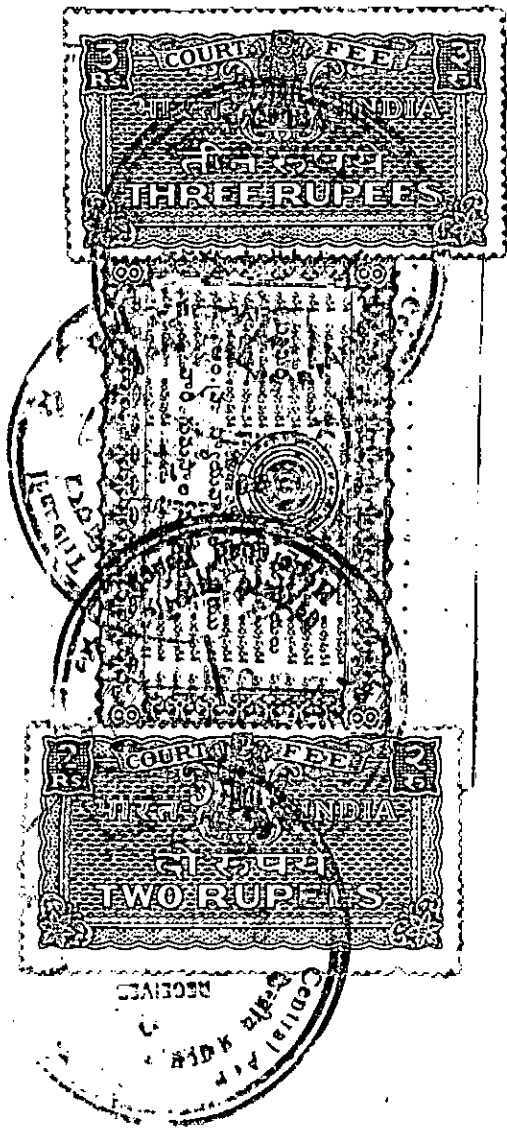
*Siva*

Advocate for Applicant  
Respondent

Address for Service :

Phone : 221766

714, Brindavan Apartments,  
Niloufer Hospital Road, Red Hills,  
HYDERABAD-500 004



# In the Central Administrative Tribunal

HYDERABAD

O. A. No.: 1449 of 1997

Between

T. D. Harishchandra

Applicant

AND  
The General Manager (Personnel),  
S.E.R., Rail Nilayam, Secunderabad,  
and others

Respondent

We

Applicant  
Respondent

do hereby appoint and retain

M/s. N. RAMA MOHANA RAO

~~PRATAP NARAYAN SANGHI~~

K.S.V. SUBBA RAO &

ABHINAND K. SHAVILI

*Sella*

Advocates to appear for me/us in the above/case/appeal/petition and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application for execution of any decree or order passed therein, I/we empower my/our Advocates to appear in all miscellaneous proceedings in the above case to matter till all decree or orders any fully satisfied or adjusted to compromise and to obtain the return of documents and draw any moneys that might be payable to me/us in the said case or matter (and I/we do further empower my/us Advocates to accept on my/our behalf service of all or any appeals or petitions filed in any court of Appeal, reference or Revision with regard said suit or matter before the disposal of the same in this Honourable Court)



*T.D. Harishchandra*  
(T.D. HARISHCHANDRA)

Certified that the executant who is well acquainted with English and this Vakalatnama and the contents of the Vakalatnama were read out explained in Telugu/English/Urdu to executant or he/she they being unacquainted with English who appeared perfectly to understand the same and signed or put his/her/their name or mark in my presence.

Executed

21<sup>st</sup> day of September 1997

Advocate, Hyderabad

(P. Ganeshaiah Rao)

Central Administrative Tribunal,  
Hyderabad Bench, Hyderabad.

OA/CA No. 1449 of 1997



MEMO OF APPEARANCE

V. RAJESWARA RAO  
ADVOCATE

Standing Counsel for Railways,  
Addl. Standing Counsel for Central Govt.

Counsel for.....

*Respondent*

Address for Service :

Phone : 272585

104/2 RT, Sanjeevareddy Nagar,  
HYDERABAD-500 038.

**Central Administrative Tribunal, Hyderabad Bench,  
HYDERABAD.**

OA/CA No. 1449 of 1997

BETWEEN

T. D. Harischandra

Applicant(s)

Vs.

The Genl Manager (Personnel)  
Secy / Rail Ministry  
Secy to Govt

Respondent (s)

**MEMO OF APPEARANCE**



To,

I V. Rajeswara Rao, Advocate, having been authorised.....

(here furnish the particulars of authority)

by the Central/State Government/Government Servent/..... authority/corporation/  
society notified under Sec. 14 of the Administrative Tribunal's Act, 1985. Hereby appear for  
applicant No ...../Respondent No ..... and undertake to plead and act  
for them in all matters in the aforesaid case.

Place : Hyderabad

Date : 26/4/98

Address of the Counsel for Service

V. Rajeswara Rao

104/2 RT. Sanjeevareddy Nagar,

HYDERABAD - 500 038.

*V. Rajeswara Rao*

V. RAJESWARA RAO

Standing Counsel for Railways,

Addl. Standing Counsel for Central Govt.

Signature & Designation of the Counsel.