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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

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O.A.No.1698/97.

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Date of decision: 19th March, 1999.

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Between:

O.Laxmana Murthy. .. Applicant

and

1. Union of India represented by its Secretary to Railway Board, Ministry of Railways, New Delhi.
2. General Manager, South Central Railway, Rail Nilayam, Secunderabad
3. The Divisional Railway Manager, BG Division, Secunderabad. .. Respondents.

Counsel for the Applicant: Sri N.Rama Mohan Rao.

Counsel for the Respondents: Sri N.R.Devaraj.

CORAM:

Hon'ble Sri R.Rangarajan, Member (A)

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

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JUDGMENT.

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

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Heard Sri Siva for Sri N.Rama Mohan Rao, learned counsel for the applicant and Sri N.R. Devaraj, learned standing counsel for the respondents.

The Applicant in this D.A., was recruited as a Signaller on 6.6.1961 in the Secunderabad Wireless Organisation. He was promoted as senior Signaller on 19-1-1967. Thereafter he was confirmed in that post during the year, 1967. He was also selected for appointment as Wireless operator in the Signal and Telecommunications in the year, 1970. While he was working as a Wireless Operator, consequent upon the introduction of the teleprinter circuits working over micro wave in place of wireless telegraphic circuits on high frequency, the applicant and other similarly situated Wireless Operators have become surplus. The scale of pay of Wireless Operator was initially in the pay scale of Rs.150-240(AS) which was subsequently revised as Rs.330-560 by the recommendation of the III Pay Commission.

The re-deployment of Wireless Operators who had become surplus was under the consideration of the Railways. The applicant, it is stated had exercised his option and willingness to join as T.C., in the Commercial Department on bottom seniority basis. He was trained for the purpose of posting him as T.C., and he was posted as T.C., duly



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protecting his pay while he was working as Wireless Operator in the grade of Rs.330--560 which is an higher grade post than the post of T.C.

along with others
The applicant aggrieved by the posting as T.C., in the lower scale of Rs. 260-400 filed Writ Petition No.3694/79 on the file of the High Court of Andhra Pradesh. It is on the directions given by the Hon'ble High Court of Andhra Pradesh the pay of the applicant was fixed in the pay scale of Rs.260-400 as T.C., protecting his last pay drawn as Wireless Operator and also the special pay drawn by him as Wireless Operator. Thereafter the applicant went on filing representations for posting him in the same grade as Wireless Operator in the pay scale of Rs.330-560. By the impugned Order No.C/P/535/2/TC/Seniority dated 16,5.1997 (Annexure A-10 Page 32 to the O.A.,) his request was rejected for the reasons stated in that letter.

This O.A., is filed to set aside the impugned Order No. C/P/535/2/TC/Seniority dated 16.5.1997 by holding it as arbitrary, unjust, illegal and unsustainable and for a consequential direction to the respondents to treat the applicant as having been absorbed as TTE in the grade of Rs.330-560(RS) upon being rendered surplus as Wireless Operator protecting his seniority and absorb him in the scale of Rs.330-560 with all consequential benefits.

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A reply has been filed in this O.A. The main contention of the respondents in the O.A., is that the O.A., has to be dismissed due to the principle of res judicata as the applicant had already filed Writ Petition No.3694/79 on the file of the High Court of Andhra Pradesh for the same relief. Subsequently the respondents also submit that the applicant had given his option to join as T.C., in the pay scale of Rs. 260--400 though there was option for him to become Wireless Mechanic, Teleprinter operator/~~Wireless Mechanic~~. Hence, the applicant cannot now request for a higher scale of pay when he had opted to come on his own will as T.C., way back in the year, 1970. The respondents submit that this application has to be dismissed.

Before going into the merits of this case, it is necessary to dwell for sometime in regard to the earlier writ petition/ filed by the applicant on the file of the High Court of Andhra Pradesh which was disposed of on 9.2.1984.

The initial prayer of the applicant in the said Writ Petition reads as follows:

"It is, therefore, prayed that this Hon'ble Court be pleased to issue a Writ, Order or directions directing the respondents herein to fix the pay of the petitioners as Ticket Collectors in the scale of pay of Rs.330-560(RS) duly protecting the pay drawn by them as Wireless Operators and give all consequential benefits and (ii) pending disposal of the above Writ Petition direct the respondents herein not to

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reduce the pay drawn by the petitioners at present as otherwise the petitioners will put to great hardship and irreparable loss."

That writ petition was filed by 10 employees including the applicant herein who were similarly placed as the applicant.

Subsequently the prayer was sought to be amended seeking amendment of the prayer in the writ petition as claiming further relief that the petitioners should be fixed in the scale of Rs.330-560(RS) as Ticket Collectors duly protecting their pay drawn by them as Wireless Operators before their absorption as Ticket Collectors. The Hon'ble High Court of Andhra Pradesh rejected the prayer of the writ petitioners on the ground that it was filed nearly five years after the filing of the writ petition observing that even on merits, there is no justification for permitting the petitioners to amend the writ petition. The High Court observed as follows:

"I do not see any ground at this stage to permit the petitioners to amend the prayer in the Writ petition seeking relief to fix the petitioners in the ~~xxix~~ ~~xxxix~~ scale of Rs.330-~~560~~ as Ticket Collector. This petition seeking amendment is filed nearly five years after the filing of the Writ petition. Apart from that, I do not see even on merits and justification for permitting

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the amendment of the prayer in the writ petition. The scale of Ticket Collector at present is Rs.260-400. Even at the time when the petitioners were absorbed as Ticket Collectors the same scale of pay was in vogue. The petitioners voluntarily opted to be absorbed as Ticket Collectors being fully aware at that time the scale of pay which a Ticket Collector was entitled to. It is submitted by the learned counsel for the petitioners that as per the Railway Board's letter dated 10.1.74 it was agreed to protect the pay and scales and this position is made clear from the minutes of the meeting held between the management of the Railways and the National Federation of Railwaymen on 9.11.1974 whereunder the Railway Board ensured that the Wireless Operators will be given their pay and grade protection. It may be noticed that there was no settlement between the Federation and the Management of the Railways as to the protection of the scale of pay. What is relied upon is the minutes of discussion between the Federation of Railwaymen and the Railway Board. It is evident from the minutes of discussion that the Board ensured to protect the pay and grade in consultation with the Ministry of Finance. It is obvious that the Ministry of Finance did not agree for the protection of the grade but agreed only for protection of pay and special pay and as such, the Railway Board issued instructions to all the General Managers of various Divisions to protect the pay and special pay of such of the Wireless Operators who were rendered surplus by reason of replacement of Wireless Circuit by Microwave.

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The petitioners are thus entitled to protection of pay and special pay as Wireless Operators.

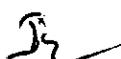
For the reasons stated above, the W.P.M.P.No.3860 of 1984 is dismissed and W.P.No.3964/1979 is allowed....."

The respondents in that Writ Petition had submitted that the applicant ^{was} given the choice either (1) to join as Teleprinter Operators or Wireless Mechanics with protection of pay admissible to them prior to their being rendered surplus; (2) options from volunteers to join as TCS/Commercial Clerks/ TNCS (Train Clerks) against the existing vacancies unconditionally accepting bottom seniority in the absorbed scale and to have their pay fixed in such absorbed scale as per the rules.

The respondents further added that the applicant opted to come to the cadre of T.C., on his volition and he was absorbed in that category and his pay was fixed accordingly in the pay scale of Rs.260-400 which was the prescribed scale of pay for T.Cs.

The High Court of Andhra Pradesh after deliberating this issue, had observed as follows:

"The next submission advanced on behalf of the petitioners is that as per the circulars of the Railway Board issued from time to time and the letter dated 25.1.1978 calling for option, it is categorically stated that the pay admissible





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to the petitioners prior to their being rendered surplus will be protected. But contrary to the circulars as well as the assurance given by the respondents, the petitioners were deprived of the protection of their pay and as such the writ petition was filed seeking relief of protection of pay. In this connection it is argued by the learned counsel for the respondents that the posting of the petitioners as Ticket Collectors is by way of transfer on their own request and as such as per rule 2017 of the Indian Railway Establishment Code Volume II the petitioners are entitled only to draw the maximum pay in the time scale of the post of the Ticket Collector which is less than the substantive post of Wireless Operator which they held before their absorption as Ticket Collectors. I am unable to accept this contention. Appointment of the petitioners as Ticket Collectors cannot be treated as one on transfer at their own request. The posts of Wireless Operators which they were holding prior to their absorption as Ticket Collector were rendered surplus due to the replacement of the Wireless circuit by Microwave. On discussion with the Federation of the employees there was an agreement between the Management of the Railway and the Federation of Employees that the petitioners who were rendered surplus would be absorbed and their pay would be protected. Even the letter dated 25.1.1978 calling for options from the petitioners made it clear that the pay admissible to the petitioners prior

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to their being rendered surplus will be protected. Under these circumstances, the petitioners are entitled for protection of their pay and special pay which they were drawing before they were absorbed as Ticket Collectors."

From the above observations of the High Court of Andhra Pradesh, it is evident that the High Court of Andhra Pradesh has rejected the request of the applicants for absorbing in the scale of Rs.330-560. However, the High Court of A.P., observed that the applicants are entitled for protection of their pay and special pay which they were drawing before they were absorbed as Ticket Collectors. The High Court of Andhra Pradesh it appears did not consider fit to grant them higher scale of pay of Rs.330-560 which they were drawing as Wireless Operators. The amended prayer was also rejected by the Hon'ble High Court as that was filed nearly five years after filing of the writ petition and on the merits also it appears that the High Court was satisfied that the said amended prayer cannot be allowed for the reasons already extracted above.

From the above, it is evident that the applicant had already approached the High Court of A.P., for a similar relief. Hence, the respondents submit that the O.A., is barred by the principle of res judicata. Though there is some force in the contention of the

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learned counsel for the respondents, it is not necessary for us to discuss that point and dismiss the D.A., on the basis of principle of res judicata as the other contentions made by the applicant also cannot be accepted for granting the relief prayed for by the applicant for the reasons stated henceforth.

relief of the
A portion of the applicant's prayer by
way of granting protection of his pay and special pay
when he was posted as Ticket Collector was given to
the applicant by the respondents in view of the directions
given by the Hon'ble High Court in the Writ Petition.
The applicant now prays for fixing him in the pay scale
of Rs.330-560 as TTE from the date when he was absorbed
as T.C. The amended prayer in the writ petition
for fixing his pay in the pay scale of Rs.330-560 while
he was discharging the duties of Ticket Collector
was rejected on the ground that there is no pay scale of
Rs.330-560 for the post of T.C. The applicant submits
that the dismissal of the prayer for amendment of the
Writ Petition by the High Court will not stand in his
posting him as TTE and
way as in the present D.A., his request for placing him
in the Pay scale of Rs.330-560 from the date he was absorbed
as T.C. ~~Effective from~~ in the year, 1970. To
substantiate his prayer, the applicant relies on the
instructions given by the Railway Board in
Letter dated 21.4.1989 whereby certain instructions

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for absorption/utilisation of surplus staff were given.

The applicant relies upon para 2 of that letter to state that the respondents were not right in showing him as T.C.

A study of the instructions dated 21.4.1989 clearly indicates that the said instructions are with regard to absorption/utilisation of surplus staff resulted from the upgradation and the change of traction power. Earlier the Railways were extensively utilising the Steam Locomotives for drawing their loads. Subsequently that was replaced by diesel locomotives and later by Electrical Locomotives. In view of the change of traction, number of employees were made surplus who were in the operation and maintenance of traction units. If they were not properly absorbed the whole Railways will come to a stand still as the traction power is the backbone for efficient running of the Railways. In that context, in our opinion, instructions were given by the Railway Board for absorbing the surplus staff from the traction units. Hence, we are of the opinion that the instructions dated 21.4.1989 cannot come to the rescue of the applicant as the applicant belongs to a category which is not an essential service category. Further, the Railways had the option to retrench the surplus staff if such retrenchment is of has not no consequence to the operation of the Railways. The applican

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given his option to come either as a tele-printer operator, Wireless Mechanic's even though in that option letter, the applicant had the benefit of getting himself absorbed as Teleprinter Operator, - Wireless Mechanic which posts carry the same scale of pay of Wireless Operator. The applicant did not choose to come to the post of Teleprinter operator or Wireless Mechanic etc. He chose the category of Clerks/T.Cs., etc., Because of his option to come to the category of T.Cs., his pay in the pay scale of Rs.260-400 was fixed. Hence, the applicant cannot now say that he was forced to take the post of T.C. He was given the opportunity of getting himself absorbed in the Higher category then itself but he did not take note of that/or did not opt to accept those higher categories which carry the same scale of Rs.330--560. Hence on that score also the O.A., is liable to be rejected.

The applicant further submits that the option cannot be shown against him to deny the pay scale of Rs.330-560as TTE., For this relies on the/absorption of Grain Shop staff. Once again it has to be observed that the Grain Shop Establishment was a separate organisation in the Railways and that Organisation was completely abolished way back in the year, 1950. The ~~decision~~/obtained circumstances in 1950 is entirely different from the circumstances.

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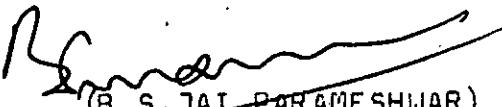
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obtained in 1970. In 1950 the Railways were in the nascent state after they were taken over from the private Railway Organisations. At that time there were vacancies in the other fields for maintaining the ^{might have been} services. In that context such a decision was taken. Hence the decision taken in 1950 cannot be a precedent in the year, 1970 when the whole situation had changed drastically. Hence, this contention has also to be rejected.

From the above discussion, we find no merits in the O.A., and the O.A., is liable to be dismissed. Accordingly, the O.A., is dismissed.

No costs.


 (B.S.JAI PARAMESHWAR)
 Member (J)
 121305


 (R.RANGARAJAN)
 Member (A)

Date: 12th March, 1999.
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 Dictated in open Court.


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sss.

Copy to:

1. HDHNC
2. HHRP M(A)
3. HBSJP M(J)
4. D.R. (A)
5. SPARE

1ST AND 2ND COURT

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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: 12-3-99

ORDER/JUDGEMENT

MA./RA./CP. NO.

IN

O.A. NO. 1698/99

ADMITTED AND IN TERM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

2 copies

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
प्रेषण / DESPATCH

30 MAR 1999

हैदराबाद न्यायपीठ
HYDERABAD BENCH