

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and

The Hon'ble Sri Justice G.Shyam Prasad

Writ Petition No.15840 of 2016

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Date: 02.06.2016

Between:

P.Rama Rao

.. Petitioner

and

Union of India
rep. by The General Manager
South Central Railway
Secunderabad and 3 others.

.. Respondents

Counsel for the petitioner :

Mr.KRKV.Prasad

Counsel for respondent Nos.1 to 3: Mrs.T.Bala Jayasree,
SC for Railways

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The Court made the following:

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Order : (Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Order, dated 21-01-2016, in OA.No.961 of 2014 on the file of the Central Administrative Tribunal, Hyderabad Bench (for short 'the Tribunal') is called in question in this Writ Petition.

The brief facts leading to the filing of this Writ Petition are that while working as a Senior Assistant Loco Pilot in Secunderabad Division, South Central Railway, the petitioner was medically decategorised. As he was found fit for C-1 and below medical classification *vide* proceeding, dated 04.08.2009, he was offered the post of Commercial Clerk in PB-1 with the pay scale of '5200 – 20200' with Grade Pay of Rs.2,000/- as an alternative appointment *vide* proceeding dated 14/15.12.2009. Thereafter, he was promoted as a Senior Booking Clerk on 15-05-2013. The petitioner filed the above-mentioned OA on the plea that as per the extant circulars, medically de-categorised employees cannot be considered for posting in the lower grade post on their request as no such provision exists. The petitioner has, therefore, sought for the relief of fixation of Grade Pay of Rs.2,400/-, which was equivalent to the Grade Pay

of the Senior Assistant Loco Pilot. The respondents have resisted the OA by filing a detailed counter-affidavit. Having considered the respective pleas of the parties, the Tribunal has dismissed the OA.

After hearing Mr.KRKV.Prasad, learned Counsel for the petitioner, we are of the view that the Tribunal has made a right approach in dismissing the OA.

Admittedly, the petitioner addressed letter, dated 30.10.2009, to respondent No.2 wherein he has stated as under:

“I am P.Rama Rao Sr.ALP/BDCR working under CC/BDCR in pay scale Rs.5200-20200 Grade Pay Rs.2400/-. Though I am working in the grade pay of Rs.2400, I am willing to work in lower grade pay of Rs.2000, as Comml Clerk due to my medical de-categorisation. I will not raise the issue of non-absorption in the equivalent post with same grade pay of Rs.2400/- at a later dated and also in future, I'll not claim for higher grade pay of Rs.2400/-

I will be obliged if you can kindly post me as Comml Clerk at the earliest.”

The learned Counsel for the petitioner has

not disputed that at the time when his client has addressed the above-mentioned letter, there were 140 candidates, who were waiting in the queue for being absorbed in the alternative posts, and that, but for the above-mentioned letter of the petitioner wherein he has given an unequivocal undertaking that he will not claim higher Grade Pay in future, he would have been made to wait for a number of years before he was accommodated in the alternative post with the Grade Pay equal to Rs.2,400/-. The learned Counsel has also not disputed the fact that had the petitioner not been appointed as Commercial Clerk, he would not have earned his promotion as Senior Booking Clerk in the year 2013. Therefore, the petitioner cannot be permitted to approbate and reprobate. As rightly observed by the Tribunal, he is estopped from claiming higher Grade Pay. We are also in agreement with the finding of the Tribunal that the OA suffers from unexplained laches as the cause for availing legal remedy for the petitioner arose on 14/15.12.2009, when he was appointed as Commercial Clerk in the downgraded pay of Rs.2,000/-. Further, having accepted the post offered to him and earned promotion, it lies ill in the

mouth of the petitioner to turn around and question the fixation of Grade Pay of Rs.2,000/-

For the above mentioned reasons, we do not find any merit in this Writ Petition and the same is, accordingly, dismissed.

As a sequel to dismissal of the Writ Petition, WPMP.No.19580 of 2016, filed by the petitioner for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

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(G.Shyam Prasad, J)

Dt: 2nd June, 2016
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