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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 3181/2002

This the 15th day of July, 2003

HON'BLE SH. SHANKER RAJU, MEMBER (J)

Sumer Chand
S/o Sh. Rucha Singh
Retired ESM Khallas
R/o D-25, Dabri Extension,
Near Janakpuri
New Delhi.

(By Advocate: Sh. T.D. Yadav)

Versus

1. Union of India through
General Manager
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad (UP).

(By Advocate: Sh. R.L. Dhawan)

ORDER (FINAL)

By Sh. Shanker Raju, Member (J)

Application is directed against an order passed by the respondents on 2.5.2002 denying pension to the applicant. Quashment of the above is sought with direction to treat the period of absence as qualifying for the purpose of pension.

2. Applicant being aggrieved by an order dated 30.11.98 denying him pension on his failure to have completed qualifying service of 10 years approached this court in OA-190/2001.

3. By an order dated 21.8.2001 though rejecting the claim of the applicant for treatment of suspension period from 1978 to 1980 and from 9.2.71 to 4.7.71 as the absence period from 1982 to 1996 was treated as non duty. Directions have been issued

to the respondents to decide the aforesaid period after issuing a show cause notice to the applicant.

4. In compliance thereof a show cause notice was issued to the applicant which was responded to by him.

5. By an order dated 2.5.2002 the request of the applicant to treat the aforesaid period as spent on duty has been rejected and as the applicant had completed the qualifying service of about 3 years 5 months which is less than 10 years. His request for pension was turned down.

6. Counsel of the applicant contends that admittedly applicant was appointed as khalasi on 18.10.68 and was removed from service on 29.5.77. This intervening period is to be treated as qualifying service and in that event he completes 10 years qualifying service entitling him for pension.

7. In so far as period from 1982-96 is concerned, as the same was on medical ground, the respondents have not considered the contention put forth in his representation.

8. It is also stated that the applicant on medical grounds remained absent till 1989 and thereafter was not allowed to join duty. However, his name was struck off on 14.3.95. But by an order dated 16.4.96 he was put back on duty.

9. In the aforesaid conspectus, it is stated that the orders have been passed without application of mind. The period of illness cannot be treated as dies non and the leave account has not been properly maintained.

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10. Lastly, it is contended that right to receive pension is the fundamental right which has been violated by the respondents without any justification.

11. On the other hand, Sh. R.L.Dhawan, counsel of the respondents states that in so far as earlier period prior to 1982 is concerned as the same has been turned down as barred by limitation, as such cannot be agitated again in this OA as this would constitute res judicata. Moreover, by referring to the service record of the applicant, it is contended that the period from 1968 to 1977 when he remained absent was treated as not spent on duty and dies non which has been recorded in his service record. Being aware of the same having taken no action as per Section 21 (2) of the AT Act. Period prior to 22.11.82 cannot be taken cognizance of as a cause of action by this Court. In so far as period from 1982 to 1996 is concerned, it is stated that on receipt of the representation of the applicant he has been asked to furnish the medical record through communications to justify his absence. As the same has not been furnished the period has been treated as dies non on the basis of no work no pay. However, it is stated that out of total service of 28 years 9 months and 13 days applicant had remained absent for 25 years 4 months and 11 days.

12. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as contention put forth by the applicant of inaction on the part of the respondents not to count the qualifying service, period from 18.10.68 to 25.5.77 is concerned, on perusal of the record it transpires that during this period, applicant

remained absent and was treated as absent. Applicant had failed to agitate the same within the permissible period. Now challenging the same after about 26 years this court has no jurisdiction under Rule 21(2) of the Act ibid the aforesaid cause of action cannot be gone into.

13. In so far as period from 1982 to 1996 is concerned, applicant was afforded an opportunity by the respondents. His contention put forth have been taken into consideration. He has been directed by a letter dated 10.12.2001 to produce the copies of medical record. Having failed to produce the same, the period was rightly treated as dies non which amounts to break in service even for the purpose of qualifying service.

14. I do not find any legal infirmity in the order passed by the respondents.

15. As the applicant had failed to complete the qualifying service of 10 years which as per rules entitles him for pension the claim of the applicant is bereft of merit. Accordingly, OA is dismissed. No costs.

S. Rajm
(SHANKER RAJU)
Member (J)

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