

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.375/86

Date of decision:- 28.5.93

Sh.Gurdial Singh ...

Applicant

versus

General Manager,
Northern Railway & ors. ...

Respondents

CORAM:THE HON'BLE MR.J.P.SHARMA, MEMBER(J)
THE HON'BLE MR.S.R.ADIGE, MEMBER(A)

For the Applicant ... Sh.K.P.Dohare, Counsel.

For the Respondents ... Sh.R.L.Dhawan, Counsel.

JUDGEMENT

(BY HON'BLE MR.J.P.SHARMA, MEMBER(J))

The applicant joined the Railways as Shed Cleaner on 10.8.45. In due course of time, he was promoted as Driver in 1962. He was transferred to Jullunder. He had fallen sick on 27.7.66. He remained, as alleged by him, under treatment upto 27.5.68. He was, however, removed from service on account of unauthorised absence from duty on 19.6.68. The applicant pursued departmental remedies by way of appeal and a memorial to the President of India on sympathetic consideration and clemency. He was reappointed by the letter dated 25.9.76 as Shunter in the old scale and he joined the service on 25.9.76 at Tughlakabad, New Delhi. He was again promoted as Driver-A and he retired from that post on 31.1.86. Since there was 8 years break in service and he was given fresh appointment, the applicant was not paid any gratuity, pension, leave encashment, insurance etc.. The applicant represented for the award of the pensionary benefits and prayed for regularisation of his service of 8 years but

with no success. The present application was filed on 19.5.86 in which the applicant prayed that the order of non-payment of pension and other retirement benefits be quashed and the respondents be directed to pass orders releasing of pension and other retirement benefits i.e. gratuity, leave encashment, insurance etc.

2. The respondents have filed their reply in which it is stated that the applicant has not come to the Tribunal with clean hands and has not exhausted the remedies available to him. The applicant was removed from service on 19.6.68. He was reappointed on 26.10.76 as Shunter in the scale of Rs.290-400 and the applicant accepted his re-employment. Since the applicant has not completed 10 years' qualifying service on his re-appointment from 26.10.76 till the age of superannuation on 31.1.86, he is not entitled to grant of pension etc. The applicant was due terminal gratuity for 4 months pay as his qualifying service was less than 10 years. This amount was however, withheld as the applicant did not vacate the Railway Quarter No.90/B-4 at Tughlakabad which was under his unauthorised occupation on his transfer to Ghaziabad on 11.2.85. The Insurance amount of Rs.844/- has already been released in his favour. There was a break in service of 8 years from 1968 to 26.10.76 which was never condoned, so the applicant cannot claim the benefit of the past service. Thus, it is stated that the applicant has no case.

3. The applicant has also filed rejoinder and stated that Quarter No.90/B-4, Tughlakabad recommended to be his son was/ regularised in favour of Sh.Kuldeep Singh,

↳ Airconditioner Fitter.

4. We heard the learned counsel for the parties at length and have gone through the records. Under Para 102 of the Manual of Pension Rules, the pension to a Raillway servant is granted only after completion of atleast 10 years of qualifying service. The applicant, as is evident was given fresh appointment on 26.10.76 and he retired on 31.1.86. Thus, he has put in about 9 years 6 months and 5 days of service. According to the aforesaid paragraph 102 of the Manual of Pension Rules, the applicant has not put in 10 years of qualifying service for grant of pension. The learned counsel for the applicant argued that on re-employment, the applicant was fixed at the same stage of pay which he was last drawing when he was removed from service on 19.6.68. It is also argued that /the period of unauthorised absence of the applicant from 27.7.66 to 27.5.68 i.e. 1 year 10 months, the applicant was bonafide ill and also submitted medical certificates in that regard. It is further argued that the order of removal from service has ^{been} to be modified on his departmental representations when he was allowed fresh appointment on the post of Shunter and was also promoted. The learned counsel for the respondents argued that since the applicant's earlier service stood washed away by virtue of the penalty of removal from service he cannot claim any benefit of the past service which he has rendered before his removal from service on 19.6.68. After a break

of about 8 years he was given fresh appointment from 26.10.76.

5. We have considered the case and also perused the departmental file. It is evident that the order of removal from service was reviewed by the Railway Board and as an act of clemency, the appointment of the applicant was approved as a fresh entrant under Rule 153-R1. He was reappointed in Delhi Division. He was fixed in the revised pay scale of Rs.290-400 at the stage of Rs.334 per month and on completing of one year's service he earned increment raising his pay to Rs.342 per month. The applicant was also sent for requisite training. It appears to be a harsh case where a person who joined Railway service on 10.8.45 was removed from service on 19.6.68 when he had put in by that time more than 22 years of service. When the order of removal was modified by giving him fresh appointment, the respondents should have considered whether the service rendered by him earlier was to be considered for pensionary benefits or not. He has served the Railway in various capacities and was also promoted as Part-time Driver before his removal. He had duly applied for leave for the period he had reported sick. The order of removal from service, therefore, in the circumstances, was modified to the extent of giving him reappointment. Since the applicant belongs to the Scheduled Caste community his case needs

sympathetic consideration for the award of pensionary benefits. We are, therefore, of the view that the respondents may look into and examine the case of the applicant afresh in the light of the observations made above and take a decision. We leave the whole matter to the discretion of the respondents as the applicant after reappointment was also promoted from his initial post of Shunter to that of a Driver.

6. In the above circumstances, the application is disposed of with the observation that the applicant shall make a representation to the respondents within one month from the date of communication of this order and the respondents shall critically examine the matter and dispose of the representation by a reasoned and speaking order preferably within a period of six months from the date of receipt of the representation. In the circumstances, the parties are left to bear their own costs.

Anfolgi
(S.R. ADIGE)
MEMBER (A)

J. P. Sharma
(J.P. SHARMA) 20-5-73
MEMBER (J)