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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Original Application No. 427/86.

Dated: 15th July, 1987.

Smt. Meena Talwar

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Petitioner

VERSUS

Union of India

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Respondent.

For petitioner

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Shri B.S. Mainee,
Advocate.

For respondent

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Ms. Rachna Joshi,
Advocate.

CORAM: Hon'ble Member Shri S.P. Mukerji
Hon'ble Member Shri M.B. Mujumdar

(Judgment of the bench delivered by Hon'ble Member
Shri M.B. Mujumdar)

JUDGMENT

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the view taken by the respondents on the basis of Rule 732 of Railway Establishment Code, Volume I that ^{by} remaining absent unauthorisedly for more than 3 months, the applicant was deemed to have resigned her appointment and ceased to be a railway employee.

2. The application has arisen under the following circumstances: The applicant was appointed as a Lower Division Clerk (LDC) on 21.8.1980 in the scale of Rs. 260-400. She was on leave from 16.1.1983 to 15.7.1983. As she could not resume her duties she sent 3 applications for extension of leave and finally she resumed her duties on 17.10.1984. In June, 1984, a suitability test for the post of Upper Division Clerk (UDC) was held and she passed in the written examination. She appeared for viva-voce examination but her name did not appear in the final list for promotion as UDCs. She was not given any increments probably because she had remained absent unauthorisedly. She therefore made a representation to the respondents on 13.1.1986 complaining against not granting any increments and for not selecting her for the post of UDC. To that representation, the respondents

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sent a reply dated 21.5.1986 informing that as she had remained absent for more than 3 months unauthorisedly, in terms of Rule 732 of Railway Establishment Code, Volume I, she was deemed to have resigned her appointment and had ceased to be a railway employee. She was further informed that on her resumption on 17.10.1982 she was treated as re-appointed in railway department by the competent authority. This reply is challenged in this application. Against the above reply the applicant had preferred an appeal dated 30.5.1986, but without waiting for the decision of the appeal she has filed the present application on 12.6.1986. In the application she has made a number of prayers but the main prayer is for quashing and setting aside the reply of the respondents dated 21.5.86.

3. By an interim order dated 17.6.86, this Tribunal had directed the respondents to take the applicant on duty without insisting upon her to comply with other formalities. It was further directed that this order would be subject to the result of the application.

4. The respondents ~~have~~ filed their reply on 24.7.1986. They have taken a preliminary objection that as the applicant has filed the present application without waiting for the order on the appeal preferred by her, this application is not maintainable in view of the provisions of Section 20 of the Administrative Tribunals Act, 1985. On merits, their defence is like this: The leave asked for by the applicant for the period from 16.1.1983 to 15.7.1983 was not granted to her but she had wrongly drawn her leave salary for that period because the intimation of non-sanction of her leave was received late in the concerned section. It is pointed out that the applicant had asked for extension of leave with effect from 16.7.1983 to 16.10.1986 but that leave was never sanctioned. Thus she had remained absent from duty from 16.1.1983 to 16.10.1984 unauthorisedly. Hence she was

not granted her increment which fell due on 1.8.1983. On her resumption on duty on 17.10.1984 in the Stores Branch, her case was again examined and it was found that in terms of Note (2) Rule 732 of the Code, the applicant who was a temporary employee had ceased to be in railway employment as she had remained absent from duty for more than 3 months without her leave being sanctioned. We have to examine the validity of this contention.

5. We have heard the learned advocates for both the sides and examined the documents carefully. We find that the applicant was never informed that her applications for leave were rejected. It is true that note (2) to Rule 732 Railway Establishment Code, Volume I is to the effect that if a railway employee remains absent unauthorisedly, he will be deemed to have resigned from the post and would cease to be in the employment of the railways. But it is held by the Mysore High Court in N. Krishna Madiwala v. Inspector of Post Offices, 1969 Labour and Industrial Cases 117, relying on a Supreme Court judgement in Jaishankar v. State of Rajasthan, AIR 1966 S.C. 492 that ^ahis service condition that a ^Kperson overstaying after expiry of leave shall be deemed to have resigned from ~~such~~ ^{such} date of expiry amounts to removal from service as punishment for absence and hence such condition is violative of Article 311 of the Constitution. It was because of such rulings that the railways have themselves by their letter dated 23.3.85 made necessary amendment in Note (2) below Rule 732. It was submitted on behalf of the respondents that the unamended note was in force prior to 23.3.85 and hence the action taken by the respondents was proper. But as already pointed out the note had to be amended in view of the judicial pronouncements on this subject. We therefore hold that the reply of the respondents dated 21.5.86 and the view taken therein is illegal

and liable to be quashed and set aside. In view of this position the applicant will be entitled to consequential reliefs also.

6. Regarding the preliminary objection taken by the respondents, it is true that Section 20 of the Administrative Tribunals Act lays down that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to the redressal of his grievances. The order in question was passed on 21.5.86. The applicant had preferred an appeal against that order on 30.5.86 and it was not decided when this application was filed. That appeal is not decided even now mostly because we have admitted the present application. As the view taken by the respondents in their reply dated 21.5.86 is patently illegal, there was no purpose in asking the applicant to wait till her appeal was decided. Mostly because of this legal position that the application was admitted though the applicant's appeal was not decided. We therefore find no force in the preliminary objection raised by the respondents.

7. In the result, we pass the following order:-

(1) The letter of the respondents dated 21.5.86, a copy of which is enclosed as Annexure 7 to the application, by which the applicant was informed that she was deemed to have resigned her appointment and ceased to be a railway employee as she had remained absent for more than 3 months unauthorisedly, is hereby quashed and set aside.

(2) The applicant should be treated to be in continuous service from the date of her appointment i.e. 21.8.1980 till she had resumed duty on 17.10.1984. The period of absence from 16.1.1983 to 16.10.1984 should be regularised by granting her leave due to her, including extraordinary leave without pay.

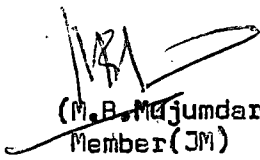
(3) The applicant should be given yearly increments due to her according to rules on the above basis.

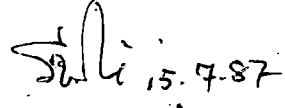
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(4) The applicant's result of the test held by the respondents in June, 1985 for considering her suitability for promotion to UDC should be declared and she should be promoted if she is found eligible to be promoted according to rules.

(5) The respondents will be at liberty to take such action as they deem fit for the absence of the applicant from duty from 16.1.1983 to 16.10.1984 in accordance with the rules.

(6) No order as to costs.


(M.B. Majumdar)
Member(JM)


(S.P. Mukerji)
Member(AM)

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