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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 1014/86

DECIDED ON : 29.7.1992

Dr. Ashok Shukla

... Applicant

-Versus-

The Chairman, Railway Board &
Ors,

... Respondents

CORAM : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

None present for the Applicant

Shri A. K. Behra, Proxy Counsel for Shri P. H.
Ramchandani, Sr. Counsel for the Respondents.

J U D G M E N T (ORAL)

Hon'ble Mr. P. C. Jain, Member (A) :-

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed the communication dated 9/10.7.1986 (Annexure-XIX) by which he was informed, with reference to his representation, that after consideration of the same it is regretted that his request for giving him the benefit of service rendered by him prior to his resignation for seniority purposes cannot be acceded to, and has prayed for the following relief :-

- "(i) The period from 1.9.1963 (the first of appointment) to 9.9.1974 (the said reappointment) ought to be taken into reckoning for all service benefits including salary, pension, seniority etc. in the cadre to which the petitioner belongs; because the petitioner's resignation was not accepted by a competent authority under rule 302 of Indian Railway Establishment Code, therefore, the alleged acceptance was illegal, null and void in the eye of law and the petitioner continued to be in service with all the service benefits which accrue to him in normal course;
- (ii) - Alternatively, the petitioner prays that the period from 1.2.1971 to 6.10.1974 be condoned and he may be given all the service benefits including seniority in the cadre to which he belongs;
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- (iii) The petitioner to be awarded costs for litigation and damages for the harassment caused."

2. The respondents have contested the O.A. by filing a reply to which a rejoinder has been filed by the applicant.

3. None is present for the applicant though the case is listed for hearing. As the case is nearly six years old, we consider it appropriate to dispose of the same on merits. Accordingly, we have carefully perused the material on record and also heard the learned proxy counsel for the respondents.

4. The facts which have given rise to this O.A., briefly stated, are as below :

The applicant joined the Railways as Assistant Surgeon Grade-I on 9.1.1963 on the Bhusawal Division, Central Railway. He was promoted as Assistant Medical Officer (Class-II) on 1.1.1966. He submitted his resignation from service vide his letter dated 2.1.1971 which was accepted vide letter dated 19.1.1971. His request dated 25.9.1973 for withdrawal of his resignation was not accepted. However, he was given a fresh appointment vide letter dated 9.9.1974, a copy of which has been annexed as Annexure R-1 by the respondents to their reply. It is seen from a perusal thereof that the applicant's appointment in pursuance of the above letter of 1974 was to be treated as a fresh one to the post of Assistant Medical Officer and that his earlier service was not to count for any purpose. Further, he was appointed on probation for a period of two years and his services could be terminated by one month's notice on either side during the period of probation. He accepted this offer and joined the service. He made a representation on 20.1.1975 praying for granting of original seniority and service benefits from his initial date of

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appointment in January, 1963. By an order dated 4.6.1975 the initial pay of the applicant, on his fresh appointment as aforesaid, was allowed to be fixed at the stage he was drawing immediately prior to his resignation. In due course, his request for counting the period from 9.1.1963 to 31.1.1971 for purposes of pensionary benefits was also accepted but the period between above two dates was to be treated as dies non. The applicant's request for counting the period for purposes of reckoning his seniority in the cadre was, however, rejected. It is in this background that the applicant has filed this O.A. and prayed for the alternative reliefs, as already stated above.

5. The first ground taken by the applicant is that the resignation submitted by him was not accepted by a competent authority. There is no dispute that the General Manager was the competent authority to accept the resignation and the stand taken by the respondents in their reply is that his resignation was accepted with the approval of the General Manager. There is nothing to rebut this contention of the respondents. In fact, the applicant admits in his rejoinder that "for the first time the respondents in their reply have produced a letter (Annexure-II) showing that the resignation was accepted by the General Manager. But no document has been filed which affirms the fact of acceptance of resignation by the General Manager except the letter dated 19.1.1971 communicated by the CPO to the Divisional Superintendent, Bhusawal Division. This letter seems to be a clear case of concoction and after thought and cannot be accepted in view of the fact that it was not referred to by the respondents any time before this reply was filed while I was making several representations mentioning the fact of my resignation

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not being accepted by the General Manager. The conduct of the respondents completely debar them from claiming any benefit from this letter or even relying upon the same." As the existence of the letter is not in dispute and as the applicant has not placed any material on record to establish that the said letter is not a genuine one, there is no reason for us not to believe the same. Accordingly, we find no substance in this contention of the applicant that the resignation was not accepted by the competent authority. Even otherwise, the resignation having been accepted more than 20 years back, if the applicant was of the view that his resignation has not been accepted by the competent authority, he should have taken appropriate proceedings in connection therewith at the appropriate time. It is too late in the day now to agitate that the resignation accepted more than 20 years back was not accepted by the competent authority.

6. The second ground taken by the applicant is that the application dated 26.9.1973 requesting for withdrawal of the resignation should have been permitted as the resignation was null and void under the law as not being accepted by the competent authority. We have already negatived above the contention of the applicant in regard to the validity of the resignation and its acceptance. As regards the plea that his request for withdrawal of resignation should have been accepted, it should suffice to state that a request for resignation cannot be withdrawn after the same has been accepted. The resignation of the applicant having been accepted, vide letter dated 19.1.1971, obviously could not have been allowed to be withdrawn after a lapse of more than 2½ years. The contention of the applicant in this regard is without any basis.

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7. Another ground taken by the applicant is that the respondents should have taken into account the circumstances in which the applicant had to submit his resignation. This contention need not hold us for the simple reason that the applicant being an educated person should be considered to be fully aware of the implications of his action in submitting his resignation and seeking withdrawal of the same after more than two years of the acceptance thereof. Still, another contention raised is that as the applicant was appointed in 1974 without undergoing the formalities of selection/screening by the UPSC etc. as it was understood that the period from 9.1.1963 will be counted for purposes of seniority and other consequential benefits. This contention is also without any basis. In view of a clear cut written order of appointment which is a fresh appointment, there is no scope for any assumption or presumption.

8. Another contention is that the period from 1.2.1971 to 6.10.1974 was illegally treated as dies non and as the resignation submitted by the applicant was no resignation in the eyes of law, the petitioner continued to be in service and as such he was entitled to all the service benefits. The validity of the resignation has already been discussed above. The fact also remains that during the aforesaid period the applicant was not in service of the respondents. If the applicant was not in fact in service nor can be deemed to have continued in service, it is difficult to appreciate the contention of the applicant that he should be allowed the benefits of seniority etc. for that period. This contention is without any basis of law. Even if the break in the two periods of service is condoned, which in this case is not

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permissible under the rules as the break constitutes a period of more than one year, no benefit of the period of break is permissible under the rules; condonation of break between two spells of service results in counting the service rendered during the first spell of service for purposes of computing qualifying service for pensionary benefits. This has already been done. As regards the condonation of break in service between the two spells, the applicant in his OA has referred to the relevant provisions of the rules applicable to him and according to the provision in sub-para (c) of Ground F, it is stipulated that interruption should not be more than of one year's duration, and in cases where there are two or more interruptions, the total of the periods of all interruptions that are condoned should not exceed one year.

9. The last contention of the applicant is that in the case of one Shri R. N. Gupta and one Shri J. N. Tripathi who had also resigned from service and were taken back, they were given all the service benefits. The respondents in their reply have stated the relevant particulars of these two cases and have pleaded that these cases are totally different. We, therefore, do not have any material on record to show that the applicant was similarly placed with the aforesaid two persons to be entitled to similar treatment. In view of this, we are unable to uphold the contention of the applicant and the plea of discrimination as violative of Article 14 of the Constitution.

10. In the light of the foregoing discussion, we see no merit in this case. The O.A. is accordingly dismissed leaving the parties to bear their own costs.

(P. C. Jain)
Member (A)

(T. S. Oberoi)
Member (J)