

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. NO. 973 OF 1990

DATE OF DECISION March 22, 1991

MAHATARIA

... APPLICANT

VS.

UNION OF INDIA & ANOTHER

... RESPONDENTS

SHRI B. B. RAVAL

... COUNSEL FOR APPLICANT

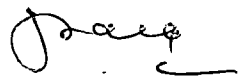
MRS. SHASHI KIRAN


... COUNSEL FOR RESPONDENTS

CORAM : HON'BLE SHRI P. C. JAIN, MEMBER (A)

HON'BLE SHRI J. P. SHARMA, MEMBER (J)

1. Whether Reporters of local papers
may be allowed to see the Judgment ? *yes.*
2. To be referred to the Reporter or not ? *yes.*
3. Whether their Lordships wish to see the
fair copy of the Judgment ? *No.*
4. Whether it needs to be circulated to
other Benches of the Tribunal ? *No.*


(J. P. Sharma)
Member (J)


(P. C. Jain)
Member (A)

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J U D G M E N T

Shri P. C. Jain, Member (A) :

In this application under Section 19 of the Administrative Tribunals Act, 1985 the applicant, aggrieved by lack of response to his request allegedly made in August, 1989 for counting his twelve years service from 1951 to 1963 towards superannuation benefits, has prayed for a direction to the respondents to consider the aforesaid period as a period spent on duty and to count the same for pensionary benefits so that these twelve years followed by another eighteen years will entitle him to a pension for thirty years service.

2. Briefly stated, the facts relevant for adjudication of the matter in issue are as below:

The applicant was initially appointed as Shed Khalasi on 19.2.1951 and he became Fireman on 17.3.1960. On a charge of unauthorised absence from duty with effect from 7.2.1961, he was served a chargesheet on 17.12.1962 and as a result of the disciplinary proceedings the applicant

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was removed from service on 6.4.1963 vide removal notice dated 3.4.1963 (Annexure A-3). His representations and appeal against the removal were rejected. The Railway Board decided to re-appoint him as a Fireman as recommended by the Divisional Superintendent, S.C.Railway, Nagpur, vide their letter dated 10.5.1974 (Annexure A-11). The applicant was sent for medical examination but was found unfit vide medical certificate dated 8.6.1974 (Annexure R-3). On his representation the applicant was re-examined medically on relaxed standards and was found fit for A-I category with glasses on 10.3.1975 (Annexure R-4). He was re-appointed as First Fireman Grade-B vide memorandum dated 12/15.3.1975 (Annexure R-5). He has since retired on superannuation at the end of February, 1991. He prays that the service rendered by him before his removal should be added to the service put in by him after his re-appointment in 1975 for calculating his pensionary benefits. The respondents in the reply filed by them have contested the application and have also pleaded that the same is barred by limitation.

3. We have perused the material on record and also heard the learned counsel for the parties.

4. There are a number of averments in the application about the alleged illegal and arbitrary order of removal of the applicant from service in 1963, and the plea of limitation taken by the respondents appears to be with reference to the challenge of order of removal which was passed in 1963. However, the applicant has stated in his rejoinder that "it is to be clearly understood that the applicant is not seeking the striking down of the

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removal order as such strictly speaking, but only praying for viewing in proper perspective as being illegal, arbitrary and not confirming to the laid down norms so that he can get only the pensionary benefits of the service rendered prior to that date of removal and is not seeking any continuity from the date of the date of removal till the date of reappointment though he suffered during these nearly 12 years for no fault of his own and for positive commissions and omissions on the part of the authorities."

In view of the above statement of the applicant as also in view of the fact that the order of removal ^{was} passed in 1963 and the order in appeal against that order was passed in January, 1970, we cannot and need not go into the aforesaid order of removal from service passed in 1963. The only point which thus remains to be decided is whether the applicant is entitled to count the service put in by him before he was removed from service for calculating his pensionary benefits.

5. From the material placed on record, it is clear beyond any doubt that the applicant was 're-appointed' in 1975 and not 'reinstated'. Para 22 of the Railway Establishment Manual mentions the characteristics of re-instatement as well as re-appointment. According to these provisions, in the case of re-instatement there is no new or fresh contract of service while it is a new contract of service in the case of re-appointment. In the case of re-instatement, it is in the same service/post while in case of re-appointment it may be in the same or a new service/post. In case of re-instatement, no gap/break occurs in the past and present service while the break remains in the case of re-appointment.

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All benefits of past service are carried on to the new service in the case of re-instatement, but in case of re-appointment no benefit of past service is taken into account except pension and gratuity in certain circumstances. Re-instatement may be as a result of a review/appeal of the case while there is no such thing in the case of re-appointment. According to Rule 2435 (corresponding with C.S.R. 420) of the Indian Railway Establishment Code, Vol-II, 5th Print, an interruption in the service of an officer entails forfeiture of his past service except in the following cases :

- "(a) Authorised leave of absence.
- (b) unauthorised absence in continuation of authorised leave of absence so long as the office of the absentee is not substantively filled; if his office is substantively filled, the past service of the absentee is forfeited.
- (c) Suspension immediately followed by reinstatement, which need not be to the same office.
- (d) Abolition of office or loss of appointment owing to reduction of establishment.
- (e) Transfer to non-qualifying service in an establishment under Government control. The transfer may be made by competent authority; an officer who voluntarily resigns qualifying service cannot claim the benefit of this exception.
- (f) Transfer to service on the Household establishment of the President."

6. From a perusal of the above provisions, it is seen that except in specified circumstances for purposes of pension and gratuity, no benefit of past service is taken into account in the case of re-appointment. None of the circumstances in which benefit of past service can be allowed for purposes of pension and gratuity is

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applicable to the case of the applicant. The material on record gives a clear indication that the applicant was re-appointed as he had done the work for the Railways for a few days during the strike period in 1973; his re-appointment was not pursuant to acceptance of his representation or appeal against the order of removal from service.

7. The respondents have also taken up the plea that the prayer for counting the service rendered from 1951 to 1963 is also time barred. We are unable to uphold this contention for the simple reason that the applicant prayed for this before his retirement on superannuation and the qualifying service for pension and other pensionary benefits is computed at the time of processing the papers for sanction of settlement dues.

8. In view of the foregoing discussion, we hold that as the applicant was not re-instated but was only re-appointed, he is not entitled to count his previous service for adding the same to the subsequent spell of service for purposes of calculating his pensionary benefits. The application is devoid of merit and is accordingly dismissed with costs on parties.

J. P. Sharma
(J. P. Sharma)
Member (J)

P. C. Jain
(P. C. Jain)
Member (A)

22/3/91