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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1314/1991. DATE OF DECISION: 12-12-1991.

Ishwar Charan Saxena Applicant.
V/s.

Union of India & Anr. Respondents.

CORAM: Hon'ble Mr. Justice Ram Pal Singh, V.C. (J).
Hon'ble Mr. I.P. Gupta, Member (A).

Shri B.B. Raval, counsel for the applicant.
Shri B.K. Aggarwal, counsel for the respondents.

(Judgment of the Bench delivered by
Hon'ble Mr. I.P. Gupta, Member (A).

JUDGMENT

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs: -

(i) To quash the order of the respondents dated 9.4.91, wherein the applicant's appointment was treated as a fresh appointment with effect from 4.1.63.

(ii) To direct the respondents to issue a revised pension payment order counting his service from 1952 and granting of interest @ 18% on arrears.

2. The applicant was appointed as Ticket Collector temporarily with effect from 12.11.1952. He tendered his resignation on 8.2.1962, which was accepted and the applicant was relieved of his duties. He later, however, withdrew his resignation vide his application dated 31.10.1962. The request for withdrawal of the resignation was turned down. However, subsequently, he represented again for reconsideration of his case. The Railway authorities directed him, vide their letter dated 24th December, 1962 to deposit the Provident Fund money paid to him on acceptance of his resignation before his request for withdrawal of his resignation could be reconsidered. Accordingly, the applicar

deposited the amount of Rs.987/-, and a copy of the receipt dated 31.12.1962 is at Annexure A-1.

3. On 3.1.1963, the applicant was 'allowed to withdraw his resignation as a special case and was posted to Delhi against the suspension vacancy of Shri N.P. Srivastava'. He was also authorised to draw Rs.139/- per month in the pay scale of Rs.110-180. Subsequently, vide letter dated 16.3.63, the applicant was informed that the intervening period of his absence from duty from 8.2.62 to 3.1.63 would be treated as Leave Without Pay.

4. The learned counsel for the applicant argued that the applicant was allowed to withdraw his resignation and the intervening period was regularised by grant of Leave Without Pay and a higher pay of Rs.139/- per month was also given to him in the scale of Rs.110-180; therefore, his case cannot be treated as of a fresh appointment. His past service and the date of joining on 4.1.1963 was bridged by grant of Leave Without Pay from 8.2.62 to 3.1.1963. Further, in a letter dated 16.2.90 (Annexure A-4), his date of appointment was rightly shown as 12.11.52.

5. The learned counsel for the respondents argued that the applicant was duly relieved of his duties on 8.2.1962 on acceptance of his resignation. On repeated representations he was allowed to be re-appointed vide Notice dated 3.1.63. It is another matter that the intervening period was treated as Leave Without Pay. Some notings on the file would also indicate that his was a case of re-employment.

6. While it is true that the applicant was relieved on 8.2.1962 on acceptance of his resignation, the facts, namely, grant of permission to withdraw the resignation as a special case by letter of 3rd January, 1963, regularisation of the period of absence by grant of Leave Without Pay, issue of instructions to him to deposit the GPF amount, which he had drawn and which he duly deposited, grant of protection of

pay even by allowing personal pay, would all go to confirm that this was not a case of fresh appointment. The learned counsel for the applicant had also drawn attention to the Railway Board's letter dated 14.3.55 where it was laid down that whenever re-employment was offered to such persons, they should be specifically warned that the new appointment was entirely a fresh one and no benefit should be claimed by such persons on account of the previous service. No such warning was issued in this case.

7. In the conspectus of the facts and circumstances summarised in the preceding paragraph, we would direct that the service of the applicant from 1952 should be duly taken into reckoning for determination of his pension keeping also in view the fact that the period from 8.2.62 3.1.63 was to be treated as Leave Without Pay. Arrears as admissible should also be paid to the applicant. We are, however, not inclined to grant any interest on the arrears in the circumstances of the case.

8. With the above directions, the O.A. is disposed of, with no order as to costs.

I. P. Gupta
(I.P. GUPTA) 12/12/91
Member(A)

Ram Pal Singh
(RAM PAL SINGH) 12.12.91
Vice Chairman(J)