

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.3060/1992

New Delhi, this the 29th day of April 1994.

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER(A)

Shri Anand Swaroop Sharma
s/o Shri Behari Lal Sharma
Retd. Guard, Tundla, Northern Rly.
R/O 1882, Laxmi Bai Nagar,
New Delhi.

(By Shri BK Batra, Advocate)

..Applicant

Vs.

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.

2. Divisional Rail Manager,
Northern Railway,
Allahabad.

3. F.A & CAO, Northern Railway,
Baroda House,
New Delhi.

(By Shri HK Gangwani, Advocate)

..Respondents

ORDER(ORAL)

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER(A).

It is the case of the applicant that the dismissal order passed by the department on 21-7-81 was set aside by Hon'ble Supreme Court (An.A4) in SLP 7089/87 in Civil Appeal No.3913/1987. The Hon'ble Supreme Court's order on 7-12-87 reads as under:-

"Special leave granted.

We have heard the learned counsel for the parties. Taking into account all the facts and circumstances of the case in the same incident, we feel that the order of termination of service dated 21-7-81 served on the appellant should be set aside and the respondents should be directed to reinstate the appellant in service without any back wages but without any break in the continuity of service. The denial of back wages for over six years appears to us to be a reasonable punishment in this case. We order accordingly. The appellant shall be reinstated in service as stated above within one month. The appeal is disposed of accordingly with no order as to costs."

As per these orders, the applicant was reinstated

in service on 16-1-88.

2. The applicant retired on 30-11-91 and in the final settlement the respondents had taken into account the service rendered by the applicant prior to 21-7-81 and the service rendered after reinstatement. The intervening period between 21-7-81 to 16-1-88 has not been taken into account in reckoning the terminal benefits. The learned counsel for the applicant is mainly pressing for the relief of treating the above intervening period as qualifying service for the purpose of pension and other related benefits.

3. It is the case of the applicant that the non-reckoning of the said period for settlement purposes came to his notice only after retirement and he submitted a representation immediately there after on 2-12-91. This representation has still not been disposed of. Apart from this representation, the applicant had also submitted another representation on 26-8-91 while he was in service on certain related matters. While admitting this O.A. on 12-1-93 this Bench had directed the respondents to consider the representation of 26-8-91 and give a suitable reply. The learned counsel for the applicant mentioned across the bar that no reply has been given in pursuance of this direction.

4. In the reply filed by the respondents the stand taken is that the Hon'ble Supreme Court has not passed any specific orders as to how to treat the said intervening period. As per rules the period of leave without pay is treated as non-qualifying service for pension and increment unless this is on medical ground or there is a specific order of reinstating authority. It is

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the contention of the respondents that the terminal benefits have been calculated correctly on the length of the qualifying service excluding the intervening period.

5. It is true that no explicit direction has been given by the Hon'ble Supreme Court as to how to treat the intervening period and whether this period would count as qualifying service for pension. It is conceded by the counsel for respondents that the reckoning of the period or otherwise is within the discretionary power of the competent authority. However nothing has been brought on record to show whether there is any application of mind taking into account the background to the order passed by the Hon'ble Supreme Court and the specific observations made by the Hon'ble Supreme Court that their order was being passed after taking into account the quantum of punishment imposed on others involved in the same 'incident' and the denial of backwages for 6 years appears to be a reasonable punishment in this case.

6. In the circumstances of the case, it will be fit and proper to give an opportunity to the applicant to submit a representation afresh covering the points already raised in his earlier representations dated 26-8-91 and 2-12-91. This should be done within two months of the receipt of this order and the respondents are directed to dispose of the fresh representation within three months from the receipt thereof. The O.A. is disposed of accordingly. No costs.

P. T. Thiruvengadam

(P.T.THIRUVENGADAM)
Member(A).

'LCP'