

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No. 619/93

New Delhi: 23rd day of September, 1994.

HON'BLE MR.S.R.ADIGE, MEMBER (A)

Shri Mohd.Yamin,
s/o Shri Mohd. Ibrahim,
Ex.Khalasi,
Loco Shed,
Northern Railway,
Moradabad.

Presently:

L-192/B, Arjun Nagar,
Near Green Park,
New DelhiApplicant.
By Advocate Shri B.S.Maineer.
Versus

Union of India: Through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad.
3. The Loco Foreman,
Northern Railway,
Moradabad.Respondents.

By Advocate Shri D.S.Mahendru, proxy for Shri
P.S.Mahendru.

JUDGMENT

In this application, Shri Mohd.Yamin,
Ex.Khalasi, Loco Shed, Northern Railway, Moradabad
has prayed for all retiral benefits with interest
at the rate of 18% per annum from the date from
which the amount allegedly became due till the
date of payment.

2. From the materials on record, it appears
that the applicant was appointed as Rest Giver Khalasi
w.e.f. 1.1.54. He was removed from service on
3.2.72, but was put back on 11.11.74 in pursuance
of his mercy appeal. Thereafter, it appears that

he again absented himself from duties firstly from 29.6.76 to 12.10.77 and again from 1978 to August, 1983. After absenting him for more than three years, the Loco Foreman, Moradabad directed the applicant to AME-I, Northern Railway (Annexure-A) for further direction in the matter. The applicant states that he attended the DRM Office regularly seeking instructions for resumption of duties. Ultimately, the then AME- I, Moradabad informed him that the decision in his case will be communicated to him, but no such decision was communicated. The applicant further states that he had submitted several representations to the authorities against their action, but unfortunately copies of these representations have been lost. Ultimately, he made a representation dated 7.1.92 to Loco Foreman, Moradabad for his retiral dues, in reply to which the Loco Foreman's Office vide letter dated 6.2.92 (Annexure-A3) asked him to fill up settlement papers and by another letter dated 13.2.92 (Annexure-A4) again asked him to fill up the same, in compliance to which the applicant attended the Loco Foreman Office and filled up the settlement papers. He states that his retiral benefits should have been paid soon after his superannuation on 28.2.92 but the respondents took no action upon which he submitted a representation on 2.5.92 (Annexure-A5) to the DRM, Moradabad and receiving no reply to that representation, he submitted an appeal to the General Manager, Northern Railway and others

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but he has been paid neither his retiral benefits nor the post-retirement passes.

3. On behalf of the respondents, it is stated that the applicant was guilty of deserting his post and was served with a charge-sheet, and a disciplinary enquiry was initiated against him. The applicant also attended the enquiry conducted by the Enquiry Officer Shri Y.P.Mahendru and also acknowledged the receipt of charge sheet.

Ultimately, he was removed from service in pursuance of the said enquiry and he was duly informed of the same. The respondents state that the applicant did not perform any duty from 1978 onwards even after reporting his duties in August, 1983 and is not entitled to any retiral benefits.

4. In the rejoinder, the applicant has denied that the charge-sheet had been issued to him, or that he was removed from service. He has also denied that any disciplinary enquiry was held against him.

5. I have heard Shri Mainee for the applicant and Shri D.S.Mahendru for the respondents.

6. The first ground taken by Shri Mainee is that the reply has been filed by the Loco Foreman, DRM Office, Northern Railway, who was not competent to file the same. In this connection, he has filed a photostat copy of the Tribunal's order dated 1.10.93 in M.P. No. 2633/90 arising out of O.A. No. 2184/90 in which it was held that the Loco Foreman is not competent to file affidavit on behalf of the respondents.

As one of the respondents (No. 3), is the Loco Foreman, his affidavit contents cannot be disregarded, particularly in view of the various annexures attached to it which are the copies of the official documents.

7. The second ground taken by Shri Mainee is that no dismissal order was served on the applicant, hence he cannot be denied his retiral benefits. No doubt, the respondents have failed to produce the copy of dismissal order served on the applicant, but a copy of charge sheet containing the charge that the applicant absented himself from duties w.e.f. 1.3.78, and the statement of imputation of misconduct in support of the charge, along with a list of documents served on the applicant, have been filed by the respondents. From this, it appears that the applicant was charge sheeted for unauthorised absence from duties w.e.f. 1.3.78. The charge sheet is dated 24.9.83, receipt of which appears to have been acknowledged by the applicant. Further more, from the letter dated 17.8.84, addressed to the applicant, it appears that the enquiry was fixed on 23.6.84 and again on 6.8.84, but the applicant did not appear inspite of enquiry letters served personally upon him and also failed to nominate his defence helper. He was warned that if he did not attend the enquiry, then the same would be finalised exparte. This letter was received on 24.8.84 by the applicant. In the light of these documents, much credence cannot be attached to the applicant's averments in his rejoinder which was emphasised by Shri Mainee that no charge

sheet was issued to the applicant nor was removed from service.

8. Shri Mahendru for the respondents stated that the order terminating the services of the applicant was not available on the record, and certified copies of whatever documents were available had been placed on record.

9. On the other hand, the applicant has also failed to establish that he was taken back in service in August, 1983 after absenting himself over three years and continuing to be in service till the date of superannuation which he claims to be 28.2.92. On his own admission, no decision was taken on his prayer for resumption of duties, and merely because he was asked to fill up settlement papers, cannot be construed to mean that he was taken back in service and retired in the normal course, to make him eligible for retiral benefits. Even for securing the retiral benefits on completion of 24 years' qualifying service, a Government servant has to give a notice to the appointing authority seeking permission to retire from service and that notice requires acceptance of the appointing authority. The applicant has not claimed that any such notice was given by him.

10. Under the circumstances, I am inclined to accept the respondents' assertion that the applicant did not perform any duties from 1978 onwards even after reporting in August, 1983 and he, therefore, is not entitled for any retiral benefits, except P.F. dues as per rules. This application is accordingly dismissed. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)