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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

Allahabad, this the 26th day of November, 1999.

ORIGINAL APPLICATION NO.1236 OF 1996

Coram : Hon'ble Mr.L.Hmingliana, A.M.  
Hon'ble Mr.Rafiq Uddin, J.M.

Shri Mithai Lal,  
S/o. Kuber,  
R/o. Railway Quarter No.412 C,  
Loco Colony, Eastern Rly.,  
MUGHALSARAI .....Applicant

(By Shri S.Ram, Advocate)

Versus

1. Union of India through General Manager  
Eastern Railway, Calcutta.
2. Senior Divisional Personnel Officer,  
Eastern Railway, Mughalsarai.

.....Respondents

(By Shri G.P.Agrawal, Advocate)

ORDER

(By Hon'ble Mr.L.Hmingliana, Member (A) )

Heard Shri S.Ram for the applicant and Shri  
G.P.Agrawal for the respondents.

2) This original application filed by a driver  
of the Eastern Railways is against the Senior Divisional  
Personnel Officer, Mughalsarai's letter dated 11-10-96

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informing him that the period from 5-12-1970 to 19-12-77 when he was kept out of service but for which period he was paid his salary could not count for seniority.

3) By two subsequent Misc. Applications No.8/97 and No.1547/97, a prayer for direction to the respondents not to discontinue him from service during that period was sought to be added by making an amendment in the original application. M.A. No.1547/97 was allowed by the Tribunal on 9-7-97, but the amendment has not been incorporated in the O.A. M.A.No.8/97 has been disposed of vide the Tribunal's order dated 2-9-97.

4) Regrettably, the case of the applicant has not been properly presented in the original application and it is difficult to follow what the case according to the applicant is and what his prayer exactly is. And that can be taken as a sufficient ground for dismissing the original application summarily.

5) The information given in the respondent's counter affidavit is as follows :-

*h/s*

The applicant acquired temporary status on 14-7-65 and he was continued as a substitute upto 14-12-70. He was imprisoned in connection with his involvement in a criminal case, and his name was deleted from the Railway Rolls on 16-7-1970. He was exonerated from the criminal case and he was re-appointed from 19-12-1977. He claimed salary for the period he was out of service, and filed a case under the Payment of Wages Act and the Authority ordered payment of his salary for the intervening period, and accordingly he was paid

and the period has been treated as a qualifying service and continuity of service.

6) According to Shri S.Ram learned counsel for the applicant, he is entitled to fixation of seniority taking the intervening period as a service period for him and he is entitled to promotion on that basis. The reply of Shri G.P.Agrawal learned standing counsel for the respondents is that it is not the case of the applicant that his juniors were promoted and that is <sup>not</sup> his challenge.

7) We find that the material given by the applicant is simply insufficient for examining his claim for seniority and for promotion. Accordingly his application has to fail and it is hereby dismissed with no order as to costs.

*Ratnadev*  
Ratnadev,  
MEMBER (J)

*W. K. Hoss*  
W. K. Hoss  
MEMBER (A)

Satya/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD BENCH, ALLAHABAD.

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ORIGINAL APPLICATION NO. 1236 of 1996

this the 9th day of April 2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)  
HON'BLE MR. S. BISWAS, MEMBER (A)

Reeta Devi, W/o late Sri Mithai Lal, R/o Railway Quarter No. 412 C, Loco Colony, Eastern Railway, Mughal Sarai.

Applicant.

By Advocate : Sri S. Ram.

Versus.

Union of India through the General Manager, Eastern Railway, Calcutta.

2. Senior Divisional Personnel Officer, Eastern Railway, Mughal Sarai.

Respondents.

By Advocate : Sri G.P. Agarwal.

ORDER (ORAL)

RAFIQ UDDIN, MEMBER (J)

By means of this O.A., the applicant who is widow of late Sri Mithai Lal has sought declaration that the order dated 11.10.1996 passed by the Senior Divisional Personnel Officer ( Sr.D.P.O. in short), Eastern Railway, Mughal Sarai (respondent no.2) is illegal and void and has also sought the directions to count services of the applicant's husband from 13.4.1968 for the purposes of seniority, promotion and pensionary benefits.

2. It is an admitted case that the applicant was granted temporary status w.e.f. 13.4.1968 and was also ~~granted~~ <sup>granted</sup> R the annual increments and further the subscription was made <sup>husband</sup> towards Provident Fund. The applicant was, however, involved in a criminal case under section 379/511/332 of IPC at P.S. Mughal Sarai on 5.12.1970 and as a result of which, he was

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husband

not allowed to perform his duty. The applicant<sup>s</sup> was ultimately acquitted by the Criminal Court from the criminal charges by the Vth Additional Session Judge, Varanasi, vide his judgment and order dated 6.6.1977. After his acquittal from the criminal case, the applicant<sup>s</sup> was allowed by the respondents to join duty w.e.f. 20.12.1977 under Loco Foreman Eastern Railway, Mughal Sarai. The applicant<sup>s</sup> was, however, not paid the pay & allowances from 5.12.1970 to 19.12.77. Consequently, the applicant<sup>s</sup> filed a case under section 15 of the Payment of Wages Act for payment of his wages from 5.12.1970 to 19.12.1977 before the Prescribed Authority, Varanasi. The application of the applicant<sup>s</sup> was allowed and it was found that the applicant's husband was entitled for payment of pay & allowances from 5.12.1970 to 19.12.1977 by the Prescribed authority and directed the respondents to pay a sum of Rs. 15741.82/- towards pay and allowances of the said period. The respondents are, however, treating the applicant's husband having been re-appointed w.e.f. 20.12.1977 and also not treating the aforesaid period spent on duty for the purposes of seniority, promotion and pensionary benefits, even-after the pay & allowances have been ordered by the Prescribed authority to be paid by the respondents.

3. We have heard the learned counsel for the applicant and learned counsel for the respondents and have also perused the pleadings on record.

4. Since it is admitted by the respondents that the payment of Rs. 15741.82/- has been paid to the applicant's husband as ordered by the Prescribed authority, we do not find any justification to deny the applicant's husband claim for counting the period, in question, for the purposes of pensionary benefits. Since the original applicant has expired during the pendency of the O.A., we

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dispose of this O.A. with the directions to the respondents to count the period from 5.12.1970 to 19.12.1977 as spent on duty for the purposes of pensionary benefits.

5. The O.A. stands disposed of as above. The above directions shall be carried-out within a period of three months from the date of communication of this order. No order as to costs.

*S. B.*  
MEMBER (A)

GIRISH/-

*D. V. Reddy*  
MEMBER (J)