

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NO. 1628 OF 2005

ALLAHABAD this *Friday* the *24* day of April, 2011

CORAM:

HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J

1. Bachau Lal S/o Bihari Lal,
age 67 years,
Resident of H.No. 174, Old Baihrana,
Allahabad.
2. Shri Anil Kumar Sahu Son of
Late Rohan Lal,
age 42 years,
Resident of H.No. 107, Madhwapur, Allahabad.
3. Kishori Lal S/o Late Suraj Din, age: about
63 years, Resident of H.No. 496, Chak Dhondhi,
Jail Road, Naini, Allahabad.

.....Applicants.

By Advocate : Sri K.N. Katiyar)

V E R S U S

1. Union of India through
General Manager, North Central
Railway, Allahabad.
2. Divisional Railway Manager,
North Central Railway,
Allahabad Division, Allahabad.
3. Sr. Divisional Personnel Officer, N.C. Railway,
Allahabad Division, Allahabad.
4. Sr. Divisional Finance Manager, N.C. Railway,
Allahabad Division, Allahabad.

..... Respondents.

(By Advocate : Shri U.S.Mishra, Counsel for the Union of India)

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ORDER

By way of the instant Original Application, the applicants seek direction from this Tribunal to the respondents to treat the period i.e. 22.7.1982 to 8.9.1989 for the purpose of qualifying service towards retiral benefits including pension, commutation etc and to comply with the earlier order of this Tribunal passed on 25.9.1998, 9.11.2001 in O.A. No. 1316 of 197 in the case of *Bachau Lal vs. Union of India* (Annexure A.1) and order dated 9.11.201 in O.A. No. 100/2002 in the case of *Roshan Lal vs. Union of India* (Annexure 2) and also order dated 26.2.2004 in O.A. No. 464/2003 in the case of *Kishori Lal vs. Union of India* (Annexure A.3).

2. Applicant No. 1, Bachau Lal was appointed as Trolley-man under the Station Supdt. Northern Railway, Naini on 22.4.1960. He retired after attaining the age of superannuation on 31.3.1997. Applicant No.2, is the son of late Shri Rohan Lal Sahu who was initially appointed with the respondents on 31.1.1959 as porter under Station Master, Northern Railway, Karchchna and retired after attaining the age of superannuation on 30.9.1995. He die on 17.1.2005. Applicant No.2 being the son late Shri Rohan Lal has filed the instant Original Application for the release of retiral benefits. Applicant No.3 Kishori Lal was appointed as Gangman under Permanent Way Inspector, Northern Railway, Fatehpur on 27.3.1962 and retired after attaining the age of superannuation on 31.8.2002 as Seal Man. During the service period of Applicant No.1 and 3 and the father of Applicant No.2 all of them were promoted as Ticket Collector as Class III post in the grade of Rs.260-400 on ad hoc basis in the year 1977. They continued as such upto July 1982. On 22nd July,

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1982, the respondents passed an order whereby all the applicants were reverted to their Class IV posts as they could not qualify in the selection for the post of Ticket Collector. It is alleged that after their reversion on 22nd July, 1982 the above said employees did not join their posts and remained absent from duty from 22nd July, 1982 to 9.5.1989 i.e. a period of six years 9 months and 17 days without any intimation or without any sanction of leave of any kind from the competent authority. Therefore, the above stated period was treated as unauthorised absence. The Applicant No.1 approached this Tribunal by way of Original Application No. 1316/1997 which was finally disposed of on 25.9. 1989 (Annexure A.1). The late father of applicant No.2 also filed O.A. No. 100/2000 which was disposed on 9.11.2001 (Annexure A.2) Applicant No.3 also filed Original Application No. 464/2003 which was disposed of on 26.2.2004 (Annexure A.3). It is averred that by the above stated orders this Tribunal allowed the Original Applications which reads as under:

" O.A.No. 1316/1997

9. In the result, the O.A. is allowed. The respondents are ordered -

- (a) to calculate the pension of the applicant for the period commencing from 22.04.1960 to 21.07.1982 and 10.05.1989, 31.03.1997 in view of rules 69 of Railway Services (Pension) Rules, 193 provisionally and pay the same to the applicant within three months.
- (b) the respondents to calculate the D.C.R.G. on the same principles and pay the same to the applicant within three months.
- (c) to pay Group Insurance amount on the same principles as stated above within three months.
- (d) to pay leave encashment amount on the same principles as stated above within three months.
- (e) to pay interest thereon @ 12% p.a. compounded annually within three months.

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- (f) to continue to pay the pension which is fixed as stated above to the applicant every month till the matter of unauthorised absence is decided
- (g) with cost of litigation amounting to Rs.650/- (Rs.500/- as Legal Practitioner's fee plus Rs.150/- as other expenses) within three months and
- (h) before I part with it is further ordered that the respondents to investigate the matter in respect of inaction of the official concerned due to which the applicant has to suffer till now and take suitable action against all the erring officials concerned.

It is averred that even after the disposal of the above Original Application the respondents did not comply with the order. On 17.12.2004 the applicant made a representation which was supplemented by reminder dated 18th October, 2005, but the respondent did not comply with the directions and even did not decide with regard to the period i.e. 22nd July, 1982 to 9th May, 1989. Hence the Original Application.

3. Upon Notice respondents filed Counter Affidavit in which they have admitted that in terms of the order passed by this Tribunal in terms of individual Original Application filed earlier, the respondents have complied with the directions and released all pensionary benefits due to the applicants on the length of qualifying service along with 12% interest. With regard to the unauthorised absence from 22nd July 1982 to 9th May, 1989 it is submitted that D.A.R action could not be initiated against the applicant for want of relevant records, for unauthorised absence from the service. But the period has been treated as *dies non*.

4. The applicant has also filed rejoinder in which he has pleaded that the maintenance of record is the responsibility of the Railway Administration and if the record is misplaced and the D.A. R action is not initiated for want of record then the applicant cannot be penalised.

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5. I have heard Shri K.N. Katiyar, Learned Counsel for the applicant and Shri U.S. Mishra, Learned Counsel for the respondents. The Learned Counsel for the applicant has submitted that despite the directions by this Tribunal in the earlier round of litigation the respondents have not decided about the alleged period of absence i.e. from 22nd July, 1982 to 9th May, 1989. It is specifically directed by this Tribunal to decide the matter with regard to the unauthorised absence. Not only this, the Tribunal has also awarded cost of litigation and further ordered investigation of the matter and to take action against the concerned officer which was at fault for not submitting the case for taking action for unauthorised absence well in time and for that reason the applicants suffered. Though the applicant was granted gratuity, Group insurance, leave encashment and arrears of pension with interest but for the unauthorised period the respondents have not taken decision therefore, the same be treated as duty for all purposes and be counted towards qualifying service.

6. On the other hand Learned Counsel for the respondents have argued that since the respondents have already released the retiral benefits after taking into account all the factors therefore, the instant O.A. has been rendered infructuous and the period from 22nd July, 1982 to 9.5.1989 has been treated as dies non. Therefore, this period cannot be counted towards retiral benefits.

7. I have considered the rival submissions and have gone through the orders of this Tribunal referred by the Counsel for the applicants. This Tribunal on 25.5.2010 granted time to the applicants to seek instruction from the respondents to find out whether the joint

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representation dated 17.12.2004 and reminder dated 18.10.2005 have been decided or not. Learned Counsel for the respondents have produced a copy of letter dated 13.09.2010 issued by the DRM, Northern Railway, Allahabad, wherein it is mentioned that the competent authority has taken the unauthorised period from 22nd July, 1982 to 9.5.1989 as Leave Without Pay (LWP). The relevant part reads as under:

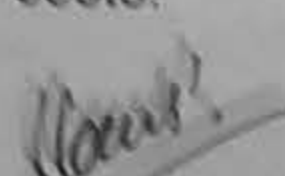
विषय : अनाधिकृत रूप से अनुपस्थिति के संबंध में ।
संदर्भ : आपका प्रत्यावेदन दिनांक 17-12-04 एवं 18-10-05

उपरोक्त प्रत्यावेदन के संदर्भ में सूचित किया जाता है कि आपके अनाधिकृत रूप से अनुपस्थिति दिनांक 22-7-82 से 8-5-89 तक की अवधि के अवैतनिक अवकाश (LWP) माना गया है ।
सूचनार्थ प्रेषित ।

मुख्य मण्डल रेल प्रशासक
उत्तर मण्डल रेल इलाहाबाद

8. From the above, it is clear that the period from 22nd July, 1982 to 9.5.1989 has been regularised by granting Leave Without Pay. Once the respondents themselves have considered the matter and the period of unauthorised absence has been regularised by treating the same as Leave Without Pay, then for all intended purposes this period is to be counted towards pensionary benefits. Accordingly, the Original Application succeeds. The respondents are directed to recalculate the pensionary benefits of the applicants in terms letter dated 13.9.2010 by counting the period from 22.7.1982 to 8.5.1989 towards qualifying service and for all other pensionary benefits and release the difference of pensionary benefits within a period of one month from the date of receipt of a certified copy of this order.

9. Thus, the O.A. is allowed. No order as to costs.


(Sanjeev Kaushik)
Member (J)