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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 47 OF 2005

ALLAHABAD THIS THE ~~30th~~ DAY OF ~~W~~ 2007.

Hon'ble Mr. S.K. Dhal, Member (J)

Shiv Charan Son of Late Sri Lala Ram,
Resident of 750 Isai Tola, Prem Nagar,
Jhansi.

..... .Applicant

By Advocate : Shri B. Tiwari

Versus

1. Union of India through General Manager,
N.C.R., Allahabad.
2. D.R.M. (P), N.C.R. Jhansi.

..... .Respondents

By Advocate : Shri A. K. Sinha

O R D E R

The legality of orders dated 04.06.2004 (Annexure A-1) dated 17.09.2004 (Annexure A-2) and order dated 9.11.2004 (Annexure-3) issued by D.R.M. (P) Jhansi (respondent No.2) are under challenge in this original application filed by the applicant.

2. The applicant was appointed on 24.4.1965 as C.N.W. Khalasi. He got promotion to the post of Basic Revitr in the year 1979. Subsequently he was also promoted to the post of Skilled Revitr in the year 1998.

3. In a departmental proceeding he was removed from service on 11.5.04. The applicant preferred appeal to

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ADRM Central Railway Jhansi. It was dismissed. The applicant submitted another application dated 12.8.1983 (Annexure A-7) on which order was passed to take him back to service after reducing his punishment. Under letter dated 13.9.1983 D.M. had intimated that he may be taken as fresh entrant if he makes an appeal to the GM. Thereafter the applicant by virtue of order dated 13.9.1983 was posted ^{0~22~9~1983} as skilled Revitr i.e. in his original position and worked till 30.9.2003 in the pay scale of Rs.4500-7000/- drawing basic pay @ 5750/-. After his retirement he has been paid pension for the period from 22.9.1983 to 30.9.2003 i.e. the date of his retirement. His past service has not been taken into consideration for granting pension. According to the applicant there is no provision or rule in the D.A.R. Rules 1968 for giving fresh appointment at the time of consideration of appeal or revision. ~~So His~~ His grievance is that his past service should not have been forfeited. So he has filed the original application praying to direct the respondents to take his past service into account for granting ~~promotion~~ pension.

4. In there written counter the respondents have not disputed the averments made by the applicant. The stand of the respondents is that the applicant made a mercy petition before the authority and he was taken as a fresh entrant and in that case the past service cannot be taken into consideration for fixing his pension.

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5. I have heard the learned counsels for both the parties and have perused the documents produced.

6. The learned counsel for the applicant has urged that there is no penalty provided in the rules by way of forfeiting past service which is indicated as one of the penalties which would be imposed against the Railway Servant. When the order of dismissal has been reduced and he has been taken back into service the question of forfeiting the past service does not arise. Reliance has been placed in case of Nanjunsaradhyा Versus Enquiry Authority reported in 1985 (3) SLR 592 and V. C., Banaras Hindu University and Others Versus Shrikant reported in 2006(3) (SC) 275 and the case of Union of India and another Versus Jang Bahadur Singh in the second appeal No. 431/1985 arising in civil appeal No. 46/1984 arising out of Original Suit No. 1196/1981 decided on 29.2.1996.

7. Inviting the attention of this Tribunal to para 7 of the counter affidavit it has been contended on behalf of the respondents that as per rules 25 of RS (D&A) Rules revision lies to the next higher authority i.e. to Divisional Railway Manager taking valid grounds for review. But in this case the said right was not exercised by the applicant but he preferred to make mercy appeal to the D.R.M. on which the impugned order was passed. The applicant did not make any representation to General Manager and that would

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suggest that he had accepted the punishment that he should be taken as fresh entrant.

8. The mercy appeal stated to have been filed by the applicant which is very relevant in this case is at Annexure A-7. This reveals that on 15.8.2006 order has been passed to the following effect on the body of the application itself.

"I have agreed to take back him on duty and reduce his punishment. Please put up the case."

9. This order has been passed by Shri S. K. Agrawal. This fact also has not been disputed by the respondents and cannot be also because that is on record. This order nowhere indicates that the applicant was taken back as a fresh entrant rather it reveals that his punishment of removal (dismissal) was reduced.

10. In a case of dismissal the past service can be forfeited. The punishment that was imposed on the applicant has been reduced by the D.R.M. No doubt the application Annexure A-7 submitted by the applicant reveals that he sought for mercy disclosing his distress, financial conditions and other domestic problems for his removal from service. The authority concerned ~~in past~~ ^{pass} order to take him back to service after reducing the punishment. It would suggest that the punishment of removal/dismissal was reduced. So in that case the question of forfeiting the past ^{case} service does not arise. In Nanjundaradhya it has been

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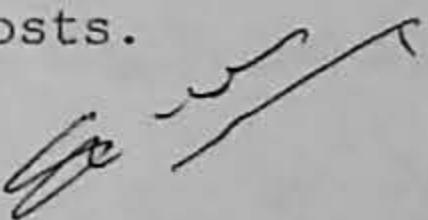
held that forfeiture of past service is not provided as a penalty and under the rules and the penalty of forfeiture of past service cannot be imposed. In para nine of the judgment after quoting the Rule 153; the following observation was made by the Hon'ble High Court of Karnataka:-

"There is no penalty, by way of forfeiting the past service, which is indicated as one of the penalties which could be imposed against a railway servant. Therefore, in exercise the power to impose a penalty the Disciplinary Authority or the Appellate Authority or the Revisional Authority have to select one or the other penalties specified in Rule 6. Forfeiture of past service not being one of the penalties prescribed under Rule 6, no such penalty could be imposed in a disciplinary proceeding."

11. Upon hearing the learned counsel for both the parties and keeping the above legal position in view, I am of the opinion that the order of the respondents forfeiting the past service of the applicant is not sustainable in the eye of law.

12. Hence, the O.A. is allowed on contest. The past service of the applicant should ~~be taken into~~ ^{Countage} consideration by the respondents for fixing his pension.

13. There shall be no order as to costs.



Member-J

/ns/