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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.
Registration O.A NO 341 OF 1986

Sukhoo

...

Applicant

Vs.

Union of India and another ...

Respondents.

Hon.D S Misra,AM
Hon.G S Sharma,JM

(By Hon.G S Sharma,JM)

This petition under Section 19 of the Administrative Tribunal Act XIII of 1985 was filed by the applicant on 14.7.1986 for reinstatement in service.

2. The facts of this case are bit peculiar. The applicant has claimed himself to be a permanent employee of the Eastern Railway and has alleged that he was working as Valveman under Inspector of Works (for short IOW)-I, Mughalsarai. He was arrested by the Mughalsarai police at 7.30p.m. on 19.8.1970 in connection with a case registered against him under Sections 302/307 Indian Penal Code. According to the applicant he regularly worked on his post upto 19.8.1970 but after his release on bail when he reported for duty, the IOW did not allow him to do his duty. The applicant was convicted by the trial Court but on appeal, he was acquitted by the Allahabad High Court on 27.4.1978 but he was not allowed to join his duty even thereafter despite reminders dated 11.8.1978, 16.11.1979, 13.3.1980, 16.1.1981, 12.2.1983, 19.2.1985 and 20.12.1985.

3. Considering it to be a time barred matter, the Bench did not admit the petition and a notice was issued to the respondents to show cause as to why the petition be not admitted. In the reply filed on behalf of the respondents by a Clerk in the DRM's office Mughalsarai, it has been stated that the applicant was not a permanent employee but was decasualised Valveman working in the CPC scale under IOW-I Mughalsarai. After performing his duty on

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19.8.1970 the applicant absconded without any information and since then neither reported for duty nor made any representation and the allegations made by him to the contrary are incorrect. On the receipt of the information regarding arrest of the applicant from Police on 16.9.1970, the applicant was placed under suspension on 18.9.1970 and he thereafter never informed about the result of his case and his services should be deemed to have been terminated for the continuous absence from duty for a period of about 7 years. There is no question of reinstatement of the applicant in service or payment of any arrears of pay to him. The applicant was never screened and absorbed against regular post and he cannot claim any protection under the Constitution of India as a civil servant.

4. In the rejoinder filed by the applicant, he reiterated the allegations that he had repeatedly met the IOW-I Mughalsarai and had made representations for allowing him to join the duty but the authorities did not pay any heed and he is entitled to continuity in service with all consequential benefits.

5. We have carefully considered the contentions raised on behalf of the parties and feel that sufficient material has not been placed before us by the parties to do justice in the case. There is no dispute in this case that the applicant had served the respondents upto 19.8.1970 and thereafter he was arrested and prosecuted in a case under Sections 302/307 IPC and was also convicted by the trial Court but his conviction was set aside and he was acquitted by the Allahabad High Court as also appears from the copy of the judgment, annexure 1, filed by the applicant. The absence of the applicant from service from 20.8.1970 to 27.4.1978 was thus in connection with his criminal case. The applicant has disputed the fact that he was ever placed under suspension though the respondents have alleged that he was placed under suspension w.e.f. 18.9.1970 on receiving a report of his arrest from the Police. The actual order of placing the applicant under suspension in the present case is not material as he admittedly remained in jail for months after his arrest. Under Rule 5(2) of the Railway Servants (Discipline and

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Appeal) Rules, 1968 (hereinafter referred to as the DA Rules), a railway servant is to be deemed under suspension by an order of the competent authority w.e.f. the date of his detention in custody whether on a criminal charge or otherwise for a period exceeding 48 hours. Rule 14 of the DA Rules contemplates that the competent authority can impose a penalty on a railway servant on the ground of misconduct which has led to his conviction on a criminal charge. There is, however, no provision in these rules for automatic termination of the services of a regular railway employee. In case, the respondents wanted to terminate the services of the applicant, they could do so without any inquiry on his conviction by the trial Court but it does not seem to have been done in the instant case. It appears from the record that they also did not pass any specific order terminating the services of the applicant on the ground of absence or any other ground and the contention raised on their behalf is that the services of the applicant should be deemed to have been terminated on account of his absence for a period of about 7 years. This contention ^{could} ~~can~~ partially hold good only if the applicant would not have reported his acquittal in the criminal case to the concerned authorities and had not made any request for joining the duty. The applicant has filed the copies of a number of representations and has also filed the copies of some postal receipts with his rejoinder. The learned counsel for the respondents contended that none of the representations filed by the applicant makes any reference to his previous representations and all of them appear to have been manufactured sometime before filing this petition to bring the petition within the period of limitation. This fact, if true, cannot be verified from the material made available to us. We are also not sure whether there can be an automatic termination of one's services on account of his continuous absence for a period of about 7 years. Further, there is a dispute about the status of the applicant. According to him, he was a permanent employee whereas according to the respondents, he was merely a decasualised employee enjoying

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temporary status. His status will have a bearing on the question of termination of his services on account of his continuous absence from duty as well as regarding his claim for arrears of pay in case he is found entitled to join his duty.

6. Instead of admitting the petition, we accordingly direct the respondents to decide the representation dated 11.8.1978, copy annexure 2 to the petition and in case the same is not found to have been received in their office, such of the other representations, copies annexures 3 to 8, as may be found received in their office. In case no representation of the applicant is found to have been received in their office, the respondents shall consider the case of the applicant by proper application of mind in the light of the history of his case and the service record of the applicant ^{and pass suitable order} within a period of four months from today. There shall be no order as to costs.

[Signature]
25.1.88

MEMBER(A)

Dated: 25 Jan, 1988
kkb

[Signature]
25/1/88
MEMBER(J)