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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.562 of 1986.

(Suit No.842 of 1982)

Hardwar Prasad Plaintiff.

Vs.

Union of India Defendant.

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

(By Hon. G.S.Sharma, JM)

This suit for declaration that the plaintiff is entitled for the condonation in the break of his service w.e.f.17.9.1970 to 3.1.1978, treating him in continuous service from 21.5.1947, has been received by transfer from the Court of VII Addl. Munsif Gorakhpur under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The case of the plaintiff is that he was born on 18.5.1929 and had joined the North Eastern Railway on 21.5.1947. The plaintiff was expected to continue in service upto 31.5.1987 but he was removed from service w.e.f.17.9.1970 after declaring him medically unfit. The said action of the defendant was illegal as he could be absorbed in other categories. On making representations to the higher authorities, the plaintiff was re-appointed vide letter dated 15.12.1977/4.1.1978. The absence of the plaintiff from duty from 17.9.70

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to 3.1.1978 should have been condoned and his service should have been treated as regular from the date of his appointment but the railway administration did not do so and wrongly treated the plaintiff as a new entrant thereby forfeiting the entire service rendered by him before 4.1.1978. On the representation of the plaintiff against the said illegal action of the authorities, the railway administration vide its letter dated 29.7.1980 directed the plaintiff to deposit the Provident Fund (in short PF) and the S.C. to PF received by the plaintiff on the termination of his service. The plaintiff was, however, not in a position to deposit the said amount and requested the railway administration to deduct the same from his pay in suitable instalments. The railway administration, however, did not condone the break in the service of the plaintiff from 17.9.1970 to 3.1.1978 despite his repeated representations. He thereafter, filed this suit after giving a notice under Section 80 of the Code of Civil Procedure.

3. The suit has been contested on behalf of the defendant and it has been stated in the written statement filed on its behalf that the termination of the services of the plaintiff was not illegal as the plaintiff was declared medically unfit for further railway service by the railway Doctor. After the termination of services, the plaintiff withdrew his entire settlement dues including the PF. The plaintiff thereafter, made a representation to take him into service and consequent-

ly, after considering his request sympathetically and after getting him medically examined again, the plaintiff was offered reappointment for a period of 6 months, which the plaintiff accepted without any protest. The plaintiff's services were extended from time to time treating him as a purely temporary Fitter. The fresh appointment of the plaintiff, therefore, cannot be treated in continuity of the services rendered by him earlier. The letter asking the plaintiff to deposit the PF and SC to PF was issued inadvertently and the settlement dues received by the plaintiff cannot be deducted from his pay under the law. The suit of the plaintiff suffers from various defects and it is liable to be dismissed.

4. In his replication, the plaintiff stated that the suit filed by him is in accordance with law. On account of remaining out of employment for a considerable period, the plaintiff had to accept the settlement dues as he had no other source of livelihood and the period of his absence is liable to be condoned and instead of reappointing him, the defendant should have reinstated him on finding him medically fit.

5. The main question arising for determination in this case is whether the break in the service of the plaintiff from 17.9.1970 to 3.1.1978 is liable to be condoned or in other words, whether the defendant should have reinstated the plaintiff

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instead of giving him reappointment w.e.f.4.1.1978. It has not been disputed on behalf of the plaintiff that he was removed from service w.e.f.17.9.1970 on his being declared medically unfit by the Medical Officer of the railway department. Paper no.52-C is the letter dated 30.11.1970/2.12.1970 of the District Electrical Engineer (W) Gorakhpur terminating the services of the plaintiff from 17.9.1970 on his being declared medically unfit. Paper no. 57-C is the copy of the D.O.letter dated 30.11.1977 from the Personnel Officer, N.E.Railway asking the ~~Divisional~~ Electrical Engineer to get the plaintiff medically examined again to give him some fresh appointment on compassionate ground on his being found fit for any job. The plaintiff was,thereafter medically examined again and the ~~Divisional~~ Electrical Engineer,Gorakhpur vide his order dated 4.1.1978, paper no.58-C, reappointed the plaintiff as Bench Fitter on temporary basis for a period of 6 months with the clear intimation that the question of his retention in service will be considered after watching his performance for 6 months. The plaintiff made his representation on 26.6.1979, copy paper no.59-C, not to treat his appointment as fresh appointment in service and to condone the period of his absence. In reply to it, he was informed by the General Manager (P) vide his letter dated 24.8.1980 , copy paper no.60-C, that the question of condoning the period of his

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absence could be considered only after his depositing ^{ment} the various amounts received by him as settled dues after the termination of his services. Admittedly, the plaintiff did not make the required deposit and vide his representation dated 11.9.1980, paper no. 61-C, he challenged the correctness of the order of his termination from service and requested that he should not be asked to refund the settlement dues received by him for maintaining his family in case it was not possible to deduct the same from his pay in instalment. He thereafter, made several other representations on the same lines but the administration did not accede to his request. Paper no.69-C is the copy of the order dated 26/29.11.1978 issued by the ~~Divisional~~ Electrical Engineer Gorakhpur stating that in continuation of his office order dated 4.1.78, the retention of the plaintiff as temporary Bench Fitter in the scale of Rs.260-400 is approved and the plaintiff thus, continued in service as a temporary Bench Fitter after his reappointment w.e.f. 4.1.1978. Paper no.70-C is the copy of the order dated 29.10.78 of the ~~Divisional~~ Electrical Engineer, Gorakhpur for making an entry in his service book for rendering commendable service by him after reappointment. There is no other noteworthy document on record to require ^a ~~the~~ mention here.

6. The pleadings of the parties and the documents placed by the plaintiff on record and discussed above go to show that the plaintiff was rightly

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declared unfit on medical ground w.e.f.17.9.1970. The plaintiff himself accepted the termination of his services and received all his settlement dues payable to him under the rules. It is only after a lapse of several years that on compassionate grounds, the plaintiff was medically examined again and on his finding fit he was given a temporary appointment for a fixed period of 6 months only w.e.f.4.1.1978. The plaintiff undisputedly did not refund the settlement dues received by him in compliance with the order dated 24.8.1980 of the General Manager (P), as pointed out above and as such, he had no right to claim continuity in service and the condonation of the break of several years in his service in the circumstances stated above. It was on the sweet will of the employer to condone the break or not and as the plaintiff has not been able to show any law or rule in support of his claim, we are unable to interfere in the matter specially when it is alleged by the defendant that the said order was issued by inadvertence. On his own showing, the plaintiff ~~has~~ to retire after a period of 4 months only and in our opinion, there is no justification to deduct the settlement dues from the pay of the plaintiff at the fag end of his service career. There is, therefore, no force in the contentions raised on behalf of the plaintiff and his suit merits dismissal.

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7. The suit is accordingly dismissed but the parties are directed to bear their own costs.

Sharma

5.2.1987
Member (A)

Sharma

5.2.1987
Member (J)

Dated 5.2.1987
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