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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

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Registration T.A. No. 184 of 1987

(Arising out of O.S. No. 804 of 1979)

R.N. Gupta Plaintiff

Vs.

Union of India and ors ... Defendants

Hon' Mr D.K. Agrawal, J.M.

Hon' Mr K. Obayya, A.M.

(By Hon' Mr K. Obayya, A.M.)

Original Suit No. 804 of 1979 was instituted in the Court of Munsif, Agra for declaration to treat the plaintiff-applicant to be continuing in service during the period 30-5-47 to 31-3-73 and ^{count} this period for the purpose of complementary passes, pension and other retirement benefits. This suit has come to this Tribunal on transfer under section 29 of the Administrative Tribunals' Act, 1985 and registered as T.A. No. 184/87 as indicated above.

2. The facts of the case are that the plaintiff applicant was appointed as temporary Law Inspector in the East Indian Railway, Calcutta on 30-5-1947. He was transferred to Sahibgunj by an order dated 18-11-47; As he over stayed leave without joining, his services were terminated w.e.f. 8-3-48 by an order dated 26-4-1948. Thereafter, the plaintiff-applicant made several representations to the authorities including Railway Board and Ministry of Railways and was re-employed as Law Inspector w.e.f. 5-11-1953 in the Northern Railway. He retired from service on 11-3-73 on superannuation and was given retirement benefits as per entitlement.

3. The case of the plaintiff-applicant is that on 2-8-1975 his service record was shown to him for appending

his signature in the relevant column and then he noticed that the order of termination dated 8-3-1948 passed by the East Indian Railway was not recorded in the service Register. The service Register showed the date of re-appointment as 5-11-1953. It is contended by him that the termination order was not entered in record presumably because, no such termination order was issued. He requested the authorities by several representations to condone the break in service between 8-3-48 to 5-11-53 and to treat the services of the plaintiff to be continuous from 30-5-47 i.e. the date he joined the East Indian Railway to 31-3-1973 the date on which he ought to have been retired. It is also contended that the cause of action for the suit arose on 2-8-1975, when it came to the knowledge of the plaintiff that there was no order^s of termination recorded in his service record or in ^{any} other record and that the letter dated 26-4-48 which was received by him at Agra, containing termination order was a fraud and that his request for issue of complimentary post-retirement passes were finally refused at Agra on 8-11-1976. He filed this suit on 3-10-1978 since 1-10-1978 and 2-10-78 were holidays for the Court. He contends that the suit is in time.

4. The defendants contested the suit. In the written statement filed in their behalf, it is stated that from the records it is noticed that he was discharged on 8-3-1948 on the ground of un-authorised absence from duty for more than 3 months. It is also stated that according to rules, a temporary Railway servant having less than one year of service who remains absent for more than 3 months at a stretch is deemed to have resigned from service. It is further stated that the representations of the plaintiff-^{applicant} were

were considered and it was decided to re-employ him as Law Inspector in the Northern Railway w.e.f.

5-11-53 and that the plaintiff-applicant agreed for the terms of re-employment and joined service,

in the northern Railway. It is further stated that new service register was opened in the Northern Railway on re-employment. In the service register ~~since~~ there is no column to enter previous service record. It was denied that a fraud was committed in the termination order.

The termination orders were passed as per rules. The plaintiff-applicant applied for condonation of break in service, but his request was not agreed to as it was not permissible under the rules. They have not received any notice under section 80CPC dated 30-7-78, as such, there is no cause of action for the suit. It is further stated that the suit is barred by limitation under section 34 of the Specific Relief Act. Their further averments is that the plaintiff-applicant filed a suit in 1950 in the Court of Civil Judge, Agra for the same relief and this suit was withdrawn on 29-7-53 and hence the principle of res-judicata will apply and the plaintiff-applicant cannot seek the same relief.

5. We have heard the learned counsel of the parties and perused the record. The fact that the plaintiff-applicant was employed in the East ^{Indian} Railway during the period from 30-5-47 to 7-3-48 and thereafter in Northern Railway on ~~on~~ re-employment for the period 5-11-53 to 11-3-73 is not denied by the defendants. The controversy is with regard to break period i.e. from 8-3-48 to 4-11-53 when according to the defendants during which the plaintiff-applicant was out of service following his termination from the East Indian Railway. The plaintiff applicant's contention is that his services

were not terminated. The other contention of the plaintiff-applicant that he should have been retired on 31-3-73 i.e. the last date of the month and not on 11.3.73. The defendants' plea to this is that the orders of the government to reckon retirement of government servants on superannuation on the last date of the month and not on the actual date during the course of the month were received only in 1974 and since the plaintiff-applicant retired in 1973, these .. were not applicable to him. We agree there is no merit in this contention of the plaintiff-applicant. Regarding the break period it is on record that plaintiff-applicant made several representations to East Indian Railway and also to the Railway Board and also to the Minister for Railways challenging his termination order and sought re-instatement in the post of Law Inspector. The record also bears out that he met the concerned authorities at Calcutta to press his case. He also filed a civil suit; and his letter dated 18-8-1950 addressed to Shri S.K. Gupta, Law Officer, East Indian Railway brings out that he was prepared to compromise on the terms agreeable to the administration, if he was re-instated as Law Inspector. The Railway Board, the highest authority of the Railway Administration was also seized of the matter through a memo dated 22-10-1950, they have intimated that his representation has been forwarded to the General Manager, East Indian Railway for necessary action. His letter dated 3-11-50 addressed to Shri P.N. Saxena also mentions redressal for wrongful termination. The record and the conduct of the plaintiff-applicant clearly points out to the fact ^{that he accepted} that his services were terminated, otherwise, there was no justification for him to be out of office, running from office to office seeking re-instatement. The threat of civil suit was also there.

Against this background, it is difficult to believe that the plaintiff applicant was out of office without any termination order. His repeated representations some of which were replied to would have certainly led to verification of facts and the administration was unable to accede to his request in the face of termination order.

6. The plaintiff-applicant relied on the service record which was shown to him in 1975 which did not contain the entry regarding his termination. Thereby he makes an inference that such order was not passed at all. His service record no doubt is a record of all particulars of a government servant. The first page which is on the bio-data of the candidate is accepted as authentic record. The entries are also certified and confirmed by the employee concerned. The other particulars entered relate to promotions, pay scale, increments, transfers, leave, confirmation etc. The entries have to be made on the basis of the orders and should also be authenticated by the concerned Officer. The absence of any entry does not mean that there was no such orders. There could be omission in making entry in the service record, where an order is available independent of service record that order has to be accepted. We have also scrutinised the appointment order and also the termination order passed by the East Indian Railway, they contained same address of the plaintiff-applicant at Agra. The orders appears to be authentic and we are inclined to believe that there has been termination order by which the services of the plaintiff-applicant were terminated. The termination order speaks of the ground on which the termination order was passed. It mentions that the absence of the plaintiff-applicant exceeded 3 months limit and on 8.3.48 and hence his services were terminated. The plaintiff-applicant has not denied

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about his un-authorised absence exceeding the permissible limit. Further, from the rules applicable to the temporary employees Note -2 Explanation-II para 732 which reads as under settles the issue:

"Note 2.- Where a temporary railway servant fails to resume duty on the expiry of the maximum period of extra-ordinary leave granted to him or where he is granted a lesser amount of extraordinary leave than the maximum amount admissible, and remains absent from duty for which he could have been granted such leave under sub-rule (1) above, he shall, unless the President in view of the exceptional circumstances of the case otherwise determines, be deemed to have resigned his appointment and shall, accordingly, cease to be in railway employ. "

7. The learned counsel for the plaintiff-applicant relied on the judgment of the Supreme Court in Sushil Kumar Yadunath Jha vs. Union of India and another wherein the benefit of continuous service was allowed notwithstanding the break in service due to termination of the service of the appellant. In that case the appellant was appointed on selection as Post Graduate Teacher in Hindi in Central School, Bombay in 1965, which later came to be known as 'Kendriya Vidyalaya Sangathan'. The appointment letter indicated that he would be on probation for a period of one year and that the post is temporary but his services are likely to be continued, as the Institution was permanent. His services, however, were continued even after completion of probationary period of one year. The appellant was also transferred in between to other schools in and around Bombay. His services were terminated in March, 1968. On representation of the appellant the authorities informed him that another appointment letter will be issued. In June, 1968, he was given a fresh appointment. This appointment letter made specific mention\$ that his previous services would not be admissible. The appellant

made representations to the authorities for condoning the break period, but, they were turned down. The aggrieved appellant moved the High Court which rejected his petition on the ground of limitation, against which he preferred an appeal in the Supreme Court. While allowing the appeal, the Supreme Court observed,

"The appellant however earned goodwill and high praise during subsequent years for the conscientious and dedicated work consistently put in by him. Successive and repeated communications were sent by his immediate superiors to the authorities detailing the high order of achievement shown by the appellant in his work and pressing that a lenient view be taken in regard to condoning the break in his service."

It was further observed by the Supreme Court that,

"his work was marked by outstanding efficiency and devotion and that almost everywhere that he was posted he was not found lacking in dedication to his responsibilities."

The outstanding service rendered by the appellant undoubtedly weighed ^{with} by the Supreme Court in considering favourably the case of the appellant. In the same judgment it was also observed, "We do not for a moment suggest that the sanctity of the contract between the parties should be given a go-bye, but what we do find is that here is a case where the subsequent conduct and the quality of his performance, of which high appreciation was recorded by his superiors, indicated that he should be relieved of the disadvantage suffered by him pursuant to that term in his contract of fresh appointment."

From this it is very clear that the relief was given as an exception in ^{recognition} due of the outstanding work of the appellant and high praise, dedicated ^{to} duty etc. shown by the appellant in his work.

8. This judgment is not helpful to the plaintiff-applicant in that his record of service does not indicate ~~any~~ any outstanding work, on the other hand

it is noticed that he was awarded a 'censure' and when his case came up for review to continue him in service beyond the age of 55 years, the order was not to retain him in service beyond the age of 55 years and 3 months notice to this effect was also served on him on 28-3-70. However, his services ^{were} continued till the age of 58 years.

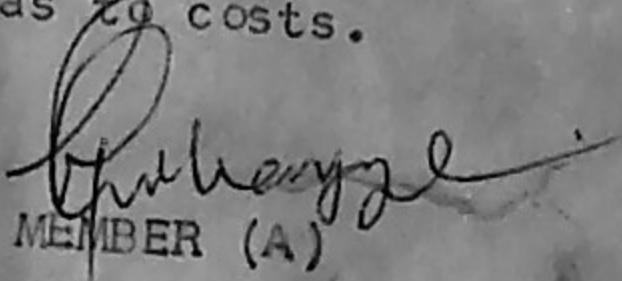
9. The learned Counsel for the defendants also raised the issue of limitation, the cause of action according to him arose in 1953 and a suit has to be filed within 3 years, whereas the present suit has been filed in 1978. The plaintiff-applicant's case is that the cause of action arose in 1975 when it came to his knowledge that there were no termination orders issued in his case. The period between the alleged termination and re-employment is more than 5 years i.e. 8-3-1948 to 5-11-1953, it is on record that the plaintiff-applicant challenged his wrongful termination order and sought re-employment on that basis. He also filed a civil suit for this purpose which he withdrew later. The re-employment letter also indicated that his work has to be watched for a period of 6 months. All this shows that the plaintiff-applicant acquiesced in the fact of termination. If he had a claim for condonation of break in service, he should have taken it up immediately after his re-employment in 1953. During his service for nearly 20 years, he never raised this issue. He was also superannuated in 1973. Two years thereafter he says that he has come to know that there are no orders of termination relating to his previous service in East Indian Railway in 1948. The plaintiff-applicant is himself well versed in law being a law graduate and he was also working in the Legal Cell of the Railway. It does not sound realistic that he was un-aware of his rights and privileges in

the Department. The service register is normally opened at the time of entering into service. The plaintiff-applicant should have agitated for this to bring his record up date and the entries made correctly; that he had access to service register only in 1975 is hardly convincing. The claim certainly relates to 1953. In Surendra Nath vs. Chief Conservator of Forests AIR 1958 Punjab 16, the High Court observed, "In a case where the petitioner alleges that he has wrongly been dismissed, it appears to me that undue or unexplained delay should by itself be sufficient to deprive him of the relief claimed."

10. In Raj Bihari Singh and another vs. Chandrika Singh and other AIR 1958 - Patna 217, while discussing the scope of limitation Act, the High Court observed, "Whether any particular facts constitute a cause of action has to be determined with reference to the facts of each case and with reference to the substance rather than the form of action. If an infringement of a right happens at a particular time, the whole cause of action will be said to have arisen then and there, in such a case it is not open to a party to sit tight and not to bring a suit for declaration of his right which had been infringed within the time provided by the Limitation Act and allow his right to be extinguished by lapse of time and thereafter, to wait for another cause of action and then to bring a suit for establishment of his right which was not then alive and which had long been extinguished because, in such a case, such a suit would mean a suit for revival of right which had long been extinguished under the Limitation Act and is, therefore, dead for all purposes."

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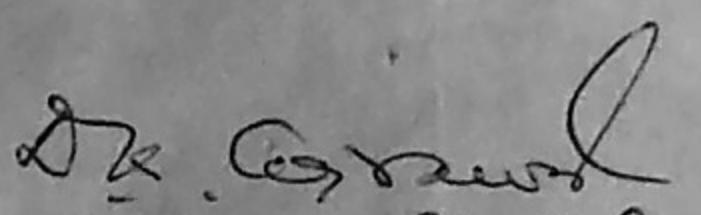
11. Taking the facts and circumstances of the case, we are of the view that the above observation is very much relevant to the instant case. The suit is barred by Limitation. For the reasons stated above, we are of the opinion that there is no force in the suit and it is accordingly dismissed with no order as to costs.


MEMBER (A)

(sns)

July 24th, 1990.

Allahabad/Lucknow.


MEMBER (J) 24.7.90