IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

T.A.No. 220 of 1987.

Abdul Majid..... Applicant.

Versus

Union of India and others..... Opp. Parties.

Hon'ble Mr. D.K. Agarwal - J.M.
Hon'ble Mr. K. Obayya - A.M.

(By Hon'ble Mr. D.K.Agarwal-J.M.)

The genesis of this case relates to the year1950 The applicant was initally recruited as Compositor on 13.2.1924 in North-Eastern Railway Press Gorakhpur and lateron promoted as officiating Forman, a permanent employee. His services were terminated by the Deputy General Manager vide order dated 15.5.1950 purporting to Act under Rules 148 (3) ad 1 9 (3) of the Indian Railways Establishment Code which conferred power for termination of service of a permanent servant. The said Rule 148 (3) and 149 (3) of the Railway Establishment Code were struck down by the Supreme Court in the case of Moti Ram Deka A.I.R. 1956 S.C. 600 by means of judgment dated 5.12.63 on the ground that the termination of the services of the permanent servant, authorised by those rules was no more and no less then removal from service and Article 311 (2) was atonce attracted. After of the Supreme Court the Railway Board issued a circular saying that those employees whose services were terminated in terms of Rule 148 (3) or 149 (3) within a period of six years prior to 5.12.1963, may be re-instated. The said circular implied that the services of the employees who had been terminated on a date which was more than six years countinb back-ward from December 5, 1963 could not be re-instated. Therefore one Sachindra Nath Sen challenged the circular of the Board before the Assam and Nagaland High Court by means of a petition under Article 226 of the Constitution. The Assam High Court struck down the Railway Board Circular and Supreme Court upheld the judgment of Assam High Court observing interalia as follows:-

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"In Moti Ram Deka's case this court held that the termination of the services of a permanent servant authorised by Rules 148 (3) and 149(3) of the Railway Establishment Code was inconsistent with the provisions of Article 311 (2) of the Constitution. The termination of the services of a permanent servant authorised by those rule was no more and no less than removal from service and Article 311 (2) was atonce attracted. In view of the law laid down by this court the termination of the services of the respondent in December, 1957 was wholly void and illegal. The Railway authorities recognised, as indeed they bound to do, the implications and effect of the judgment of this court be created a wholly illegal and artificial distinction by saying that only those employees whose services were terminated in terms of Rule 148 within a period of six years prior to Dec. 5, 1963 and whose representations were pending were to be considered for reinstatement whereas the employees like the respondent whose services had been terminated on a date which was more than six years couting backward from December, 5, 1963 would not be reinstated. The fixing of the period of six years was on the face of it arbitrary and no valid or reasonable explanation had been given as to why this limit was fixed. If the termination of service of an employee in terms of Rule 148 was wholly illegal and void and was voilative of Article 311 (2) of the Constitution, his reinstatement should have followed as a matter of course. The submission of the learned counsel of the appellant that the Railway authorities would have found lot of difficulty and inconvenience in reinstating employees without taking into consideration the period which had elapsed is devoid of any merit and cannot be accepted.

The appeal fails and it is dismissed with costs." 2

It may be added that the petitioner who has since died was re-employed as Proof Reader on 14.2.55 and retired from service as Proof Reader on 13.2.59 after attaining the age of

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superannuation i.e. 55 years which was the age of superannuation at that time. The prayer in this present Writ Petition which has been received by transfer from the High Court is for issuance of a Writ of Mandamus directing the respondents to pay salary to the petitioner from the date of his illegal termination till the date of re-employment i.e. w.e.f. 15.5.50 to 14.2.1955. It has also been prayed that the terminal benefits of the petitioner be also settled accordingly.

We have given our anxious consideration to the facts of the case. In view of the pronouncement of the Supreme Court as referred to above, there is no doubt in our mind that the petitioner is entitled to the salary of Asstt. Foreman with due increment from the date of termination to the date of re-employment. The petitioner is further entitled to continuity of service as if the termination order had not taken place. The petitioner would also be entitled to terminal benefits accordingly.

In the result the Writ petition is allowed in part. The order of the Railway Administration dated 1.9.1978 refusing to grant benefits to the petitioner is hereby quashed. The respondents are directed to treat the petitioner as having continued on the post of Asstt. Foreman upto the date of his re-employment as Proof Reader and count the service rendered by him for all intent and purposes including the terminal benefits. The respondents are directed to settle the monetory claim of the petitioner within thirty days of the communication of the order and pay the same to the heirs of the petitioner impleaded in the present Writ Petition. The parties are left to bear their own costs.

Member (A)

Member (J)

Feb: 14, 1992.

(DPS)