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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1342 of 1992

Allahabad this the 4th day of June 1996

Hon'ble Dr. R.K. Saxena, Member (Jud.)

Jugnarain, S/o Late Sri Satnoo R/o Village Rasauli,
Post Office-Jigna, District Mirzapur.

A PPLICANT

By Advocate Sri P.K. Kashyap

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Senior Divisional Personnel Officer, Northern Railway, Allahabad.

RESPONDENTS.

By Advocates Sri A.K. Gaur
Sri K.D. Pandey.

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J)

This application has been moved under Section 19 of the Administrative Tribunals Act, 1985. The contention of the applicant is that he was appointed as Gangman on 15/8/57 and retired from service on 30/6/92. The applicant was not given pensionary benefits and the period of service from 15/8/57 to 16/9/78 was not counted towards the qualifying service and no reason was given. Hence, this O.A. is filed with the relief that the directions be given to the respondents to pay monthly pension

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and other pensionary benefits to him and to pay the gratuity. The leave salary amount has also been asked.

3. The respondents contested the case on the ground that the applicant was, no doubt, appointed on 15/8/57 but he absented himself w.e.f. 03.1.1972. He was, therefore, removed from service. Subsequently, the applicant was re-appeared in the department on 15/6/78 and he was given fresh appointment w.e.f. 17/9/78. In this way, the service which was rendered prior to the date of re-appointment, could not be taken into consideration. The total service of the applicant at the time of his retirement, was only 13 years, 9 months and 13 days. Out of this period, the period of leave without pay totalling 9 years, 9 months and 3 days has been deducted and the balance comes of 4 years and 10 days of service. Thus, the applicant is not entitled to the pensionary benefits and other benefits.

4. The applicant furnished rejoinder denying his absence from 03/1/72 to 16.9.78 on the ground that neither any charge-sheet was given nor was any show-cause notice issued. The contention made by him is that in case an employee absents himself from duty, he would definitely be charge-sheeted. Thus, the plea of absence taken by the respondents is claimed, not maintainable.

5. I have heard the learned counsel for the parties and have perused the record.pg.3/-

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6. It is admitted fact that the applicant was taken in service on 15/8/57. The respondents have come with a case that the applicant had absented himself from duty w.e.f. 03.1.1972 and did not discharge any duties for about more than 6 years. The learned counsel for the applicant, no doubt, argued that the plea of absence from duty should not be considered and believed because neither was given any charge-sheet nor was served any show-cause notice. This fact could have been of some substance if the applicant had challenged the order of termination of service at the relevant period of time. He kept quiet² in the year 1978 and he accepted the letter of re-appointment w.e.f. 17.9.1978. It is, therefore, not possible for the applicant to raise the issue of illegality of order of removal from service at this stage.

7. The applicant, as is disclosed by the respondents, was given fresh appointment and he joined on 17/9/78. He retired on 30/6/92. During this period, the applicant again absented himself and remained on leave without pay. According to the² provisions of Manual of Railway Pension Rules, 1950, the period of leave without pay shall be excluded from qualifying service. On deduction of the period of leave without pay, only service of 4 years and 10 days comes to the credit of the applicant. Thus, in view of the rules, he has not² qualifying the service for pension and he was not entitled for the same.

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8. The respondents have come with the statement that the payment of gratuity, leave salary and provident fund which was found due, was paid to the applicant. The correctness of this statement, has not been controverted by the applicant.

9. In view of the facts mentioned above, I am of the view that there is no merit in the O.A. and the same is dismissed, No order as to costs.



Member (J)

/M.M./