

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

O.A. No.853/93

Allahabad, this the 24 th day of Feb., 1999.

CORAM : Hon'ble Mr. S.L.Jain, Member(J).

Sri Jiya Lal, S/o. Sri Jagannath, Ex-Safaiwala,
under C.T.X.R., Northern Railway, Kanpur,
R/o. Village : Umrai Purwa, P/o Barouli,
District : Farrukhabad.

.....Applicant.

(By Shri Anand Kumar, Advocate)

Versus

1. Union of India through General Manager,
N.Rly., Baroda House, New Delhi.
2. Divisional Railway Manager, N.Rly., Allahabad.
3. Divisional Personal Officer, N.Rly. Allahabad.

.....Respondents

(By Shri G.P.Agrawal, Advocate)

O R D E R

(By Hon'ble Mr. S.L.Jain, Member[J])

This is an application under Section 19 of the Administrative Tribunal Act, 1985 for issuing of a direction in the nature of Mandamus commanding the respondents to grant pensionary benefits computing the total service of the applicant computing period from 26-2-67 to 26-12-85 with compound interest @ 18% per annum on the arrears.

2. There is no dispute between the parties in respect of the fact that the applicant was appointed as Safaiwala on 28-2-67, he worked upto 20-8-78, thereafter he was discharged from service, appointed on 11-8-79 and worked upto 26-12-85 and he is not provided with any pensionary benefits.

S.L.J.

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3. The applicant's case in brief is that he was appointed in regular vacancy on 28-2-67, worked upto 20-8-78. He proceeded on leave for three days as his wife was serious at his village and he could not come after expiry of three days leave, but informed regarding her illness and his inability to come on duty due to the said reason. He reported on duty after sometime when his wife was in a better condition. He came to know that he has been removed from service without any show cause notice or action under Railway Servant (Disciplinary & Appeal Rules, 1968, the order is void ab initio, arbitrary and contrary to the provisions contained under Article 311(2) of the Constitution of India. Therefore he represented against the illegal termination from service. On a direction from the Railway Board he was reinstated in service on 11-8-79 as Safaiwala under Chief Train Examiner, Northern Railway, G.M.C. Kanpur and thereafter he continuously worked without any complaint or break in service. The applicant took three days leave alongwith due rest on 21-8-94 and went to his native house to see his family, but unfortunately decoity was committed at his house and in the firing by the decoits he suffered injury in both the eyes. He was under treatment of Northern Railway Loco Hospital, Kanpur, but he was discharged from service being unfit in all categories. He applied for pensionary benefits. He was paid Provident Fund, Group Insurance, but no pension. He is entitled for pension and other consequential benefits. Hence this O.A. for the above said reliefs after exhausting departmental remedies.

4. The respondents denied the said allegations and stated that as the applicant has not rendered qualifying service of 10 years he is not entitled for any pension in view of rule 623 MOPR. The claim of the applicant is barred by time. He was reappointed on 11-8-79 on his representations hence there was no continuity of service. Therefore they prayed for dismissal of O.A. alongwith cost.

P. V. M.

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5. The grievance of the applicant that he was removed from service without any show cause notice or action under Railway Servant (Discipline & Appeal Rules) 1968 which is void ab initio, arbitrary and contrary to the provisions contained under Article 311(2) of the Constitution of India, cannot be agitated now after a period of 22 years from the said action of the respondents. An order which is arbitrary, contrary and for the said reason void, deserves to be set aside. If no action is taken for the same the applicant is not entitled to agitate the same after expiry of about 22 years - the period which lapsed in passing the order and in filing the O.A.

6. In fact the applicant was not reinstated in service, but he was reappointed. Order dated 12-5-79 annexure-CA2 specifically mentions that "let him be considered for reappointment" and in pursuance of the ^{same vide} void annexure-CA3 on 3-8-79 he was reappointed. Thus the fact that he was reinstated is false to the knowledge of the applicant himself.

7. In the circumstances his period of service commencing from 11-8-79 to 26-12-85 is less than 10 years. Hence he is not entitled to any pensionary benefits. In view of rule 623 MOPR which specifies that pension is granted to Railway Servants who completed 10 years service or more qualifying service. The applicant was provided with gratuity which he was entitled.

8. The applicant in para 13 of R.A. claims a circular in his favour regarding pension for persons who have rendered service of less than 10 years. He has neither mentioned the No. and date of issue of the said circular nor placed the circular on record and at the time of final hearing of the case no such circular has been placed before the Bench.

P.V.M?

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9. In the circumstances I do not find any reason to grant any relief to the applicant. In the result O.A. is liable to be dismissed and is dismissed. No order as to cost.

S. L. Datta

MEMBER(J)

Satya/