

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 49 OF 2004
ALONG WITH O.A. 1148 OF 2003
AND O.A. 1149 OF 2003

ALLAHABAD, THIS THE 8th DAY OF July 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(S)
HON'BLE MR. S. C. CHAUHAN, MEMBER(A)

Deba Prasad Biswas
aged about 56 years,
son of Shri Janardhan Biswas,
resident of at present posted as C.I.T.,
Kanpur.

....Applicant in O.A.
49/2004

(By Advocate: Shri K.K. Mishra)

ALONG WITH

Daya Prasad,
aged about 65 years, s/o Late Shukhi,
r/o village Arai Sumerpur, P.O. Bawana,
District-Kaushambi.

....Applicant in O.A.
1148/2003

(By Advocate: Shri K.K. Mishra)

ALONG WITH

Dinkar Rai Pandey
aged about 62 years,
s/o Late Shri Sheo Kumar Pandey,
r/o Nagar Panchayat Sirathu,
Ward No.4, Post Sirathu,
Kaushambi.

....Applicant in O.A.
1149/2003

(By Advocate : Shri K.K. Mishra)

VERSUS

1. Union of India through General Manager,
North Central Railway, Allahabad.
2. General Manager (Personnel),
North Central Railway, Allahabad.
3. Divisional Railway Manager,
North Central Railway, Allahabad.
4. Senior Divisional Personnel Officer,
North Central Railway, Allahabad.
5. Senior Divisional Commercial Manager,
North Central Railway, Allahabad.

....Respondents in all the O.A.s

(By Adv. Shri A.K. Pandey)

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ORDER

By Hon'ble Mrs. Meera Chhibber, Member (J)

All the three D.As involve common grievance and identical relief is sought by them, therefore, with the consent of all the advocates, these cases are being disposed of by a common order.

2. Grievance of all the three applicants in this case is that their request for condoning the break in service from 12.03.1981 to 14.03.1981 has been rejected by the impugned letter dated 04.09.2003 being time barred even though the cases of all other Ticket Checking Staff who had joined the strike in March 1981 have already been condoned.

3. The admitted facts are that on 11.03.1981 there was some dispute between administration and the commercial side staff of Allahabad, Aligarh Jn., Kanpur and Tundla. As a result of it all ticket checking staff about 202 employees went on strike from 12.03.1981 to 14.03.1981.

4. According to the respondents the department had issued a letter dated 22.06.1981 whereby break in service was imposed on all the employees who were on strike. Applicants' names are at Sl. No.18, 20 and 21. Thereafter, their period of service has been shown only from 15.03.1981 to the date 2 applicants superannuated. Shri Gaya Prasad retired on 30.09.1997 while Shri D.R. Pandey retired on 30.08.2002. Shri D.P. Biswas is still in service. Their service prior to 12.03.1981 was forfeited as a result of break in service. They have further submitted that Shri Gaya Prasad and Shri D.R. Pandey never requested the authorities to condone the break of service during their service and represented only after retirement, therefore, their request has rightly been rejected on the ground of limitation.

5. The affected staff who had applied for condonation as per instructions dated 26.06.1983 were referred to the Rly. Board, their cases were considered and break in service was condoned with ^{the} sanction of President, thus, applicants cannot claim parity with those persons who had requested for condonation of break in service in time. Counsel for the respondents, thus, submitted that these O.A.s may be dismissed on the ground of limitation and being time barred cases.

6. We have heard all the counsel and perused the pleadings.

7. It is seen that impugned order was passed in respect of 4 persons viz. Shri Gaya Prasad, Shri D.R. Pandey, Shri D.P. Biswas and Shri Surendra Bahadur. All the applicants filed separate O.A.s. The case of Surendra Bahadur bearing O.A. No.1284/03 was heard on 10.05.2004. In his case also respondents had taken the same stand that he did not apply for condonation of break in service in time, therefore, his case was rightly rejected being time barred. It was stated by respondents that applicant applied for the 1st time on 03.07.2000 in that case, therefore, the relief may be rejected. However, Tribunal passed a detailed judgment on 10.05.2004 observing therein as under:-

"Since notice of this type entailed serious consequences as regards the applicant. It was expected of respondents as an ideal employer to have issued separate notices to those employees who were to be awarded the break in service as decided by the authorities. Tribunal relied on the Judgment of Hon'ble Supreme Court in the case of Shiv Shankar & Another Vs. U.O.I.& Ors. reported in AIR 1985 SC 514 wherein it was held as under:-

"Railway Establishment Manual, Paras 1301 and 1304 - Forfeiture of past service for participation in illegal strike - No opportunity of showing cause against proposed action given to



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concerned employees - Order of forfeiture is liable to be quashed on ground of non-observance of principles of natural justice. (Constitution of India Acts. 226, 311; Natural justice - Forfeiture of past service).

8. In view of the above judgment it was held by the Tribunal that there has been violation of principles of natural justice. Therefore, the O.A. deserved to be allowed. The impugned order dated 5/8-09-2003 was quashed and respondents were directed not to treat the period from 12.03.1981 to 14.03.1981 as break in service. It was held that applicant would be entitled to count his service benefits from 01.06.1962 till 30.06.2002 the date on which he superannuated with all consequential benefits including the post retirement benefits. Shri Surinder Bahadur had also retired already.

9. We had asked the counsel for the Respondents categorically whether respondents had accepted the judgment given in case of Surender Bahadur or it was challenged in the High Court. Counsel for the respondents was not able to throw any light on this aspect. Since we have not been shown any order by which the judgment passed by Tribunal has either been set aside or stayed, it is presumed that the judgment dated 10.05.2004 passed in O.A. No. 1284/03 in the case of Surendra Bahadur has attained finality.

10. Once the judgment given in identical case has attained finality, there is no reason or justification why the same relief should not be given to the other similarly situated persons unless it is shown ^{that is} ~~how~~ these cases are different from the case of Surendra Bahadur.

11. It is settled law by now that similarly situated persons should not be discriminated atleast in courts. In case

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of Surendra Bahadur also he had requested for condoning break in service after 18 to 20 years and he was also retired and out of 3 cases in hand 2 persons have retired while Biswas is still in service, therefore, the same ratio would apply in these cases also.

12. In all the 3 cases before us, applicants viz Shri Gaya Prasad had initially joined the service in 1961. He was promoted as T.C. on 1978. He retired on 30.09.1997 meaning thereby that if there was no break in service, applicant had put in almost 36 years of service but due to break in service from 12.03.1981 to 14.03.1981 applicant's service prior to 14.03.1981 has been totally wiped out and his pension has been calculated on the basis of 16 years of service only i.e. from 15.03.1981 to 30.09.1997. In other words benefit of 20 years service has been denied to Shri Gaya Prasad.

13. Similarly Shri U.R. Pandey had initially joined the service in 1962 as a porter. He was promoted as T.C. in June 1978 and retired on 30.08.2002 meaning thereby in normal course his service would have been about 40 years but due to break in service his pension has been computed by treating his service of about 21 years only i.e. from 15.03.1981 to 30.08.2002. In other words his 19 years of service has been totally wiped out.

14. As far as Shri D.P. Biswas is concerned he joined as T.C. on 20.12.1977 so he was promoted as conductor. He is presently working as CIT at Kanpur. In case break in service is not set aside, he would be deprived of his service of about $3\frac{1}{2}$ years after his retirement while fixing his retiral benefits.

15. At this juncture it would be relevant to quote the extract from judgment of Hon'ble Supreme Court in the case of Shri Shiv Shankar Vs. U.O.I. and Others wherein the question of

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break in service due to strike was the issue. It was held by Hon'ble Supreme Court relying on earlier judgments that an order with regard to the break in service which results in forfeiture of past service of a Railway servant cannot be made without observing the principles of natural justice. The Writ petitions were accordingly allowed by quashing the order of break in service.

16. In the instant case also though respondents have stated that they had issued the break in service order on 22.06.1981 but admittedly no show cause notice was issued before passing the said order. Moreover, applicants Gaya Prasad and D.R. Pandey have stated that they came to know about the effect of break in service after they retired, therefore, they represented which was rejected on 04.09.2003 by a common order. Applicants have challenged the order dated 04.09.2003 on the ground that break in service was condoned for all the other persons who had participated in strike therefore, they cannot be denied the condonation of break in service. Interestingly perusal of letter dated 29.05.2003 Pg.39 of O.A.1148/2003 shows that while recommending the case of all the 4 persons as mentioned above, DRM had himself requested the authorities to reconsider the cases as in case of Shri C.B. Mishra T.T.E. Kanpur and Shri Mohan Singh J.J.E. Kanpur also, break in service was condoned even though they had also not applied for condonation after delay and had not applied within the stipulated period. This letter clearly shows that earlier also Railway Board has condoned the ^{legit f/r} break in service of some employees who had participated in strike and had not even applied for condonation in time. It is, therefore, not the 1st case where applicants had given the request after delay. In fact counter of respondents filed in the case shows that as many as 202 employees had been given the benefit of condonation of break in service, which shows that

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as a policy it was decided in principle to condone the break in service, therefore, simply because applicants had applied late for condonation, it should not have been rejected. After all the effect of break in service would be only after retirement for computing the retiral benefits. Since in all other cases it has already been condoned, we feel it should be condoned in case of applicants as well. These cases, therefore, cannot be rejected on the ground of limitation alone.

17. In view of the above discussion the order dated 04.09.2003 is quashed. In normal course we would have remitted the matter back but since 2 applicants have already retired we are disposing off these O.As finally by directing the respondents to condone the break in service in respect of all the 3 applicants as well and give them all consequential benefits. The service be counted from the date of initial date of service for the purposes of computing their retiral benefits and 2 of the applicants be paid the difference of arrears after recalculation within a period of 3 months from the date of receipt of a copy of this order. Respondents shall give the due and drawn statement also to the applicants so that they ^{way} verify the position. As far as Shri D.R. Biswas is concerned, he is still in service, therefore, his records may be corrected by recording that break in service is condoned.

18. All the three O.As are accordingly disposed off with no order as to costs.