

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 12 DAY OF April, 2010)

PRESENT:

HON'BLE MR. A.K. GAUR, MEMBER - J

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

ORIGINAL APPLICATION NO. 361 OF 2003

(U/s, 19 Administrative Tribunal Act. 1985)

Manuwar Khan S/o Late Anwar Khan
R/o Muzafana Rahim Muhaddipur,
P.O.Hata, P.S.Hata District. *Kushinagar*

.....Applicant

By Advocate: Shri S.Srivastava.

Versus

1. The Union of India through Chief Personnel Manager, North-Eastern Railway, Gorakhpur.
2. The Chief workshop Manager, Mechanical workshop N.E.Railway, Garakhpur.
3. The Assistant workshop Manager, Mechanical workshop, N.e.Railway, Gorakhpur.

..... Respondents

By Advocate : Shri P. Mathur.

ORDER

DELIVERED BY HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

Heard both the parties counsel.

2. The applicant was initially appointed as Khalasi on 06.10.1979 and promoted as Fitter in the year 1994. Vide letter dated 21.5.2001. The applicant made a request for voluntary retirement giving a notice of three months. Subsequently he moved another request vide representation dated 28.8.2001, for counting leave period as extra ordinary leave and that the leave period may be taken into consideration for counting qualifying service. The applicant in Para 6

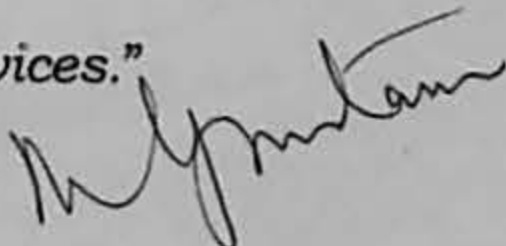
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of the O.A. has referred to order dated 07.09.2001 by which his leave was sanctioned as extraordinary leave for the purpose of annual increments and pension and the same was treated as qualifying service, but no copy of the above mentioned order has been filed by the applicant or the Respondents. When no action was taken by the respondents to his notice dated 21.5.2001, the applicant filed O.A. No. 1268/2002, which was decided vide order dated 02.12.2002 with a direction to the Respondents to decide the representation for voluntarily retirement as well as reminder thereto within a period of four weeks from the date of receipt of copy of the order.

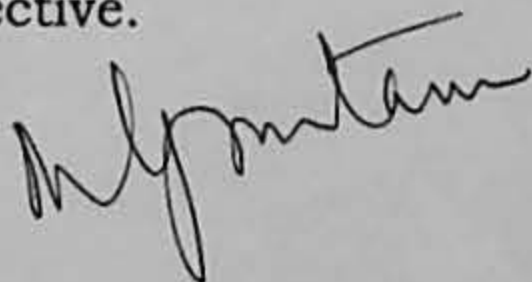
3. In pursuance of the same, impugned orders dated 04.1.2003 have been passed. The fact taken by the respondents in the impugned order is that qualifying period for giving notice for voluntary Retirement is 20 years of service whereas the applicant has put in only six years seven months and four days as per chart submitted by the Respondents alongwith Supplementary Affidavit placed as Annexure-2. It is clear that out of total period of service of 21 years, 7 months and 15 days the total period of leave without pay is 15 year and 11 days. Respondents have also qualified that leave without pay sanctioned to the applicant cannot be converted to extra ordinary leave on medical grounds as the medical certificates supplied by him are from Private Medical Practitioner, and not by recognized Railway Doctor.

The Rule regarding counting of period spent on leave reads as follows:-

"Leave during service for which leave salary is payable and all extra ordinary leave granted on medical grounds shall count as qualifying services."

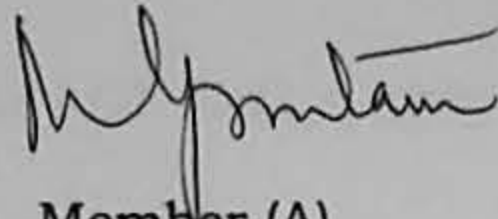


4. It is clear from the above that if the leave sanctioned to the applicant was extra ordinary leave on medical grounds, it would have been counted for qualifying service but according to the Counter Affidavit filed by Respondents it was not possible to convert leave without pay into extra ordinary leave on medical grounds for want of necessary formalities. The applicant in para 6 of the O.A. referred to orders 07.9.2009, but he has not placed the order on record and as such the position stated in the counter has to be accepted. After hearing both the parties counsel and perusing the record on file we are of the considered opinion that the applicant when he gave the notice for voluntary retirement did not fulfill the primary condition of having 20 years of qualifying service, as the leave of more that 15 years had been sanctioned to him as leave without pay and could not be counted towards qualifying service as Extra Ordinary Leave. Notice for voluntary retirement attains finality within three months of the issuance of the notice even if the notice is not accepted by the Competent Authority but the applicant has to fulfill the necessary condition of 20 years of qualified service in order to avail of this benefit. In this particular case it is true that within 3 months notice period given by the applicant, respondents did not either accept or reject the notice and in normal conditions the voluntary retirement would have attained finality after a period of three months, but in this particular case since the applicant did not fulfill the necessary condition of 20 years of qualifying service to make him eligible for applying for voluntary retirement, the notice dated 21.5.2007 cannot become effective.



5. In view of the fact that out of 21 years of service the applicant remained on leave for more than 15 years and worked for only six year, 7 months and 4 days is enough to make him non-eligible for making a request for voluntary retirement.

6. No case is made out for intervention in the matter. O.A. is accordingly dismissed.



Member (A)



Member (J)

/Shashi/