

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH  
N R W D E L H K

O.A. No. 194  
~~TAXON~~

1987

DATE OF DECISION 20-4-1990

Shri Mohmd Sadiq Shaikh Petitioner

Shri G.A.Pandit

**Advocate for the Petitioner(s)**

## Versus

Union of India & Another

### Respondent

Shri R. M. Vin

#### Advocate for the Respondent(s)

**CORAM**

The Hon'ble Mr. N. Dharmadhan

**Judicial Member**

The Hon'ble Mr. M. M. Singh

• Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

Mohmd Sadiq, Shaikh,  
retired S.M.Western  
Railways, Vyara, Bombay Division,  
present residing at Vyara taluka,  
Vyara district, Surat.

6  
Applicant

## Versus

1. Union of India  
Through:  
Western Railway, Churchgate,  
Bombay.

2. Divisional Railway Manager,  
Bombay Central, Western Railway,  
Bombay Central. : Respondents

Coram : Hon'ble Mr. N.Dharmadan : Judicial Member  
Hon'ble Mr. M.M.Singh : Administrative Member

ORAL ORDER

Date: 20/4/1990

Per: Hon'ble Mr. N.Dharmadan : Judicial Member

A retired station master is before us. His prayer in this application reads as follows:-

"Your Honour be pleased to issue mandatory direction to the respondents Railway Administration to grant the applicant all his dues and benefits available to him under Rules in the pensionary scheme applicable to the Western Railway employees.

Such other and further relief as may be deemed just and expedient in view of the facts of the case including costs of this petition".

The facts are as follows.

The applicant entered the railway service in 1954. In 1962 there was a break in service between 25.2.1962 to 9.6.1962. Subsequently the applicant retired from the railway service on 30.11.1986. His request for condonation of break in service was accepted by the railway and they have ~~been~~ passed an order dated 26.6.1980 condoning the break in service. The effect of the condonation of break in service is that the applicant will be deemed to be in continuous service from the date of his original appointment till his actual retirement and on the basis of the condonation of break in service the applicant is entitled to all pensionary benefits as ~~such~~ there is no

17

break in service.

But some further details are necessary for deciding the controversy arising <sup>in</sup> this case. After retirement the applicant represented before the railway that he wants <sup>to</sup> ~~consolidated~~ amount of pensionary benefits such as provident fund, DCRG, Commutation, Pensions, etc. in <sup>itself and by</sup> 1962, the railway had given the following sums:

1. Provident Fund	20813
2. DCRG	18780
3. Commutation	38874
4. Pension	540 + relief.

So thereafter the applicant was treated for pensionary benefits as a fresh appointee from the date of break in service. Though the applicant received all the pensionary benefits as indicated above he made a request after the condonation of break in service that his pensionary benefits should be calculated as if there is no break in service. This was considered and the DRM issued a communication dated 20.11.1986 which reads as follows:-

"Shri Mohd Saduq.. AM BBAI was removed from service from 23.2.62 AN and was reappointed as Rly. Th Sigr BGMR as a fresh recruit from 10.8.62. It is noticed that he was paid P.F. dues on his removal from service which he had not refunded on condonation of break in service from 25.2.62 to 9.8.92 by GM's office in 1980.

He is retiring from RLY. service on 30.11.86 AN. His service from 3.11.54 till date of retirement cannot be treated as continuous unless he refunds settlement dues. He may therefore please be asked to refund above dues to enable this office to settle him up after his retirement.

The learned advocate appearing for the railway brought to our notice a letter written by the applicant himself which is produced along with the reply affidavit as Annexure-I. This letter which reads as follows:-

17

"R/Sir,

: 3 :

8

" I the undersigned beg to state the following few lines of request for favour of your kind consideration. That break inservice from 22.2.62 to 9.8.62 by GM CCG in the year 1980, the condonation given to me for the break is not required by me and I am not going to pay P.F. dues paid to me in 1962.

Kindly arrange to consider my new service only i.e. from 1962 onwards and give me pension as per rules.

Thanking you,

Yours faithfully,

Sd/-  
Ex. RG ASM VYA"

According to us this letter is very important.

By this letter, which is written by the applicant on 1.12.1986, after the railway's stand as indicated above that if the applicant refunds all the amount which he had received towards the pensionary benefits he will be given the pension as if he has continuous service from 1954, he requested to give him the above consolidated amounts. In this letter he has stated in unequivocal terms that he will be satisfied with the fixation of his service for the purpose of pensionary benefits from 1962 onwards in accordance with the rule and grant him consolidated amounts. The railway has acted upon this request and made the payment to the applicant. Hence the aforesaid letter is having the effect of settling the balance and deciding the question of grant of pensionary benefits as per the rules. The applicant has also accepted the consolidated pension without any objection. So he cannot be now allowed to change his stand and claim pensionary benefits from 1954.

The applicant cannot be allowed to blow hot and cold. The amounts having been received at the time when he retired on the ~~fact~~ <sup>basis</sup> of his own request ~~he~~ <sup>and</sup> cannot now turn round <sup>take</sup> a different stand for getting more beneficial ~~and~~ <sup>more</sup> payments of his pension. In fact he thought it fit for his family benefits to receive

2  
8  
9

the consolidated amounts of Provident Fund, DCRG, etc. and he was satisfied about it. Accordingly the Railway also fixed it on the basis that he is a fresh employee after break in service on the basis of the crucial letter referred to above. Hence his ~~new~~ <sup>new</sup> ~~fresh~~ request in the application cannot be granted.

Under these circumstances, we are unable to grant the relief which is claimed by the applicant in this application. The application is disposed of. There will be no order as to costs.

  
(M.M. Singh)  
Administrative Member

  
(N. Dharmadan)  
Judicial Member

a.a.bhatt