

Yes  
Pensionary  
Benefit

(X)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No. 254 OF 1988.  
~~XXXXXXXXXX~~

DATE OF DECISION 20-9-1991.

Dr. Rajendra Singh Bhansali, Petitioner

Mr. Y.V. Shah, Advocate for the Petitioner(x)

Versus

Union of India & Ors. Respondents

Mr. N.S. Shevde, and Advocate for the Respondent(s)  
Mr. Sandeep Shah for Mr. Anil Dave.

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. S. Santhana Krishnan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
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*

(4)

Dr. Rajendra Singh Bhansali,  
Western Railway Hospital,  
Sabarmati,  
C/o. 733/A New Rly. Colony,  
Opp. Colony Post Office,  
Sabarmati, Ahmedabad-19.  
(Advocate: Mr. Y. V. Shah)

..... Applicant.

Versus.

1. The Secretary,  
Railway Board,  
Rail Bhavan,  
New Delhi.
2. Union of India, through  
The General Manager,  
Western Railway,  
Churchgate, Bombay-20.
3. Director of Medical Services,  
E.S.I. Scheme,  
3rd floor, ESIC Building,  
Ashram Road, Ahmedabad.
4. The Secretary,  
Ministry of Health &  
Family Welfare Deptt.,  
Government of Gujarat,  
New Sachivalaya,  
Gandhinagar.

..... Respondents.

(Advocate: Mr. N. S. Shevde for Resp.  
No. 1 & 2, Mr. Sandeep Shah for  
Mr. Anil Dave for Resp. No. 3 & 4)

J U D G M E N T

O.A.No. 254 OF 1988

Date: 20-9-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

This original application under section 19 of the Administrative Tribunals Act, 1985, has been filed because the respondents, to quote from the application :

"Neglected to condone the break of service and failed to count qualifying services rendered both under Western Railway and E.S.I.S. Govt. of Gujarat for pensionary benefits by Railways."

The following two reliefs are sought :

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"(A) Be pleased to direct the respondent no.1 and 2 to condone the period from 30.6.1973 to 1.8.1973 and to count the period of ad-hoc services rendered under Western Railway and Government of Gujarat for pensionary benefits by obtaining the consent from respondent no.4 to share the proportionate pensionary liability on service share basis for the services rendered by the applicant in State of Gujarat in view of Annexure A/4 and A/14.

(B) Be pleased to direct the respondent no.1 and 2 to re-fix the seniority of the applicant after counting his past services rendered in Western Railway from the date of his ad hoc appointment i.e. from 15.5.1971 in view of the recent judgment delivered by the Hon'ble Supreme Court of India on 24.9.1987 at Annexure A/14."

2. Respondent No.1 is the Secretary Railway Board and No.2 is the Union of India through the General Manager, Western Railway. Respondent No.4 is the Secretary, Ministry of Health & Family Welfare, Govt. of Gujarat.

3. Annexure A-4 is the copy of Ministry of Home Affairs letter No. 3(20)/Pen/A/79 dated 31.3.1982 on the subject of "Allocation of Pensionary liability in respect of temporary service rendered under the Government of India and State Governments." By this letter, the decision of the Government of India that :

"proportionate pensionary liability in respect of temporary service rendered under the Central Government and State Governments, to the extent such service would have qualified for grant of pension under the rules of respective Government will be shared by the Governments concerned on a service-share basis, so that the Government servants are allowed the benefit of counting their qualifying service both under the Central Government and State Governments for grant of pension by the Government from where they eventually retire. The gratuity if any, received

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by the Govt. employees for temporary service under the Central or State Governments will, however, have to be refunded by him to the Government concerned."

has been circulated. The Government servants claiming the benefit of this scheme are identified to be, to quote from the letter :

"(1) Those who having been retrenched from the service of Central/State Governments secured on their own employment under State/Central Govt. either with or without interruption between the date of retrenchment and date of new appointment,

(2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Govt. through proper channel with proper permission of the administrative authority concerned;

(3) Those who while holding temporary posts under Central/State Govts. apply for posts under State/Central Govt. direct without the permission of the administrative authority concerned and resign their previous posts to join the new appointments under State/Central Governments."

How the above categories are to be considered for the benefit of the scheme is stipulated in this letter as follows :

"The benefit may be allowed to the Govt. servants in categories (1) and (2) above. Where an employee in category (2) is required for administrative reasons for satisfying a technical requirement to tender resignation, from the temporary post held by him before joining the new appointment a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement to join, with proper permission the new post may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to

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enable him to get this benefit at the time of retirement. Govt. servants in category (3) will, obviously, not be entitled to count their previous service for pension."

The scheme is made applicable from the date of issue of the letter which is 31.3.82.

4. Annexure A-14 is the order dated 24.9.1987 of the Supreme Court in a group of W.Ps of 1987. The para of the order relevant to the matter herein is reproduced below :-

"The services of all doctors appointed either as Assistant Medical Officers or as Assistant Divisional Medical Officer on ad-hoc basis upto 1.10.1984 shall be regularised in consultation with the Union Public Service Commission on the evaluation of their work and conduct on the basis of their confidential reports in respect of the period subsequent to 1.10.1982. Such evaluation shall be done by the Union Public Service Commission. The doctors on regularised shall be appointed as Assistant Divisional Medical Officers with effect from the date from which they have been continuously working as Assistant Medical Officer/Assistant Divisional Medical Officer. The Railway shall be at liberty to terminate the services of those who are not so regularised. If the services of any of the petitioners appointed prior to 1.10.1984 have been terminated except on resignation or on disciplinary grounds, he shall be also considered for regularisation and if found fit his services shall be regularised as if there was no break in the continuity of service but without any back wages."

5. The break in the service from 30.6.1973 to 1.8.73 arose because, to quote from his application "The applicant had continuously worked as Asst. Medical Officer from 15.5.1971 to 30.6.1973 but under a notice of 14 days dated 16.6.1973 he was retrenched from service w.e.f. 30.6.1973 on the ground of surplus."

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This retrenchment has been <sup>questioned</sup> / as effected in violation of "Last Come First Go" and therefore violative of Articles 14 and 16 of the Constitution and judgment of Gujarat High Court reported in 21(1) GLR 997.


6. We have heard learned counsel for both sides and perused the record.

7. The retrenchment of the applicant with effect from 30.6.73 and the consequential break in service is the crux of the applicant's case for if it had not occurred or if it could be condoned, the grievance of the applicant would not have arisen at all or would have ended. It is the case of the applicant that the retrenchment was illegal. If held to be so the retrenchment and its consequence will legally disappear. We may look at this allegations from two angles. The first is from the angle of Tribunal's jurisdiction to give a decision on an alleged illegality committed in 1973. We are of the view that by provisions of Section 21(2)(a) of the Administrative Tribunals Act, 1985 the Tribunal cannot even admit an application which agitates about a grievance arisen prior to three years preceding 1.11.85, the date of the commencement of the exercise of the authority of the Tribunal. As such an application cannot even be admitted, it is obvious that we have no jurisdiction and authority to give our decision on such a grievance. The second angle from which we may look at it is whether any instruction, decision or rule of the competent administrative authority or decision of the Court is helpful to the applicant in getting the allegedly illegal termination set aside or in getting it rendered ineffectual condoned or ignored but respondents nevertheless not

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doing so. It is averred in the application that the "circular of the Ministry of Home Affairs dated 31.3.1982 for the purpose of pensionary benefits fully operative to the applicant". We have reproduced the relevant parts of the circular above. The circular does not at all stipulate nor its provisions imply that any break in service should be treated as condoned for the purpose of the application of the scheme. The Supreme Court judgment reproduced above directs steps for regularisation of service of those appointed on adhoc basis upto 1.10.1984 and if service of any of the petitioners appointed prior to 1.10.1984 terminated except on resignation or on disciplinary grounds, he shall also be considered for regularisation. The applicant may fall in the latter category. But not being petitioner in the Supreme Court case, cannot claim benefit of the order regarding his retrenchment in 1973, fourteen years before the filing of the petitions. The case of R.L. Marwaha V/s. Union of India & Ors. (1987 LLJ Vol.II SC 536) is about joining of temporary post service under Central Government with service in ICAR for Calculation of Pension and there is no observation in the judgment about treatment of break between leaving one service and joining the other perhaps because none was there. The case Natwarlal V. Shah Vs. Secretary Education Department, Government of Gujarat (1983 GLH (UJ) 58) is about a secondary school employee of Gujarat on different rules and instructions. In the case N.S. Padukone Vs. Union of India (ATR 1988(1) CAT 492), break in service was not the issue for decision but only question of counting of Railway, State and Central Government service for pension was. In the record before the Tribunal, in this case, it appears was the example of one Smt. D.Shringarpure in which case

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Railway service was counted by the Administration for pension and period of break in service treated as dies-non. These three cases being on different facts are distinguishable from the applicant's case with a break in service as the crux of the matter in it.


8. When a break in service has occurred due to retrenchment as in the case before us about 15 years before filing of the application in the Tribunal, for the reasons discussed above, the Tribunal has absolutely no jurisdiction to adjudicate on its legality and tenability as the matter lies outside the jurisdiction of the Tribunal. No provision that such a break should be presumed or deemed to have been condoned has been shown to us. On applicant's alleging discrimination on the ground that benefit given to overseer G.J. Bhambhaney has been denied to him, we make no observation as that case is not before us for our decision on the legality of the decision. Para 4 of Ministry of Finance O.M. dated 28.2.76 referred to in the rejoinder obviously covers cases where both pre and post break service is under the Central Govt. which is not the case of the applicant whose prebreak service was with the Railways and post break with the State Government of Gujarat. As the applicant had joined the Government of Gujarat service after the break, it should initially, in the normal sequence of events and decisions about those events, fall to State Government of Gujarat to decide whether the applicants' state service should be treated as continuous despite the break. Tribunal has no authority to give any direction to State Government about a State Government employee in this regard. When the applicant next came over to the Railway service with effect from 30.4.76, he obviously came over from

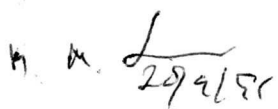
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State Government service which had not treated the applicant's previous spell under Central Government as joined and continuous to the service with the State. Thus the reliefs sought have to be held as unmerited on legal considerations and the application to be dismissed. We hereby do so but without any orders as to costs.

9. We, however, clarify that the respondents are at liberty to take a favourable decision in the applicant's case irrespective of our above order. We insert this clarification as it appears that the applicant's case is under consideration with the respondents.

  
(S. Santhana Krishnan)  
Judicial Member

  
(M. M. Singh)  
Administrative Member