

*Pension
(B2)
Jud.)*

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**O.A. No. 352 OF 1990. 198
T.A. No.**

DATE OF DECISION 9-7-1991.

Gajanan Chimanlal Upadhyaya, Petitioner

Mr. P.K. Pandya, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents.

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. R.C. Bhatt, 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 ? *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*

Gajanan Chimanlal Upadhyaya,
C/o. Mahendraprasad Chimanlal Upadhyaya,
Sachi Matani Khadki, Dakor,
Pin Code No. 388 225
Dist: Kheda.

..... Applicant.

(Advocate: Mr.P.K. Pandya)

Versus.

1. Divisional Railway Manager(E)
Western Railway, Rajkot.

2. The General Manager,
Western Railway,
Churchgate, Bombay.

3. The Union of India,
Copy to be served through
the respondent no.2.

..... Respondents.

(Advocate: Mr. B.R. Kyada)

JUDGMENT

O.A.No. 352 OF 1990

Date: 9-7-1991.

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

The applicant, a former employee of the Western Railway, had, on his own showing in the application, gone away to an unknown place in 1979 from his place of duty for mental peace in the face of matrimonial problems and was found by his brother in 1985. While he was so away to an unknown place, he was removed from service with effect from 10.9.80. After his brother found him out, the applicant addressed letter dated 18.9.1986 requesting the respondents for his dues and to have mercy on him. The respondents sent him a cheque towards payment of Provident Fund and blanks pension forms to be filled up under a covering letter dated 2.3.1988 which also mentioned that DEN-J-RJT has accorded sanction for 50% compassionate grant and allowance

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with effect from 10.9.80, the date of removal of the applicant from service. However, after the forms were filled and sent, the sanction did not follow despite representations and reminders and pursuing of the matter in pension adalat and through the association of retired pensioners. Ultimately DRM(E) Rajkot informed the applicant by letter dated 19.3.90 that his services cannot be certified in terms of paras 309 and 310 of the Manual of Railway Pension Rules and therefore the memorandum of above sanction on the basis of which forms to be filled up were sent to the applicant was withdrawn. The applicant has impugned this letter dated 19.3.90 in this application under section 19 of the Administrative Tribunals Act, 1985.

2. Though only the above letter has been impugned, the body of the application contains pleas to dispute earlier disciplinary orders and the way the applicant would like his absence to be treated without having challenged these orders at the relevant time or at all in any proper forum. The applicant had ~~started~~ service on 16.8.1963. He avers that he remained on duty upto 16.4.1979 and thereafter remained on leave for some uncertain period or remained absent for five years. While absence and its cause and duration is shown in the application, no mention of exact period spent on leave and document to show it was sanctioned has been produced by the applicant. He justifies his using of railway passes for his divorced wife for which default he was removed from service in 1980. He challenges the letter of 19.3.90 on grounds of nonapplication of mind; that pension can be affected only by future grave misconduct or conviction in crime; that the alleged act for which he was removed from service does not amount to misconduct; that compassionate pension once sanctioned

cannot be, unilaterally and without giving opportunity to be heard, be withdrawn. He has also advanced a preposterous ground that unless his post is substantively filled up, it has to be treated as lying vacant and his lien on the post has to be held as continued and, in any case, the break in service could have been condoned. He also claims the benefit of five years presumed addition to his service of 17 years which makes his service of 22 years for pension and benefit of computation of pension by merging a part of his dearness allowance to his pay. He has relied on precedents without taking pains to explain how these precedents apply to the facts of his case the salients of which are that the applicant was removed from service in 1980 by way of disciplinary action (which order unchallenged became final) after about 17 years of service which length of service does not make him eligible for pension. At this stage he leans on five years weightage provision which applies and is available to those seeking voluntary retirement and not to those removed or dismissed from service. The respondents asking the applicant to fill up pension forms on the ground that 50% compassionate grant allowance is sanctioned does not amount to issue of a pension payment order in his favour before the issue of which the respondents cannot be held to have sanctioned pension. It is stated in letter dated 2.3.88 that DEN-J-RJT accorded sanction for 50% compassionate grant. It is rightly replied by the respondents that pension settlement takes place only after the filled up forms are examined and pension payment order is issued. No such order came to be issued. Also Rule 309 pertaining to special consideration for grant of some pensionary benefits to those removed or dismissed from service applies to those who have become eligible for pension

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when removed or dismissed and not to the applicant with only about 17 years of service when removed. The applicant's counsels argument that he could not be deprived of pension sanctioned unless he is heard can at best be relevant when it is shown that the applicant is eligible for pension which came to be sanctioned and then the order came to be cancelled or withdrawn. His further argument that the pension sanctioned could not be deemed to him on account of the applicant's bad past service record is unacceptable for the same reason.

3. The application is thus totally devoid of merit and relief and grounds altogether without rational and legal basis. We hereby dismiss the application but, seeing the applicant's condition, without ordering costs against him.

R.C.Bhatt

(R.C.Bhatt)
Judicial Member

M.M. Singh
9/7/91.

(M.M. Singh)
Admn. Member

M.A./15/91

in

O.A./352/90

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
Hon'ble Mr. R.C. Bhatt .. Judicial Member

22.2.1991

Heard learned advocates Mr. P.K. Pandya and
Mr. B.R. Kyada, ~~xxxx~~ for the applicant and respondents.
Application for early hearing allowed. The main matter
O.A./352/90 may be posted for hearing in the month of
June, 1991. M.A./15/91 stands disposed of.

R.C.B
(R C Bhatt)

Judicial Member

P.H.T
(P H Trivedi)
Vice Chairman

*Mogera