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**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

RA/03/2000

In

OA/305/91

Date of Decision : 07-02-2000

Shri. N.M.Dhobi : **Petitioner (s)**

Mr.K.K.Shah : **Advocate for the petitioner(s)**

Versus

Union of India & Ors. : **Respondent(s)**

_____ : **Advocate for the Respondent(s)**

CORAM

The Hon'ble Mr.V.Radhakrishnan : Member(A)

The Hon'ble Mr. P.C. Kannan : Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

} No

Shri N.M.Dhobi,
Residing at B-8,
Bhagwati Park-II,
Nr.Gor No.Kuwo,
Maninagar(East)
Ahmedabad.

: Applicant

Advocate: Mr.K.K.Shah

Versus

1. Union of India,
Notice to be served through,
The General Manager,
Western Railway,
Head Quarter Office,
Churchgate,
Mumbai-400 020
2. The Divisional Railway Manager,
Divisional Office,
Western Railway,
Pratapnagar,
Baroda.

: Respondents

(Decision by Circulation)

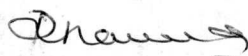
ORDER
RA/03/2000
In
OA/305/91

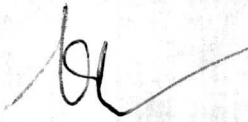
Date: 07/2/2000

Per: Hon'ble Mr.V.Radhakrishnan

: Member(A)

Orders in the OA have been passed after due deliberation and discussions at the bar and the learned advocate for the applicant had agreed that the benefit may be restricted to counting of service for pension only. Accordingly, we see no error apparent on the face of record of our judgment dated 20.8.99 requiring review. Hence, the RA is rejected.


(P.C.Kannan)
Member(J)


(V.Radhakrishnan)
Member(A)

OA/TA/RA/CP/MA/PT

of ~~199~~ 2000 in 04/30/91

N. M. Dhobi

APPLICANT (S)

VERSUS

Winn of 2nd 19 2.02

RESPONDENT (s)

I N D E X S H E E T

[illegible]

Certified that the file is complete in all respects.

Signature of S.O. (J)

Signature of Deal. Hand.

20/03/2000

RA/SH/32/88

1. Judgment / Order by

- (i) Hon'ble Mr. V. Raelhakrishna Member
(ii) Hon'ble Mr. P.C. Kannan Member

2. Both the aforesaid Members are functioning in this Tribunal.

2. Hence to be placed before the said Members i.e.

- Hon'ble Mr. V. Raelhakrishna Member
Hon'ble Mr. P.C. Kannan Member

3. Hon'ble Mr. _____ still belongs to Local Bench but Hon'ble Mr. _____ is now a Member/V.C. of _____ Bench.

3. Hence may be sent for consideration by circulation to the said Members i.e. Hon'ble Mr. _____ and Hon'ble Mr. _____

4. Both the aforesaid Hon'ble Members have ceased to be Members of the Tribunal.

4. Hence to be placed before Hon'ble V.C. for constituting a Bench of any two Members of this Bench.

5. Hon'ble Mr. _____ has ceased to be Member of Tribunal but Hon'ble Mr. _____ is available in this Bench.

5. Hence may be placed before Hon'ble V.C. for constituting a Bench of Hon'ble Mr. _____ who is available in this Bench and of any other Member of this Bench for preliminary hearing.

6. Both the aforesaid Members are now Members of other Benches namely _____ and _____ Benches.

6. May be placed before Hon'ble V.C. for sending the R.A. to both the Members for consideration by circulation. If one of the Members is of the view that the petition merits a hearing, reference may be made by Hon'ble V.C. to the Hon'ble Chairman seeking orders of the Hon'ble Chairman.

7. The case is not covered by any of the above contingencies.

7. Therefore, orders of the Hon'ble Chairman are required to be obtained by Hon'ble Vice Chairman.

Obj removed By Mr. at 03-1-2000

K Patel
03-1-2000 use

S.O.C.T. 23-1-2000
Per: M(A) and is on leave
upto 23-1-2000.
per 3-1-2000

3/1/2000
D.R. (J)

Hon'ble V.K.

3/1/2000

DA/03/200

RA/ST/32/98.

Submitted,

The ADP ADV file
Review ADP, for clarifying and
modification of the judgment
dt 20.8.98.

In this ADP, on scrutiny following
objections; seen in the matter:-

- ✓ Index-sheet not completed
with page no.
- ✓ 2. Copy not served on other side.
- ✓ 3. Date not given at the bottom
of the application.
- ✓ 4. Vakalatnama filed without
date. (Mr. K.K. Shah)

* Notification place with (date)
for signature.

Wfated
15/10/98

S.O. GJ
PG
18/10/99

S. 15/10/98
DL(1)

Resubmitted,

Obj. does not comply fill below,
if appeared, matter will be
place u.o.f.d

12/11/98
BKL

no in
AD Board
on 26-11-98
15-11-98

Resubmitted,

Above obj. removed
by ADV today; it
appeared as to be registered.
& place.

03-1-2000

SOC
PG 12/12/99
DY Regd

15/11/98
DL(1)

File with Smt Bsmee
L. other scrutiny sec.
Sgt 05.1.2000

12/12/99
place with on 305/99

04/305/99
plan

PG 13/12/99

13/01/2000

SOC

Kiran Patel

200/32/99

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

R.A.NO.

03

OF 1999

200

IN O.A.305/1991

N.M.DHOBI

....APPLICANT

V/S

UNION OF INIDA & OTHERS

....RESPONDENTS.

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FILED BY KIRAN K.SHAH,

ADVOCATE

Copy to
K.K. Shah
for
3/1/99

Filed by Mr. K.K. Shah
Learned Advocate for Petitioner
with supporting & ...
copies of ...
order side

20/9/99

By Registrar G. & ...
...

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AHMEDABAD

R.A. NO.

03- OF 1999

2000-

IN

O.A. NO. 305/91.

N.M. DHOBİ.

... Applicant

Versus

Union of India & ors.

... Respondents.

DETAILS OF APPLICANT :

N.M. DHOBİ,

Residing at B-8, Bhagwati Park-II,
Nr. Gor No Kuwo, Maninagar(East),
Ahmedabad.

DETAILS OF RESPONDENTS:

1. Union of India,

Notice to be served through

The General Manager, Western Railway,

Head Quarter office, Church Gate,

Mumbai-400 020.

2. The Divisional Railway Manager,

Divisional Office, Western Railway,

Pratapnagar, Baroda.

Application for clarifying and
Modification of the judgement
dated 20.8.1999.

MOST RESPECTFULLY SHEWETH THAT :-

1. The applicant has challenged the impugned decision of the Railway by not condoning the break in service after setting aside the penalty of removal. The applicant challenged the same by preferring O.A. No.305/91. The applicant respectfully submits that this

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Hon'ble Tribunal was kind enough to allow the application by treating the service as continued and /or directed the respondents to count the service of the applicant by computing the period from the date of his initial appointment i.e. from 31.12.1958 to 31.12.1996, which period shall be added to the period from 18.4.1978 until his date of his retirement and shall be counted for the purpose of his pension and other retirement benefits.

2. The applicant in his Original Application has prayed for to quash and set aside the order dated 12.4.1990 which was communicated to the Union vide letter dated 17.7.1990 and have also requested the Hon'ble Tribunal to direct the respondents to treat the services of the applicant as continuous. The Hon'ble Tribunal while allowing the application have directed the respondents to treat the services of the applicant as continuous and it appears by oversight that the direction with regard to the consequential benefits on the basis of merger of two spell of service is not ordered specifically nor the reasons for the same is given. As a result, the applicant despite considering as continuous employee but in absence of any order of consequential benefits, his seniority, promotion and arrears of pay etc. will remain in confusion for implementing the judgement.

The Hon'ble Tribunal was kind enough by not rejecting the said relief, it means that on counting the continuous service, the consequential reliefs to be

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construed deemed to have been granted. But when the applicant served the copy of the judgement to the respondent authorities and subsequently on inquiring from the department, he was orally informed that the Hon'ble Tribunal has only directed for the purpose of his pension. The fact is that when the applicant moved the original application, he was in service and not retired and he was retired on 30.6.1996 only and by ordering specifically consequential benefits on condoning the break in service, the applicant lost two promotions when his juniors were promoted. The applicant in the scale of 1600-2660, if this consequential relief will be added, he will be retiring in 2375-3500 and in between period, he would also have got the benefit of promotion from the date of his juniors have been given.

3. The Hon'ble Tribunal also failed to quash and set aside the Annexure-A. So in absence of quashing and setting aside, the respondents may say that the impugned order are still standing in the way of the applicant to get implemented judgement.

4. The applicant further submits that the judgement relied by the Hon'ble Tribunal in O.A. No. 195/91) which was also the matter of year 1991) wherein the Hon'ble Tribunal was pleased to decide the similar issue as stated in para 4 and where it is mentioned that "the applicant was given the relief with regard to continuity of service for the purpose of pensionary and other benefits".

5. In view of the aforesaid facts and circumstances of the case, the applicant, herein, therefore, prays that :

(A) The Hon'ble Tribunal be pleased to consider the case of the applicant for releasing his usual promotion based on seniority and promotion, in the interest of justice and direct the respondents to revise the pension of the applicant accordingly and the consequential benefits may kindly be granted.

(B) Any other further order or direction as may be deemed fit, just and proper, in the interest of justice may kindly be granted.

Place : Ahmedabad.

K.K. Shah

Date : 20-9-99

Advocate for the Applicant.

- : A F F I D A V I T : -

I, N.M. Dhobi, aged about 61 years, residing at B-8, Bhagwati Park Society-II, Nr. Gor No Kuwo, Maninagar(East), Ahmedabad, do hereby solemnly affirm and state on oath that what is stated hereinabove is true to the best of my own knowledge, information and belief and I believe the same to be true.

SOLEMNLY AFFIRMED AT AHMEDABAD ON THIS 18 DAY OF SEPTEMBER, 1999.

(D E P O N E N T)

Identified by me;

Kiran K. Shah, Advocate.

Shri N.M. Dhobi has signed and affirmed before me on 18/9/99 at ahemdabad.

in Shah

Am A 5

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

:Date of Decision: 20 .8 .99

OA .No.305/91

Mr.N.M. Dhobi : Petitioner (s)

Mr K.K. Shah : Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

Mr N. S. Shrivastava : Advocate for the respondent(s)

CORAM

Hon'ble Mr. V. Radhakrishnan : Member (A)

Hon'ble Mr . P.C. Kannan : Member(J)

Handwritten signature

Shri N.M.Dhobi,
Char Kuwa Bhagol,
At PO Sojitra

: Applicant.

Address for service of notice
C/o. Shri Kiran K. Shah
3, Achalayaten Soceity, Div. II,
B/H Memnagar Fire Station
Naranpura, Ahmedabad-380 009.

Advocate: Mr. K.K. Shah

Versus

1. Union of India,
Notice to be served through:
General Manager, Western Railway,
Churchgate, Bombay.

2. DRM, Baroda Division,
Pratapnagar,
Baroda.

: Respondents

Advocate: Mr. N.S. Shevde

JUDGMENT
OA/305/91

Date: 20/8/99

Per: Hon'ble Mr. V. Radhakrishnan : Member(A)

The applicant was recruited with the respondents in 1957 as a Signaller. The respondents promoted him in December, 1974 to the post of ASM against the quota for reserved candidates. The applicant refused the promotion on the ground that he was recruited against general category and not against reserved category. Subsequently he was charge-sheeted. As per charge-sheet Annexure A-1 the advantage for original recruitment in the reserved quota he was showing himself as S.C.

The applicant denied the charges. The respondents conducted an inquiry and on the basis of inquiry report, he was issued penalty of removal from service vide order dated 3.12.76 (Annexure A-7). The applicant then made an appeal to the Divisional Superintendent, Baroda. After rejection of the appeal he applied for review to the Reviewing Authority i.e. DSO, BRC to review the punishment and reappoint him in service. (Annexure A-11). Thereafter, the applicant made a representation to the General Manager, Western Railway to restore him in the original status along with consequential benefits. The General Manager refused to accept his prayer. The applicant also gave one more representation to the General Manager and also to the Railway Board. The Railway Board also disposed of his representation. The matter of condonation of break in past service of the applicant also taken up by the Union which was also not accepted. Consequently, the applicant lost his past service extending for more than 18 years from 31.12.58 to 31.12.76 and he was treated as a fresh entrant from 18.4.78 when he was re-appointed. Due to the loss of 18 years service, the applicant has lost chances of promotion and also lost by way of reduced retirement benefits. Accordingly, he has prayed for the following reliefs:-

- (1) The Hon'ble Tribunal may be pleased to quash the order No.E(REP)/1-89-12-19/545 dt. 12.4.90 communicate to Union vide letter dt.17.7.90 according to which it has been conveyed that as matter of policy break in service cannot be condoned in cases of dismissal removal, etc. because the original punishment of removal has been set aside and the applicant has been reappointed on his past post and Hon'ble Tribunal be pleased to direct the Respondents railways to treat the service of the applicant continuous with all consequential benefits of the past services.

(2) The Hon'ble Tribunal may be pleased to allow this application with cost.

(3) The Hon'ble Tribunal may be pleased to issue other orders or directions as may be deemed fit."

2. The respondents have filed a reply. They have stated that the applicant had shown his community as S.C in his application. They have stated that the applicant failed to point out the fact that he does not belong to such caste. He was issued charge-sheet for showing wrong information at the time of appointment and after inquiry he was removed from service. The appellate authority rejected his appeal but the reviewing authority after reconsidering his case treated him as afresh entrant from 18.4.78. The representation of the applicant for condoning of break in service have been considered and rejected by all the authorities of the respondents. They have stated that the break in service of the applicant is from the date of removal up to the date of reappointment i.e. 1.1.1977 to 17.4.78. Accordingly, his earlier service from 31.12.76 will not count for any purpose. They have stated that the applicant was re-appointed as a fresh employee on humanitarian consideration. His pensionary and other benefits will be counted from the date of his re-appointment. Accordingly, they have prayed for rejection of the application.

3. The applicant has filed rejoinder, wherein he has reiterated most of the points raised in the O.A.

4. We have heard both the learned advocates and gone through the documents on record. The question is to be considered and decide in this case as to whether break in service in the case of the applicant after he was removed from service and subsequently appointed afresh will be condoned. In the case decided by Jabalpur Bench of CAT in OA/395/91 wherein the question to be decided was similar as to whether the applicant who was Ticket Collector was removed from service and re-appointed as a fresh entrant and who had completed 16 years service was not given

the benefit of past service. The Tribunal observed the decision of the Hon'ble Supreme Court that whatever may be the reason for his reemployment the respondents obviously condoned the lapses in calling him back to duty and it is usual relief available to these circumstances to give continuity of service for the purpose of pension. Accordingly the applicant was given the relief with regard to continuity of service for the purpose of pensionary and other benefits. We may also refer the judgment of the Hon'ble Supreme Court in U.P. Awas evam Vikas Parishad v. Rajendra Bahadur Srivastava and another 1995 Supp.(4) SCC 76 wherein it was decided that whether termination of service was followed fresh appointment or after employee had given undertaking not to claim benefit of past service. The employee was entitled to computation of the period from the date of initial appointment for the purpose of pensionary benefits only and to no other relief. Having been graded by the above Hon'ble Supreme Court's judgment, and taking into account the facts and circumstances of the case, we pass the following order:-

The applicant is entitled to computation of the period from the date of his initial appointment i.e. from 31.12.58 to 31.12.96 which period shall be added to the period from 18.4.78 until his date of his retirement and shall be counted for the purpose of his pension and other retirement benefits. This shall be done by the respondents within three months from the date of receipt of a copy of this order.

5. With the above order, OA stands disposed of. No costs.

Prepared by
Back and
Compared by 18/25/8
Date of file
True Copy

Sd

(P.C.Kannan)
Member(J)

9/25/84
प्रमाणित (सी.)
आदेश (सी.)
प्रमाणित अधिकारी
उपस्थित न होने पर
प्रमाणित अधिकारी

Sd

(V.Radhakrishnan)
Member(A)