

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

**O.A.NO.** 208/1992  
**TAXNO.**

**DATE OF DECISION** 10.6.98

Prabhulal J. Brahmbhatt

Petitioner

Mr. M.M.Xavier

Advocate for the Petitioner [s]

**Versus**

Union of India and others

Respondent

Mr. R.M.Vin

Advocate for the Respondent [s]

**CORAM**

**The Hon'ble Mr.**

**V.Ramakrishnan, Vice Chairman**

**The Hon'ble Mr.**

**Laxman Jha, 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 Lerdships wish to see the fair copy of the Judgment ?

Whether it needs to be circulated to other Benches of the Tribunal ?

Prabhulal J. Brahmbhatt  
Sr. Booking Clerk, Gondal  
Bhavnagar Para Division

Residential Address,  
Railway Colony, Block No.4/T-G  
Gondal.

Applicant

Advocate: Mr. M.M.Xavier

Versus

The Union of India, Owning &  
Representing Western Railway  
Through its General Manager,  
Churchgate, Bombay.

2. The Chairman Rly. Board,  
Rail Bhavan, New Delhi.  
Through The Secretary, Estt.,  
Railway Board, New Delhi.

3. The Divisional Railway Manager  
Western Railway, Bhavnagar Division,  
Bhavnagar Para

Respondents

(Notice to be served through  
Divisional Comm. Supdt.. (Estt.))

Advocate: Mr. R.M.Vin-

ORAL ORDER

IN

O.A./208/1992

Dated 10/6/1998

Per Hon'ble Mr. V.Ramakrishnan, Vice Chairman:

We have heard Mr. Xavier for the applicant  
and Mr. Vin for the Railway Administration.

2. The applicant joined Railway Service on 13.7.56.  
He remained unauthorizedly absent for the period from  
3.8.59 to 9.12.59 and the Railway Administration  
taking recourse to the provisions of Note 2 below  
Rule 732 of Indian Railways Establishment Code deemed  
him to have resigned from service. Note 2 reads as

follows:-

"Where a temporary railway servant fails to resume duty on the expiry of the maximum period of extraordinary leave granted to him or where he is granted a lesser amount of extraordinary leave than the maximum amount admissible and remains absent from duty for any period which together with extraordinary leave granted exceeds the limit upto which he could have been granted such leave under sub rule (1) above, he shall be deemed to have resigned his appointment and shall accordingly, cease to be in railway employ".

Sub Rule (1) of Rule 732 provides for a maximum period of three months in such cases.

The Administration held that on expiry of three months from 3.8.59 he would <sup>be</sup> deemed to have resigned w.e.f. 3.11.59 from the railway service. They considered his case again and he was reappointed as a fresh appointee from 10.12.59. He continued in Railways service upto 16.2.60 but ~~again~~ he remained absent from duty without any leave from 17.2.60. Taking recourse to the provisions of the Note 2 of Rule 732(1) of IREM, the administration this time again held him to have resigned w.e.f. 17.5.60. He represented later for being taken ~~is~~ back in service in April 1962. The Railways asked him to undergo a medical test and eventually reappointed him on 7/8.8.63 as per order at Annexure A-11. In this order, it was made clear that the applicant who was treated as having resigned from servide from 17.5.60 was reappointed against existing vacancies and that his services will be treated as fresh for all purposes only and this was accepted by him. He continued

superannuated *January*  
in Railway service till he ~~was suspended~~ in July 1994.  
represented  
Meanwhile, he ~~was suspended~~ to the Railway for condonation  
of break in service as per his letter dated 12.11.1990  
(Annexure A-12) so that the past service of about 3½ years  
from 13.7.56 to 2.8.59 and from 10.12.59 to 16.5.60  
would count as qualifying service for the purpose of  
retirement benefits. This was turned down by the Railway  
Administration by their letter as at Annexure A-1 stating  
that he does not fulfil the condition laid down in Para  
*which is challenged in the present case*  
1308 of IREM. The relevant portion of this para reads  
as follows:-

"Break due to resignation or removal may be  
condoned by the Railway Board in the case  
of gazetted Railway servants and by the  
controlling officer as defined in rule  
1302(3) of the Indian Railway Establishment  
Code, Volume I, in the case of non gazetted  
railway servants. The breaks due to  
dismissal can be condoned only by the  
President. The powers in respect of condo-  
nation of breaks due to resignation beyond  
the control of the railway servants or ~~or~~  
removal may also be exercised by Heads of  
Departments or Divisional Superintendents  
if the break does not exceed 12 months.

If, however, a railway servant who was  
dismissed or removed or compulsorily  
retired from service is, on revision or  
appeal reinstated in service, his past  
service shall count for all purposes. When  
the break is between a period ~~or~~ periods  
of temporary service or between temporary  
service and permanent service, such period  
or periods may be condoned by the General  
Manager in the case of non gazetted railway  
servants ~~for~~ the Railway Board in the case  
of gazetted railway servants for the purpose  
of special contribution, provided the total  
permanent and temporary service rendered or  
likely to be rendered upto the date of  
superannuation by the employee is not likely  
to be less than 30 years".

*fb*  
3. Mr. Xavier for the applicant submits that the

applicant being a low paid employee should not be penalised for absence for short periods earlier. He further states that the action of the department in treating him as having resigned in terms of Note 2 is not legal as he was not served with a show-cause notice before the Railway Administration deemed that he had resigned. He refers in this connection to the decision of the Supreme Court vs. Union of India decided on 7.10.87 (AIR 1988 (1) CAT/427). Further he submits that if the earlier spells totalling 3½ years are taken into account he will get increased retiral benefits as he would then be taken to have put in further qualifying service. He prays that this small benefit may not be denied to him.

4. Mr. Vin for the Railways resists the application. He contends that the issue before the Tribunal at present is whether the applicant is eligible to count the past period for retiral benefits and not whether his deemed resignation was legal as the orders in this regard were issued in 1959 and 1962. The applicant also has accepted that his reappointment is in the nature of a fresh appointment and it should be taken that he has given up all rights and is stopped from claiming that this past period should be reckoned for the purposes of retiral benefits. Mr. Vin further contends that once it is taken that the applicant has resigned, his earlier service gets forefeited and it cannot be counted for the purpose of pensionery benefits.

4. We have carefully considered the rival contentions. We find that the orders regarding deemed resignation were issued in 1960 and 1962. The applicant after having been reappointed submitted a representation in 1989 before he retired from service in 1994. He filed the present O.A. in 1992. The question of counting his past service would be relevant, for the purposes of retiral benefits and as such, it cannot be held that the applicant had been guilty of delay and laches and the O.A. cannot be dismissed solely on that ground. We also find that the Railway Administration's order dated 8.8.63 refers to "reappointment". In other words, it recognises that there was an earlier appointment. However it proceeds to observe that his service shall be treated as fresh for the all the purposes and this condition has been accepted by him. As has been brought out by Mr. Xavier, the applicant has not been given a show cause notice before the administration proceeded to treat him as having resigned from service. The Railways have mainly relied on Note 2 below Rule 732(1) of the Railway Code. The Hon'ble Supreme Court in the case of Jayshanker vs. State of Rajasthan AIR 1966 SC 492 while dealing with an analogous provision under Regulation 13 of the Jodhpur Services Regulations held that the removal from service without asking the Govt. servant to show cause is not legal and the relevant regulation cannot be held to exempt the Government from the requirement of asking the Government servant to show cause before passing an order of removal. We may

reproduce the Head Note in this case which reads as follows:-

" Constitution of India Art. 311- Removal from service for overstaying leave- Service regulations providing that there is automatic termination of service on everstay. Still removal from service without giving opportunity to show cause is illegal".

It is not the case of the Railways that the applicant was given any such show cause notice before he was treated as having resigned. The applicant had represented on 24.7.62 for his reappointment and he was given ~~that~~ such reappointment after being made to pass medical test etc. This however will not exempt the railways from giving the show cause notice prior to their decision deeming him to have resigned on completion of three months absence.

It is seen that the order of reappointment dated 18.8.63 was accepted by the applicant. But in the context of the law laid down by the Hon'ble Supreme Court in such matters, it would not be reasonable to hold that the applicant is precluded from raising the question of failure to issue show cause notice despite his acceptance <sup>of</sup> ~~failure to issue show cause notice despite his acceptance~~ of the condition <sup>enjoined by</sup> ~~of the railways.~~

5. In the facts and circumstances of the case and in the context of the observation of the Hon'ble Supreme Court, we hold the applicant is entitled to some relief. We accordingly direct that while the period of absence from 3.8.59 to 9.12.59 and 17.2.60 to the date of reappointment in August 1963 may be treated as dies non, The past

services from 13.7.56 to 2.8.59 and from 10.12.59 to 17.2.60 shall be taken as qualifying service solely for the purpose of retiral benefits and we quash the respondent's letter dated 6.8.91 as at Annexure A-1 and the further letter dated 3.1.92 as at Annexure A-2. The Railway Administration shall recalculate the pensionary and other retiral benefits due to him and whatever additional benefits become available to him on this basis shall be paid to him within three months from the date of receipt of a copy of this order.

6. With the above directions, the O.A. is finally disposed of. No costs.

*LJha*

(Laxman Jha)  
Member (J)

*VR Krishnan*

(V. Ramakrishnan)  
Vice Chairman

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