

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO.
T.A.NO.

O.A.74/93

DATE OF DECISION 11.4.96Shri G.M.Malik

Petitioner

Mr. P.K.Handa

Advocate for the Petitioner [s]

Versus

Union of India & Ors.

Respondent

Mr. N.S.Shevde

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr.

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

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 ?

G.M. Malik,
Ex.Head Train Clerk,
Under Station Superintendent,
Bharuch

Applicant

(Advocate:P.H.Handa)

Versus

1. Union of India through
General Manager, Western Railway,
Churchgate. Bombay.
2. Divisional Railway Manager,
Pratapnagar,
Baroda.

Respondents

(Advocate: Mr.N.S.Shevde)

O R A L J U D G E M E N T

O.A. No.74 93

Dt. 11.4.96

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

The applicant was originally appointed on 31.12.1959 in group D category in the Railways. According to him, he fell sick on account of tuberculosis in June 1969 and he was bed-ridden and was treated by private doctors. His contention is that he was sending medical certificates from private doctor to his department. He reported for duty after his sickness and after examination by a medical board, he was taken on duty on 5.3.77. He retired as head train clerk on 31st July 1991.

His main grievance is that for the purpose of working out of qualifying service for pension, the period he remained absent from 1.6.69 to 4.3.77 was treated as non qualifying service, with the result that his retirement benefits were scaled down. He was granted increments during his absence which were later withdrawn at

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the time of retirement. His contention is that once he was given the increments, the service for that period also should be counted for pension as he was absent on medical grounds. However, the contention of the respondents is that the applicant remained on unauthorised absence and as such the period has been treated as non-qualifying service. The applicant was asked to produce any proof of having submitted medical certificate on account of his sickness. But, on his behalf Mr. Handa Learned Advocate states that the applicant had given medical certificates at the time of his sickness and at this point of time he does not have any copy thereof. The respondents were asked to produce service sheet and his personal file. Mr. Shevde, Learned Advocate for the respondents has shown the service sheet and leave record, but states that the personal file is not available. He also states that earlier, the personal file was produced in Tribunal but at present it is not tracable. The perusal of the leave record shows that from 1967 to 1990 a total of 3424 days has been certified as non qualifying including the sickness period as stated by the applicant.

After hearing the parties and after going through the documents, it is not possible to establish regarding the question as to whether the applicant was actually sick or ne was malingering. The applicant states that he was down with TB and he could not attend his duties and he had submitted medical certificates from private doctor regularly. The respondents however stated that they do not have any medical certificate on record and the applicant was absent without permission. However, we cannot help but notice certain peculiar circumstances in this case. Firstly, it is seen that even though the applicant was absent continuously from 1969 onwards on account of sickness, as stated by him, the Service Book shows that he was regularly granted increments which is not denied and is also shown in the service book. Of course, the respondents



withdrew the increments at the time of retirement of the applicant. Secondly, it is also strange that even though the appallicant was absent continuously from 1969 up to 1977, no disciplinary action appears to have taken for his unauthorised absence by the authorities. On ther other hand when he reported for duty, he was examined by the Medical Board and taken on duty. This would go to show that the Medical Board had examined the applicant and found him fit for duty and there is a different presumption that there was every possibility that the applicant was suffering from some major disease.

In the facts and circumstances of the case, it is felt that the applicant should make out a self contained representation giving full details of sickness he was suffering from 1969 to 1977 with any supporting document if any available to the DRM Baroda who is directed to consider the said representation after giving a personal hearing to the applicant and with the help of record in his office with a view to reconsider and decide the question of treating the period from 1.6.69 to 3.3.77 for the purpose of qualifying service for pension and take a decision in the matter within 3 months from the date of receipt of the representation of the applicant and inform the applicant within 10 days thereafter by reasoned speaking order. With the above directions, the O.A. stands disposed of. No order as to costs.



(V. RADHAKRISHNAN)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Application No. _____

OA/74/03

Transfer Application No. _____


CERTIFICATE

Certified that no further action is required to be taken and
the case is fit for consignment to the Record Room (Decided)

Dated :

21/5/06

Countersign :


21/5/06

Section Officer.


21/5/06

Signature of the Dealing
Assistant

I N D E X - S H E E T

OA/74/93

Mr. G. M. March

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