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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.289 of 1987.

Date of decision : July 26,1989.

Shri Madhab Gharai, aged about 59 years,
son of late Bauri Gharai, Ex-Grade -IV
Assistant Teacher, Mixed Primary School,
S.E.Railway, Khurda Road, Dist-Puri.

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Applicant

Versus

1. Union of India, represented by the
Commissioner, Scheduled Castes and
Scheduled Tribes, Ministry of Home
Affairs, West Block No.I, Wing No.7,
1st Floor, Ramakrishna Puram,
New Delhi 110 066.
2. The General Manager,
South Eastern Railway (Headquarters),
Garden Reach, Calcutta.
3. The Divisional Railway Manager,
South Eastern Railway, Khurda Road,
District-Puri.
4. The Chairman, Railway Board, New Delhi.

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Respondents.

For the applicant ... M/s.Devanand Misra,
Deepak Misra,
Anil Deo, S.S.Hota,
R.N.Naik, Advocates.

For the respondents ... Mr.B.Pal,
Senior Standing Counsel
(Railways)

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.N.SEN GUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed
to see the judgment ? Yes.
 2. To be referred to the Reporters or not ? *No*
 3. Whether Their Lordships wish to see the fair
copy of the judgment ? Yes.
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J U D G M E N T

B.R.PATEL, VICE-CHAIRMAN, In this application filed under section 19 of the Administrative Tribunals Act, 1985 (hereinafter to be referred to as the Act), the applicant has sought the following reliefs :

- (i) to quash the orders in Annexures -1 & 2;
- (ii) to direct the respondents 3 and 2 to dispose of the representation in Annexure-4 within a stipulated period;
- (iii) to pass appropriate orders directing the respondents to condone the break in service of the applicant and to take into consideration all his previous period of service for computation of retirement benefit/pensionary benefits; and
- (iv) to grant any other relief.

2. The facts, in brief, are that the applicant was appointed as an Assistant Teacher in a Primary School at Khurda Road on 1.9 1960. He was confirmed in the post of Assistant Teacher on 10.6.1965. In the year 1967, the Railway authorities set up a Railway Staff Benefit Fund under which a Homoeopathic dispensary was opened at Khurda Road. According to the applicant, he was advised by the Respondent No.3 to resign from the post of Assistant Teacher before he could be appointed as a Doctor in the Homoeopathic dispensary vide letter of Respondent No.3 dated 20.12.1967. Accordingly, the applicant resigned from the post of Assistant Teacher on 23.12.1967. His resignation having been accepted by Respondent No.3 on 5.1.1968, he joined the post of a Homoeopath in the Homoeopathic

dispensary on 6.1.1968. According to the applicant, the scheme having failed on account of paucity of funds, the applicant applied to the competent authority for permission to go back to his former post of Assistant Teacher. The permission was granted on 30.8.1978 vide Annexure-R/8 on the condition that he would resign from the post of Homoeopath. After the applicant resigned from the post of Homoeopath on 31.8.1980 and joined as Assistant Teacher on 1.9.1980 he represented to Respondent No.2 to condone the break in service which was caused by his appointment as a Homoeopath. But his representation was rejected vide order dated 4.6.1982 (Annexure-1). He filed an appeal against this order which was rejected vide order dated 28.2.1984 (Annexure-2). Thereafter, the applicant moved the authorities for appointment of his son on the ground that the benefit of his full service has been denied to him. On consideration of his application the Divisional Personnel Officer vide order at Annexure-3 advised the applicant to file another representation which he would recommend for sympathetic consideration by the higher authorities. Accordingly, the applicant filed another representation dated 9.1.1987 (Annexure-4) which is still pending consideration of the higher authorities i.e. General Manager, South Eastern Railway, Garden Reach.

3. The respondents have maintained in their counter affidavit that the applicant is not entitled to the reliefs he has sought inasmuch as he resigned on his own accord from the post of Assistant Teacher in order

to be appointed as Homoeopath in the Homoeopathic dispensary and the management of the Homoeopathic dispensary was different from the Railway Administration. They have further maintained that it was not a permission which was accorded to the applicant to go back to his former post but it was reemployment against a fresh vacancy and the re-employment was given to him on his giving declaration that he would accept the post as fresh appointment and that it would not assign to him any benefit of continuity in service as an Assistant Teacher, vide Annexure-R/6.

4. We have heard Mr.R.N.Naik, learned counsel for the applicant and Mr.B.Pal, learned Senior Standing Counsel appearing for the Railway Administration. Mr.Naik has submitted that since the representation is still pending before the General Manager, South Eastern Railway the Bench should pass an order requesting the General Manager to sympathetically consider the second representation of the applicant at Annexure-4. Mr.Pal took us through various annexures beginning with Annexure-R/1 to R/8. These annexures give us the factual account of the whole case. Annexure-R/1 deals with Railway Staff Benefit Fund ^{under} ~~for~~ which a Homoeopathic dispensary was set up. Annexure-R/2 is a copy of order offering the applicant appointment as a Homoeopathic practitioner under some terms and conditions. Annexure-R/3 is a copy of the letter dated 13.12.1967 issued by the Secretary, Staff Benefit Fund Committee (SBFC) addressed to the Divisional

Superintendent, South Eastern Railway with a copy to the General Manager, South Eastern Railway, Garden Reach. Mr. Pal had pointed out that the Secretary, S.B.F.C. was the employer of the applicant against the post of Homoeopathic practitioner. Annexure-R/4 is the representation of the applicant dated 16.1.1979 addressed to the Senior Personnel Officer (Education), South Eastern Railway, Garden Reach, requesting the authorities to take him back to his original post of Assistant Teacher in Primary School (Oriya) with full service benefits, seniority and ^{pay} ~~pay~~ protection. Annexure-R/5 is a copy of the letter dated 30.8.1979 sanctioning re-employment of the applicant as Assistant Teacher Gr. IV in the scale of Rs. 330-560/- (RS) subject to the following conditions :

- "(i) Submission of his resignation letter from the post of Homoeopath Doctor, Khurda Road,
- (ii) Availability of a vacancy of Teacher Gr. IV."

Annexure-R/6 is a copy of the declaration dated 28.2.1979 made by the applicant. This declaration reads as follows:

" I do hereby declare that I am prepared to accept a fresh appointment on the Railway which will not assign to me any benefit of my continuity service as Teacher and other allied benefits in this respect.

Sd. 28.2.79
(Dr. M. Gharai)
Homoeopath
S. E. Rly, Khurda Road. "

Annexure-R/7 is a copy of the letter written by the applicant on 25.8.1980 tendering his resignation from the post of a Homoeopath. Annexure-R/8 is a copy of the order dated 1.8.1980 reappointing the applicant as an Assistant

Teacher Gr.IV in the D.T.Primary School in the vacancy caused by the resignation of Shri Bishnu Charan Mohapatra, (underlining is for emphasis). These annexures leave no scope for any doubt that the applicant resigned from the post of an Assistant Teacher in order to accept the post of Homoeopath in the Homoeopathic dispensary at Khurda Road and that his reappointment as an Assistant Teacher Gr.IV was a fresh appointment in the vacancy caused by the resignation of Shri Bishnu Charan Mohapatra and further that he himself by his declaration dated 28.2.1979 accepted re-employment as a fresh appointee and also gave up the benefits of continuity of service and other allied benefits. All these are however beside the point. The stand taken by the applicant is that it was at the instance of the Railway Administration that he preferred a second representation to the Railway authorities to count his past service as an Asst. Teacher from the very beginning and condone the break caused by his appointment as a Homoeopath. The Railway Administration have taken the applicant back to the post of Assistant Teacher, though technically it was not obligatory on their part to do so. As the Railway Administration have shown sympathy to the applicant all along and the applicant has in the meantime retired, after having served the Railway Administration to the best of his capacity, we hope and trust that the Railway authorities will consider the representation of the applicant at Annexure-4 sympathetically and dispose of the same as soon as possible.

5. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

R. S. Mehta
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Vice-Chairman

N. SEN GUPTA, MEMBER (J)

I agree.



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 26, 1989/Saranghi.

N. Sen Gupta
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Member (Judicial)