

In The Central Administrative Tribunal
Calcutta Bench

OA 30 of 1996

Present : Hon'ble Mr. B.P. Singh, Administrative Member
Hon'ble Mr. Kuldip Singh, Administrative Member

Shri Benoy Krishna Halder, s/o late Ranjan Kanta Halder, working as Head Goods Clerk in the Office of the Area Manager, S.E. Railway, Shalimar, P.O. Shibpur, Dist: Howrah, residing at 164, Roy Bahadur Road, P.S. Behala, Calcutta.

.... Applicant

- Versus -

- 1) Union of India, through the Chairman, Railway Board and Secretary, M/o Railway, New Delhi.
- 2) The General Manager, S.E. Rly., Garden Reach, Calcutta-43.
- 3) The Divisional Railway Manager, S.E. Rly., Kharagpur, Dist: Midnapore.
- 4) The Sr. Divisional Personnel Officer, S.E. Rly., Kharagpur, Dist: Midnapore.
- 5) The Area Manager, S.E. Rly., Shalimar, P.O. Shibpur, Dist: Howrah.

..... Respondents

For the Applicant : Mr. P.K. Munshi, Counsel

For the Respondents: Mr. D.K. Singh, Counsel

Heard on : 6-2-2002

Date of Order : 6-2-2002

ORDER

B.P. SINGH, AM

Shri B.K. Halder has filed this O.A. against non-counting of his past services for pension purpose and prayed for the following reliefs :

- a) Counting of service w.e.f. 20-4-1963 or at least w.e.f. 5-12-1970.
- b) Consequential retirement benefits on superannuation.

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2. The facts of the case as it appears from this O.A. are that the applicant was appointed as Pro-Commercial Clerk vide letter dated 18-1-1963. After successful completion of the training, he was given independent charge of Goods Clerk under Chakradharpur Division of S.E. Railway on 20-4-1963. The applicant proceeded on seven days' leave ^{from 20-5-66} on receipt of a telegram intimating the sudden death of his younger brother. Thereafter, the applicant himself fell sick and became a victim of mental agony and other family problems. The applicant approached the respondent authorities for joining duty on 5-12-1970 and submitted medical certificate in support of his serious illness since May/June, 1966. The applicant came to know that he was deemed to have resigned from service w.o.f. 25-9-1966 for his unauthorised absence from duty in excess of 3 months. The applicant made representations for his reinstatement to various authorities including the Railway Board. The Railway Board required detailed remarks on the representation of the applicant vide their letter dated 23-5-73 (Annexure-C). The respondent authorities vide their letter dated 13th/15th Feb' 1974 (Annexure-D) offered fresh appointment as a Temporary Commercial Clerk (Goods) to the applicant subject to being declared medically fit. The applicant ^{accepted} ~~joined~~ the re-appointment and continued agitating regarding his re-instatement from time to time. He was given final reply on 28-6-75 that there is no justification to consider his appeal for ^{counting} ~~affecting~~ his service from earlier period when he reported for duty only on 5-5-74 as a fresh entrant on re-appointment. Being aggrieved by this order the applicant filed the present O.A. praying for the reliefs quoted above.

3. We have heard Ld. Counsel Mr. P.K. Munsji for the applicant and Ld. Counsel Mr. D.K. Singh for the respondents. We have gone through the O.A., reply to the OA and various enclosures annexed therewith.

4. Ld. Counsel for the applicant has reiterated the facts and submitted that the Chief Personnel Officer, S.E. Railway vide his letter dated 25.11.72 (Annexure-B) has admitted that since the

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applicant had completed three years continuous service before his going on leave in 1966 he was liable to be protected under the Estt. Sl.No.519/60 and as such the notice terminating his services treating the same as resignation was irregular. Therefore, he directed the DS/P/CKP to re-examine the case and initiate DA proceedings against the applicant before his services are dispensed with. In reference to the communication no proceedings was started against the applicant and he continued to be treated as resigned from the post.

The Ld. Counsel for the applicant further submits that the applicant approached the Railway Board through his representation for their intervention in the matter. The Railway Board vide their letter dated 23-5-1973 (Annexure-C) called for detailed remarks on the representation which was not sent by the local respondent authorities. Instead the local respondent authorities offered proposal of re-appointment to the applicant vide their communication dated 13th/15th February, 1974 (Annexure-E) and the applicant was re-appointed thereafter. The Ld.Counsel submits that the reappointment was not based on any further test or selection process; but ^{was} based on ^{his} earlier qualification for the post. Therefore, if re-appointment can be given on the basis of past selection, the service of the applicant could have been regularised according to the Rules in continuation of earlier service. Since the same was not done the applicant ^{has been} dealt with against the principles of natural justice.

The Ld.Counsel further submits that the TS/S.E.Rly/Shalimar vide his note dated 20-4-77 asked the Sr.DPO/KGP to examine the case of the applicant for giving effect to re-appointment at least w.e.f. 5-2-70; but that was also not considered by the local respondent authorities. Request of the applicant was arbitrarily rejected vide order dated 28-6-1995 (Annexure-J).

The Ld. Counsel further submits that intention of the Railway Board vide their communication dated 23-5-73 (Annexure-C) was

that if the facts as stated by the applicant in his representation were correct, his case for re-instatement ~~he~~ should be considered. But since no report was sent to the Railway Board ^{and} the applicant was offered re-appointment in the meantime and action on the re-instatement of the applicant could not be finalised.

Ld. Counsel further submits that as already recommended by the Local respondent authorities repeatedly for taking action after DA proceedings or counting the service at least w.s.f. 5-12-70 ^{was} ~~were~~ ^{my} not taken the applicant suffered financial loss in service. But since now he has retired from service he wants to obtain counting of his past services which will have nominal financial implication and therefore, the same should be granted by acceding to the prayer made by the applicant in the application.

5. The Ld. Counsel Mr. D.K. Singh for the respondents contested the allegations made in the application except those which are admitted or based on records. The Ld. Counsel did not contest the basic facts of the case. On the contrary he submits that the applicant was on unauthorised absence from duty for more than three months' period. Therefore, he was deemed to have resigned from service w.s.f. 25-9-1966 for his unauthorised absence vide Divisional Personnel Officer, Chakradharpur communication dated 29-12-70. The Ld. Counsel further submits that the applicant was given offer of re-appointment which he accepted and therefore, he has no claim for the past services and counting of past services for pensionary purpose. The Ld. Counsel further submits that the case of the applicant was sent to the Divisional Personnel Officer, Kharagpur for consideration; but the same was not considered and therefore, the relief claimed by the applicant for counting his past services w.s.f. 20-4-63 / 5-12-70 does not arise and he is not entitled to get the reliefs.

The Ld. Counsel further submits that once the applicant has accepted the offer of re-appointment on the terms mentioned in the

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offer, he has no legal right to agitate for counting of his past services. Therefore, the prayers made in the application should not be granted and the application should be dismissed.

6. The main point to be considered in this application is whether the applicant is entitled for getting the benefit of counting of his past services w.e.f. 20-4-63 or at least from 5-12-70.

7. The undisputed fact of the case is that the applicant was appointed after training on independent charge w.e.f. 20-4-63. He has proceeded on leave on getting intimation about the sudden death of his younger brother from 20-5-66 i.e. after more than three years continuous service. The applicant reported for duty on 5-12-70 and submitted medical certificate in support of his long illness from May/June 1966 till the date of report on 5-12-70. On 29-12-70 the Divisional Personnel Officer, CKP issued an order by which the applicant was deemed to have resigned from service w.e.f. 25-9-66 due to unauthorised absence from duty in excess of three months. The Chief Personnel Officer, Garden Reach wrote a letter to DS/P/CKP that since the applicant had continuously completed three years service before his unauthorised absence the action to terminate the service treating the same as a deemed resignation was not covered by the rules. Therefore, he directed that the case be re-examined and action be taken as provided in the DA Rules in the case. We find that no action was taken in reference to this communication which was issued on 25-11-72. On our specific query the Id. Counsel for the respondents submits that he has no information on this point.

8. The other fact which has been referred to in the communication of the Rly. Board dated 23-5-73 is that they had called for detailed report on the representation of the applicant within the target date. We find that no report was prepared and sent to the Railway Board which perhaps intended considering the case of the applicant ^{for re-examination} ~~reasonable~~. On a query on this point the Id. Counsel for the respondents submit.

that he ~~is~~ not in a position to ~~throw~~ any light nor he has any information.

9. From the offer of re-appointment made by the local respondent authorities to the applicant in 1974 it is clear that there was a strength in the representation made by the applicant and therefore, instead of initiating any action under the DA Rules ^{or submitting any} ~~no~~ detailed report ~~was submitted~~ to the Railway Board; ~~rather~~ the local respondent authorities offered re-appointment to the applicant. This offer was made not on the basis of any fresh test or selection but on the basis of the selection or test which was held in the year 1963 when the applicant was initially selected and appointed. If the selection process of 1963 has been recognised to be valid for re-appointment in the year 1974 why the appointment made in reference thereto should not be counted towards pensionary benefit according to Rules. On our specific query on this point the Id.Counsel for the respondents submits that he has nothing more to add except what has been submitted in the reply by way of opposition to the application.

10. From the above submissions, discussions and observation it is clear that the applicant has a case for counting his past services for the purpose of pensionary benefit as per Rules. We do not agree with the communication dated 28-6-95 (Annexure-J) and quash the same. Therefore, we would like to direct the local respondent authorities i.e. the Sr. Divisional Personnel Officer, SE Railway, Kharagpur and the Divisional Railway Manager, SE Railway, Kharagpur to consider the case of the applicant for counting the past services of the applicant w.e.f. 20-4-63 for the purpose of retirement benefit and to pass reasoned and speaking order within a specified period and to give benefit of such period in refixing the pensionary benefit to the applicant.


11. In view of above, we allow this application and direct the respondent authorities specially the respondent No.3 to consider the case of the applicant for counting his past services w.e.f.

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20-4-63 and to pass speaking and reasoned order within a period of eight weeks from the date of communication of this order and ensure that pensionary benefits of the applicant are also revised and paid accordingly within a period of four weeks thereafter. The above order should be communicated to the applicant within a week after finalisation as per direction. (4)

12. We do not pass any order as to costs.


(Kuldip Singh)
Member(J)


(B.P. Singh)
Member(A)

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