

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. NO. 1499 of 1996

Present : Hon'ble Mr. Justice S.N.Mallick, Vice-Chairman
Hon'ble Mr. B. P. Singh, Administrative Member

Pradyut Kanti Dey,
R/o 19B, Latafat Hussain Lane,
Calcutta- 700 085

VS

1. Union of India through the
General Manager, N.F. Railway,
Maligaon, Gauhati-781011
2. General Manager (Personnel)
N.F.Railway, Maligaon,
Gauhati-781 011
3. Chief Signal and Telecommunication Engineer,
N.F. Railway, Maligaon,
Gauhati-781 011
4. Sr. Signal & Telecommunication Engineer,
N.F.Railway, Maligaon,
Gauhati-780 011

..... Respondents

For the applicant : Dr. K.S.Dey, Counsel

For the respondents : Mrs. Uma Sanyal, Counsel

Heard on : 21.4.99 : Order on : 29.4.99

O R D E R

S.N.Mallick, V.C.:

In this OA, the petitioner's case is as follows :

The petitioner was appointed as an Office Peon in Class IV post under the respondent authorities, N.F.Railway, on 18.5.54. Subsequently he got a promotion and was appointed as Clerk in Class III post with effect from 3.8.61. He absented himself from duty with effect from 31.8.68 as he became mentally deranged due to some physical attack by some miscreants. The respondent authorities re-appointed him on 23.12.81. According to the petitioner he was never removed from service and as such there was no

question of re-appointment, which he did, however, accept under compelling circumstances. The petitioner, in order to seek redress of such arbitrary action on the part of the respondent authorities, moved the Guwahati Bench of this Tribunal claiming regularisation of the period of absence and payment of pay and allowance and also for striking down the illegal order of re-appointment. The said application was subsequently transferred from the Guwahati Bench to this Bench being numbered as OA 44 of 1989. Although the said OA was dismissed on point of limitation, but the Tribunal in its judgement dt. 30.5.91 refused to accept the respondents' version that the applicant's service was terminated w.e.f. 5.11.68. A copy of the said judgement is available at Annexure-A3 to this OA. Annexure-A2 dt. 23.12.81 is the order of re-appointment of the petitioner as Jr. Clerk (C) issued by the respondent authorities. The petitioner retired on superannuation w.e.f. 31.5.92. But the respondents allowed him pension reckoning his qualifying service only from 23.12.81 i.e. the date of his re-appointment as per annexure-A2 ignoring his past service from 18.5.54 to 22.12.81. The petitioner made a representation to the respondent authorities praying for re-calculation and refixation of his pension and DCRG reckoning his service from 18.5.54 in view of the judgement passed by an earlier Bench of this Tribunal as per annexure-A3 dt. 30.5.91, which was rejected by the respondent authorities in their letter dt. 23.3.94 vide Annexure-A4 stating that he was not entitled to any benefit of past service rendered by him as he was removed from service for unauthorised absence w.e.f. 5.11.68. According to the petitioner, his past service should be reckoned for the purpose of refixation of pension. Hence the instant OA has been filed for a direction upon the respondent authorities to refix and recalculate his pension and DCRG taking the entire period of qualifying service w.e.f. 18.5.54 to 31.5.92 maintaining continuity of service by granting any kind of leave for the period of his absence with a further direction to disburse all the arrears to that effect with 12% interest per annum.

2. The respondent authorities have contested this OA by filing a reply. It is their categorical case that the petitioner was unauthorisedly absenting himself from duty w.e.f. 5.11.67 and not from 31.8.68, as alleged, for which a notice-cum-charge-sheet was issued upon him at his home address which was returned undelivered with the postal endorsement "Not Known". Thereafter, a show cause notice for termination of service was

sent to the petitioner which was also returned undelivered with the postal endorsement "Not Known". Thereafter, his service was finally terminated w.e.f. 5.11.68 as per order dt. 7.11.68. It is the further case of the respondents that on an appeal made by the petitioner, he was re-appointed on humanitarian ground in the post of Jr. Clerk (G) which was accepted by him and that in the said post the petitioner worked and ultimately he retired on superannuation. It is also the case of the respondents that the Calcutta Bench dismissed the petitioner's earlier OA being OA 44 of 1989 on 30.5.91 holding that he was not entitled to any benefit of his past service. It is also contended in the reply that the petitioner filed a Special Leave petition being No. 13548/91 before the Hon'ble Supreme Court against the final order of the earlier Bench of the Tribunal dt. 30.5.91 passed in OA 44/89 which was dismissed by the Hon'ble Supreme Court on 3.9.91.

3. The petitioner has not filed any rejoinder denying the allegations made in the reply filed by the respondent authorities.

4. The question is whether the petitioner is entitled to the reliefs claimed in this OA.

5. We have heard Dr. K. S. Dey, the Id. counsel appearing for the petitioner and Mrs. Uma Sanyal, the Id. counsel appearing for the respondents. Mrs. Sanyal has contended that this application is hopelessly barred by limitation as well as by the principle of res judicata in view of the categorical decision on the same issue by the earlier Bench of this Tribunal made in the judgement dt. 30.5.91 as per annexure-A~~3~~.

6. The admitted facts are as follows :

It is undisputed that the petitioner was unauthorisedly absent from duty for a period of 13 years before he was given a re-appointment in another post. It is also admitted that the said period of absence was not regularised by the respondent authorities in any manner. On the other hand, the petitioner accepted the fresh appointment given by the respondent authorities in the post of Jr. Clerk (C) w.e.f. 23.12.81. It is also undisputed that the petitioner was removed from service with effect


from 5.11.68. The earlier Bench of this Tribunal in the judgment dt. 30.5.91 refused to accept the respondents' version that the applicant's service was terminated w.e.f. 5.11.68. But at the same time, the Tribunal held that the aforesaid application being OA 44 of 1989 was barred by limitation and that the prayer of the petitioner to treat the aforesaid period of absence be treated as on duty with all pay and allowances treating his service as continuous was not entertainable. The relevant portion of the order may be quoted below :

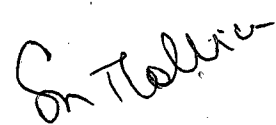
"Admittedly, after a medical check-up as directed by the N.F. Railway authority when the applicant was found fit he was appointed afresh as a Junior Clerk in the scale of pay of Rs. 260-400/-. The copy of the order containing the terms and conditions of his such appointment is shown in Annexure-D to the application. That order is dated 23.12.1981. It was clearly stipulated in the order that such appointment was given to the applicant on purely temporary basis and he would be liable for removal or dismissal from service on the occurrence of any mental or physical incapacity or any misconduct. It was further stipulated that he would not be eligible to any benefit except that is admissible to temporary employee under the rules in force from time to time. No assurance of counting his previous service prior to 31.8.1968 was given. The applicant joined the post of Junior Clerk accepting such terms and conditions. We do not find that within a reasonable period of time he had ever raised his little finger claiming counting of his previous service or payment of his pay and allowances for the intervening period. The applicant was subsequently promoted to the post of Sr. Clerk. For the first time he woke up in September 1983 and claimed regularisation of the intervening period and payment of his arrear salary. The matter was not pursued thereafter. Annexure-H shows that about 2 years after that he renewed his such prayers. The next representation in that regard was submitted by him on 27.10.1986. In our opinion when the order containing the terms and conditions of his reappointment as Junior clerk was passed on 23.10.1981 and when the applicant had accepted the terms and conditions incorporated therein without raising any objection and joined the post and enjoyed the subsequent promotion his present claim at this stage is not entertainable. The claim has become stale and this Tribunal would not entertain it. Besides, after so many years when the claim is wholly barred by limitation this Tribunal cannot grant any such relief to him. It is inconceivable that when the applicant had been absent from 31.8.68 to 1.8.81 i.e. for about 13 years without sending any intimation of his illness whatsoever and when he had not worked for a single day during that long period he would get arrears of salary and allowances for that period and that the said period would be treated as on duty. Considering the circumstances, we have no hesitation to conclude that the present application being devoid of merit is liable to fail."

7. In the instant application, the petitioner has made the same prayers although couched in a different language which were disallowed by the earliere Bench in the earlier OA as quoted above. The said judgement

is final and binding upon the parties thereto. It is also undisputed that the SLP preferred by the petitioner against the aforesaid judgement was rejected by the Hon'ble apex court. Under such circumstances, we are of the view that the instant application is barred by the principle of res judicata. What was disallowed by the earlier Bench cannot be given by the Tribunal in this OA. In that case, it would mean that this Bench is sitting on appeal in respect of a judgement passed by an earlier Division Bench. This is impermissible. The application is also devoid of any independent merit. It is an echo of the earlier application already dismissed by the Tribunal.

8. In the result, the application is dismissed. There will be no order as to costs.


(B.P. Singh) 29/11/99
MEMBER(A)


(S.N. Mallick)
VICE CHAIRMAN