

In The Central Administrative Tribunal
Calcutta Bench

OA 171 of 1996

Present : Hon'ble Mr. D.V.R.S.G. Dattatreylu, Judicial Member
Hon'ble Mr. B.P.Singh, Administrative Member

Sri Ramanand Shaw, son of Nathani Shaw
working as Peon at the Ordnance Factory
Board, Calcutta residing at 6/4, Panbagan
Lane, Calcutta - 60.

.... Applicant

- Versus -

- 1) Union of India through the Secretary to the Government of India, Ministry of Finance, New Delhi.
- 2) The Chairman, Ordnance Factory Board/the Director General, Ordnance Factories, 10A, Auckland Road, Calcutta-1.
- 3) The Member Personnel, Ordnance Factory Board, 10A, Auckland Road, Calcutta-1.
- 4) The Joint Director (Head Quarters), Ordnance Factory Board, 10A, Auckland Road, Calcutta-1.

.... Respondents

For the Applicant : Mr. S.K. Dutta, Advocate
Mr. T.K. Biswas, Advocate

For the Respondents : Mr. M.S. Banerjee, Advocate

Heard on : 1-8-2000

Date of Order : 1-8-2000

ORDER

D.V.R.S.G. DATTATREYULU, JM

The applicant in this case prays for setting aside the order passed by the authority (Annexure-A/4 to the application) forfeiting the past service rendered by him prior to the order of the removal from service and also setting aside the decision of the authority denying the benefit of the intervening period from 5-12-75 till the date of reappointment for the purpose of qualifying service.

Contd....

2. The applicant was working under the respondents. It appears that he was absent from duty for a long time due to ill health unauthorisedly. Therefore, the authority had taken the decision for his removal from service. The applicant preferred an appeal and the Appellate Authority vide order dated 5-12-1975 stated that there was no merit in the appeal and also the appeal was not within the period of limitation. However, the respondents, as a very special case, took lenient view and allowed the applicant to be re-appointed with certain terms. Sub-para (ii) of para (3) of the said order shows that the applicant is re-appointed as Peon. Paragraph (iii) shows that the intervening period from the effective date of DGOF order dated 5-12-1975 referred to above to the date when the applicant reports for duty shall not be counted as qualifying service and he shall have no claim for the service rendered by him at DGOF, Calcutta upto the period the said order of removal from service was effective. It is also stated that seniority of the applicant in the grade of Peon shall be reckoned from the date he reports for duty. After joining as per the above orders, he made representation dated 26-12-1991 stating that he had joined the DGOF, Calcutta as a Peon on 18-12-1962 and he proceeded on sanctioned leave and after expiry of leave, due to mental disbalance, he could not report for duty. It is seen that he made another representation on 25-5-1995 and on 8-9-1995 requesting the respondents to regularise the period of his absence by granting EOL for the purpose of pensionary benefits.

3. Respondents filed written reply wherein it is stated that the present application is time barred and also it is stated that the applicant was given re-appointment, which has been considered a fresh appointment, after acceptance of certain terms and conditions by the applicant. Ld. Advocate Mr. Banerjee for the respondents repeatedly made submissions before us that the present application is not maintainable in view of the fact that the applicant was re-instated in service after he had accepted the terms and conditions mentioned in the order dated 12th April, 1989.

4. It is to be seen that the Appellate Authority took lenient view considering the circumstances in which the applicant was placed. Therefore, actually the re-appointment is given. We are of the opinion that the Clause dealing with the past services should not be taken into consideration ^{as} is too harsh because the services rendered by the applicant is on the basis of original appointment. Unless the services are terminated by dismissing the applicant, his services must be counted for all other purposes. Here, in the special circumstances in this case re-appointment is given to the applicant.. Therefore, this is a case where the punishment imposed is too harsh. Therefore, the past services of the applicant have to be treated ^{as on duty} from the date he rejoins the duty on the basis of the re-appointment. The intervening period i.e. from the date he has not attended duties till the date he joins as per order of the re-appointment must be treated as dies-non and he is not entitled for that period to be counted as service.

5. Id. Advocate appearing for the respondents submits that the re-appointment order is a part of non-giving effect to the service already rendered by the applicant. It is an integral order; But we are of the opinion that applying the principle of doctrine of severality ^{is not} with particular Clause dealt with the past service only is hereby held as illegal and the order of the Appellate Authority is modified passing the following orders :

The application is allowed. The applicant is ^{deemed} ~~due~~ to have been in continuous service from the date he ^{joined} ~~joins~~ till the time he was not in service and ^{from} ~~up to~~ his joining there as per order of the re-appointment. In other words the phraseology used as re-appointment has to be taken as no more there but continuity of appointment. The applicant is not entitled to count his service during the period he has not rendered service i.e. from the date he ^{is} ~~is~~ attending the duty till the date he joins the service in pursuance of the order of re-appointment. ~~But that service will not be counted for any benefit.~~ With the above modification application is disposed of accordingly.

^{B. P. Singh}
(B.P. Singh)
Member(A)

(D.V.R.S.G. Dattatreya)
Member(Judl.)