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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

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Date of Order :19.03.2002 .

O.A.NO. 167/2001

B.K.Khanna (Bimal Kishore Khanna) S/o Late Shri Ram Kishore Khanna, aged about 60 years, Resident of 1, Nakoda Nagar, Near Gas Godown, Hiran Magri, Sector 3, Udaipur (Rajasthan).

.....Applicant.

versus

1. Union of India through the General Manager, Western Railway, Church Gate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer (Rajasthan).
3. Divisional Personnel Officer, Western Railway, Ajmer (Rajasthan).

.....Respondents.

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CORAM :

HON'BLE MR. JUSTICE O.P.GARG, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH,ADMINISTRATIVE MEMBER

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Mr. S.K.Malik, Counsel for the applicant.

Mr.Kamal Dave, Counsel for the respondents.

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ORDER

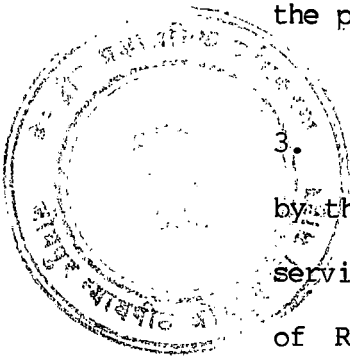
(Per Hon'ble Mr.Gopal Singh)

In this application under section 19 of the Administrative Tribunals Act, 1985, applicant B.K.Khanna, has prayed for quashing the impugned order dated 23.5.2001 (Annex.A/1) and for a direction to the respondents to take into account the whole service w.e.f. 25.9.1962 to 30.12.2000 for calculation of pension and pensionary benefits and further to issue revised Pension Payment Order with all consequential benefits.



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2. Applicant's case is that he was initially appointed to the respondent-department on 25.9.1962 on the post of SOSR Mistry. His services were terminated w.e.f. 26.3.1967 after giving him one month's notice. He was again given a fresh appointment as temporary SOSR Mistry w.e.f. 27.12.1972. On his representation the applicant was given the benefit of Para 602, Indian Railway Establishment Manual, protecting his last pay drawn on reappointment. It is also a case of the applicant that in the seniority list published on 17.8.1990 and 1.1.1992, the date of entry of the applicant was indicated as 25.9.1962. It was only in the Pension Payment Order dated 28.11.2000 (Annex.A/10) that his date of entry into Government service was indicated as 29.12.1972. It is also contended by the applicant that in terms of Rule 43 of Railway Services (Pension) Rules, 1993, he is entitled to count his past service as qualifying for the pensionary benefits. Hence this application.



3. In the counter, the contentions of the applicant have been denied by the respondents. It is contended by the respondents that applicant's services were terminated and, therefore, he is not entitled to the benefit of Rule 43 of Railway Services (Pension), Rules, 1993. It is also contended by the respondents that the applicant never challenged his termination order dated 27.2.1967 and, therefore, he is not entitled to count his past service as qualifying for the purpose of pensionary benefits. It has, therefore, been averred by the respondents that the application is devoid of any merit and is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the record of the case file.

5. Both the counsel heavily relied upon rule 43 of Railway Services (Pension) Rules, 1993 in support of their contentions. We consider it appropriate to extract below Rule 43 of Railway Services (Pension) Rules,

Copy of

1993 :-

"Condonation of interruption in service - (1)

(a) In the absence of a specific indication to the contrary in the service book, an interruption between two spells of Government service rendered by a railway servant under Government including Civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.

(2) Where the break in service of a railway servant is condoned, he shall, unless specifically provided to the contrary in the sanction for such condonation, refund any gratuity, special contribution as well as Government contribution to Provident Fund, if any, with interest thereon, received by him in respect of his service before the break."



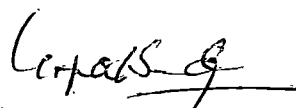
It can be seen that a person whose services have been terminated or has been removed from service, is not entitled to count his past service as qualifying for the purpose of pensionary benefits. The contention of the applicant is that he was reappointed by the respondent-department without any selection test as his name was appearing on the approved list of SOSR Mistry. It has, therefore, been contended by the applicant that initial termination of the services cannot be treated as dismissal or removal and, therefore, he cannot be denied the benefit flowing from the Rule 43 of Railway Services (Pension) Rules, 1993. It is also the case of the applicant that respondent-department has protect-ed his last pay drawn on his reappointment in the year 1972. Applicant's services were terminated as he was declared surplus and he was offered a fresh appointment on the basis of approved list maintained by the respondent-department. This approved list perhaps contained the names of SOSR Mistry, who had been

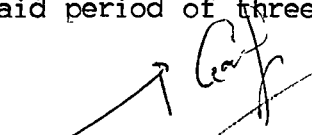
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rendered surplus and whose services were terminated, for the purpose of offering fresh appointment as and when need arises. Seen in this view, the applicant was given a fresh appointment on the same post of SOSR Mistry and his last pay drawn earlier was also protected. In these circumstances, it can safely be presumed that removal/termination of the applicant from service was only technical and, therefore, the applicant cannot be deprived of the benefit flowing from Rule 43 of Railway Services (Pension) Rules, 1993. We are firmly of the view that the applicant is entitled to count his past services as qualifying for pensionary benefits in terms of Rule 43. Accordingly, we pass the order as under :-



"The O.A. is partly allowed. The respondents are directed to count the period from 25.9.1962 to 26.3.1967 as qualifying for the purpose of pensionary benefits and revise the pensionary benefits of the applicant accordingly within a period of three months from the date of receipt of a copy of this order. The respondents are also directed to pay to the applicant, arrears on account of revision of pensionary benefits within the said period of three months. No costs."


(Gopal Singh)
Adm.Member


(Justice O.P.Garg)
Vice Chairman

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Part II and III destroyed
in my presence on 9.2.97
under the supervision of
section officer [signature]
order dated 14.5.92

Section officer [signature]

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