

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.505/96

Tuesday, this the 26th day of May, 1998.

CORAM:

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

PK Vasu,
Commission Bearer,
KK Express,
Southern Railway,
Trivandrum.

- Applicant

By Advocate Mr TC Govindaswamy

vs

1. Union of India through
the General Manager,
Southern Railway,
Madras-3.
 2. The Chief Commercial Manager,
(Catering),
Southern Railway,
Madras-3.
 3. The Divisional Commercial Manager,
(Catering),
Southern Railway,
Trivandrum-14.
 4. The Divisional Railway Manager,
(Personnel),
Southern Railway,
Trivandrum-14.
- Respondents

By Advocate Mrs Sumathi Dandapani

The application having been heard on 26.5.98, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant is a Commission Bearer/Server in the Southern
Railway. He was proceeded against for loss of Rs.12,200/ suffered
by the Southern Railway on account of misappropriation allegedly

committed by him. The criminal case instituted against him ended in his acquittal. Since thereafter the respondents did not take him back in service, applicant approached the Tribunal in O.A.1065/91. The Tribunal held that the action of the respondents in refusing to allow the applicant to join duty cannot be sustained and declared that "the applicant is entitled to be continued in service as Commission Bearer/Server". The Tribunal also awarded back wages for a certain period from 1986. This judgement of the Tribunal has become final. Thereafter the applicant has submitted a representation for regularisation and since it was not considered, he approached the Tribunal in O.A.1513/93. The O.A. was disposed of by the Tribunal with a direction to consider the representation of the applicant and pass appropriate orders within three months. On the failure of the respondents to dispose of the representation within the time granted, a Contempt Petition was filed. Thereupon an order was passed rejecting the applicant's claim for regularisation(A4). In A4 it was specifically stated that applicant had been reinstated to duty in accordance with the orders of the Tribunal and continuity of service was granted from the date of the judgement i.e. from 18.5.90. It was also stated that the applicant's case for regularisation of service could not be accepted as he had a break in service from 16.11.86 to 23.8.91 and continuity of service was a basic criterion for considering the candidate for empanelment for absorption as a regular employee against vacancies as and when they arise. Aggrieved by A4, the applicant approached the Tribunal in O.A.1792/94 which was disposed of with a direction to the second respondent therein to pass a reasoned order within four months of the date of receipt of a representation. The impugned order herein A6 was passed in consequence of the direction of the Tribunal and states that the claim of seniority of the applicant from his initial date of appointment cannot be allowed

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since the Court itself had directed that no back wages be paid from 1986 to 17.8.90. Applicant is aggrieved by this order and has filed this application praying that A6 be quashed and that respondents be directed to absorb the applicant in the regular cadre in preference to his juniors with all attendant benefits like fixation of pay, seniority etc.

2. Respondents in their reply submit that applicant was entrusted with the responsibility of selling items worth Rs.14,609.95, that he remitted back only Rs.2,409.95, and that he misappropriated an amount of Rs.12,200/. Notwithstanding the acquittal, his conduct is one unbecoming of a person entrusted with the responsibilities and having regard to the fact that he was kept under suspension from 26.5.83 to 13.6.83 and his status on the date of criminal proceedings was only that of a Commission Bearer and not a regular Railway Servant, it was decided to treat the period from 26.11.86 to 17.8.90 as a break in service.

3. Applicant had been proceeded against in a criminal court and had been acquitted. The respondents have also not taken any action under law against the applicant though the Tribunal in A1 judgement had stated specifically that the Railways have the freedom to proceed against the applicant for the loss stated to have been sustained by the Railways due to misappropriation of the articles belonging to the catering department by taking appropriate legal action in accordance with law by invoking provisions of R1 agreement or in any other method like removal under law. No such action was taken by the Railways. Since the applicant has not been found guilty of any charge, it would not be proper to inflict punishment of break in service on the applicant. The orders passed in A4 clearly indicate that the period from 16.11.86 to 23.8.91 has been treated as a break in service even though there are no reasoned

orders passed holding that a break of service has been imposed on the applicant. There is an inherent contradiction in A4 in that it first states that continuity of service is granted from 18.5.90 but the period upto 23.8.91 is treated as break in service. It is also seen from A4 that the break in service has prevented the absorption of the applicant as a regular employee in his turn. Therefore a material punishment has been imposed on the applicant and he has been subjected to adverse civil consequences without any proper procedures being followed, or without any proper reasoned order passed which the applicant could have challenged. Under these circumstances we are unable to uphold the decision of the Railways to treat the period from 16.11.86 to 23.8.91 as break in service.

4. If the decision to treat the period as break in service is based on the judgement (as stated in A6) not granting backwages for the period prior to 17.8.90, then it is a clear case of misreading of the Tribunal's decision, because the Tribunal has earlier clearly stated that applicant is entitled to be continued in service as Commission Bearer/Server.

5. Learned counsel for respondents submits that the application is bad for nonjoinder of necessary parties. Applicant has only asked for condonation of break in service and for absorption in his turn. When a plea of nonjoinder is taken, it is not enough to merely make a broad statement to that effect but it should be pointed out specifically as to who are the necessary parties who were not made parties in the application. This has not been done. Learned counsel for respondents also submits that applicant could have claimed this relief when he approached the Tribunal in O.A.1065/91 and that the application is barred by constructive res judicata.

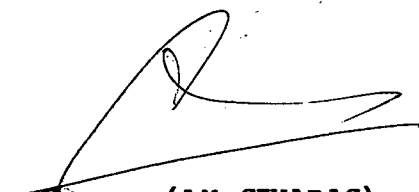
In any case, applicant could not have anticipated the stand that the Railways would take in A6 dated 20.9.95 when he approached the Tribunal in 1991.

6. We therefore hold that the application is neither bad for nonjoinder of necessary parties nor barred by constructive res judicata.

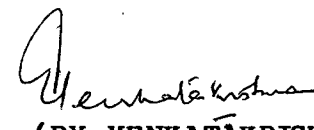
7. In the light of the above discussion, we dispose of this application quashing A6 and with a direction to the respondents to consider the applicant for absorption in the regular cadre with consequential benefits without treating the period 16.11.86 to 23.8.91 as break in service.

8. Application is disposed of as aforesaid. No costs.

Dated, the 26th May, 1998.



(AM SIVADAS)
JUDICIAL MEMBR



(PV VENKATAKRISHNAN)
ADMINISTRATIVE MEMBER

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