CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.585/2002

Tuesday, this the 16th day of September, 2003.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

L.Palani Mudali,
Retired Mail Driver,
Southern Railway, Shornur,
Residing at: Kavitha Nivas,
Near A.U.P.School, Shornur-1. - Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India represented by
the General Manager,
Southern Railway,
Head Quarters Office,
Park Town.P.O.
Chennai-3.

2. The Divisional Railway Manager,
Southern Railway,
Palghat Division,
Palghat.

3. The Senior Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat.

4. The Divisional Accounts Officer,
Southern Railway,
Palghat Division,
Palghat. - Respondents

By Advocate Mr Thomas Mathew Nellimoottil

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant who retired on superannuation as Mail Driver from Southern Railway, Palghat, on 30.4.2001, is aggrieved by the reduction of his qualifying service for the

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purpose of pensionary benefits on the ground of break in service during the period 6.7.68 to 19.7.68 on account of his alleged participation in an illegal strike. Consequently, the applicant's service between 6.3.62 and 19.7.68 is not reckoned resulting in loss in pension and other retiral benefits. Challenging A-2 incorporating to pension calculation sheet dated 10.4.2001 and A-6 communication dated 18.9.2001 rejecting the applicant's representation dated 10.8.2001, the applicant has filed this O.A. praying for the following main reliefs:

a) Call for the records leading to the issue of A-6 and quash the same;

b) Call for the records leading to the issue of A-2 and quash the same to the extent it determines the applicant's pension based only on a qualifying service of 32 1/2 years, instead of 33 years; and

c) Direct the respondents to recalculate and pay the applicant's pension and other retiral benefits on a total qualifying service of 33 years and direct further to grant all consequential benefits, with interest thereon calculated with effect from 1.5.2001 @ 12% per annum.

2. The applicant's case is that inspite of his inability to discharge his duties during the agitation by Firemen from 6.7.68 to 19.7.68, no order of any break in service had ever

been passed, no intimation to that effect has been communicated to him, or any other similarly situated persons and that his seniority remaining unaffected, the applicant was duly promoted to the higher posts of Fireman'C', Fireman'B', Diesel Assistant, Shunter, Goods Driver, Passenger Driver and eventually Mail Driver strictly in accordance with his seniority. It is also submitted by the applicant that he used to get the number of Railway passes to which he, as a Railway employee was entitled in accordance with the number of years of uninterrupted regular service from 6.3.62. According to the applicant, he had never been superseded on account of any alleged break in service. It is pointed out that the period of absence from duty between 6.7.68 and 19.7.68 has been treated as dies non. The applicant would, therefore, maintain that the respondents were unjustified in reducing his qualifying service of 38 years 7 months and 29 days as 32 1/2 years and his monthly pension Rs.6256/- to 6161. A-2 order containing the pension calculation sheet is challenged inasmuch as it shows the computation of the applicant's pension based only on qualifying service of 32 1/2 years, instead of 33 years for purposes of grant of full pension to which he is otherwise entitled. A-6 communication dated 18.9.2001 is assailed on the ground that it is a totally arbitrary order in so far as it states that the alleged break in service was not condoned since the applicant had not given any written regret for having participated in the illegal strike in July 1968.

3. In their reply statement the respondents have resisted the O.A. by stating that as the applicant participated in the

illegal strike between 6.7.78 to 19.7.68 the said period was treated as break in service, that the applicant's service prior to the date of his participation in the illegal strike was forfeited on account of interruption in service, the said forfeiture was strictly in accordance with rules particularly Rule 42 of Railway Servants(Pension) Rules 1993, that the break in service in the applicant's case could not be considered for condonation since the applicant did not prefer to make a representation for condonation by expressing regret for having participated in the illegal strike. According to the respondents, wherever employees who participated in the illegal strike had tendered their written apology for having participated in the illegal strike, the break in service was condoned. Therefore, the applicant could not get the same benefit as those who expressed their written regret. The matter having been decided and necessary entries having been made in records, the applicant had no case for seeking condonation of break and restoration of the past service for purposes of pension and pensionary benefits by means of this O.A., the respondents would urge.

4. Applicant has filed rejoinder highlighting failure of the respondents to offer him an opportunity to verify his service records in accordance with rules and the fact that no order of break in service was ever communicated to him. The respondents thereupon have filed additional reply statement holding on to their original stand that the break in service could not be condoned at this distance of time.

5. We have heard Shri TC Govindaswamy, learned counsel for the applicant and Shri Thomas Mathew Nellimoottil, learned counsel for the respondents.

6. According to Shri TC Govindaswamy, the applicant had not been told of any break in service, not to speak of any requirement of a written apology for the purpose of condonation of the alleged break in service. The respondents' stand that the break in his service could not be condoned as the applicant did not communicate his written regret is arbitrary and unsustainable, the learned counsel would argue. It is emphatically stated that the applicant never suffered any consequence of the alleged break in service. All his subsequent service events, like assignment of seniority, periodical increments, promotions etc. would corroborate the fact that no break in service was ever considered to have taken place. Unless there was a proposal to cause a break in service, there could be no expression of regret, counsel would state. Citing the relevant provisions of the Indian Railway Establishment Manual (Paragraphs 1301 and 1304) and the Indian Railway Establishment Code(Rule 2435 corresponding to 420 of the Central Civil Services Regulations), the learned counsel would maintain that the respondents' decision to forfeit his valuable service prior to the date of commencement of the strike in 1968 without affording him an opportunity to explain his case was in gross violation of the principles of natural justice, as held by the Supreme Court in Shiv Shanker and another Vs Union of India and another, [AIR 1985 SC 514]. The applicant was not afforded a chance to verify his Service

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Record as enjoined by the rules, more particularly the provisions of the Railway Administration and Finances Rules, the learned counsel for the applicant would submit. It is also pointed out by the learned counsel that it was only in A-3 statement that the date 20.7.68 is shown interpolated below the actual date of appointment, viz, 6.3.62, presumably in an attempt to show that a break in service was enforced in his case and the new date of appointment was 20.7.68. The impugned orders were accordingly liable to be set aside, the learned counsel for the applicant would urge.

7. Shri Thomas Mathew Nellimoottil, learned counsel for the respondents would defend the impugned orders by stating that the break in service was caused on account of the applicant's participation in an illegal strike and that this fact was duly recorded in his service records. According to learned counsel for the respondents, the break in service was within the applicant's knowledge since his date of increment falling in the month of March was changed to July after the break in service was enforced. The break in service in respect of those employees who expressed regret in writing for having participated in the strike was condoned; and had the applicant done so, the break in service in his case would also have been condoned. Learned counsel for the respondents would, therefore, urge that the applicant was not entitled to any relief as prayed for in the O.A.

8. We have gone through the records and have considered the contentions raised by the respective counsel. In our opinion, the only issue to be considered is whether the

respondents' action in enforcing a break in service was justified in the light of the principles of natural justice. That as per the provisions of the relevant rules, participation in an illegal strike entails forfeiture of past service is beyond question. But before enforcing such a forfeiture which is fraught with serious consequences, the principles of natural justice had to be necessarily observed. In our considered view, the respondents have failed in this respect. The applicant has never been notified about the proposed break in service. The entries as per R-1, which is an extract of the Service Register do not appear to have been verified or seen by the applicant. We fail to understand how the respondents can justify their action on the ground that the applicant had accepted the change in the date of accrual of increment from March 1969 to July 1969 which was alleged on account of break in service and that therefore, he was aware of the break in his service. It can be seen from records that the seniority list drawn up from time to time never reflected the alleged event of break in service. The applicant is seen to have been considered and given all his due promotions like Fireman'C', Fireman'B', Diesel Assistant, Shunter, Goods Driver, Passenger Driver and eventually Mail Driver without any disturbance to his seniority position with reference to his original date of appointment, i.e. 6.3.62. Similarly, in the matter of the number of privilege passes to be issued on the basis of the number of years of service of the concerned Railway employee, the applicant's uninterrupted service from 6.3.62 was reckoned. A-1 provisional seniority list as on 1.1.87 shows the applicant's seniority position as Goods

Driver at Sl.No.202 wherein his date of appointment is shown as 6.3.62 and no other date subsequent thereto. Thus no communication of any enforcement of break in service has ever been given to him in regard to the abovementioned important service events like preparation and publication of seniority list, issue of privilege passes, grant of promotions and so on.

9. From a perusal of the impugned A-2 pension calculation sheet dated 10.4.2001, we notice that Col.G pertaining to qualifying services shows the applicant's qualifying service as '38 years 7 M 29 days'. However, without scoring it of or effecting any attested correction, the expression '32 1/2 yrs' is indicated above the entry against Col.G. Against Col.I, regarding average emoluments on which pension is fixed is shown the figure shown as '6256', but just above it, another figure '6161' is also shown. The figure 2,77,250.00 is shown along wide the figure of Rs.2,78,050.00 being the amount of DCRG sanctioned indicated against Col.M. In our considered opinion, since two sets of figures appeared in A-2 and since the lower figures are adopted in determining the applicant's pension and pensionary benefits, the circumstances under which such variations are effected ought to have been brought to the applicant's notice. If such variations were on account of break in service, such break in service ought to have been enforced after observing the principles of natural justice. As already seen, by the respondents own action, no such break in service was effected. As we have observed above, the respondents have failed to act in accordance with the

principles of natural justice in this case. In Shiv Shanker and another Vs. Union of India and others [AIR 1985 SC 514], the Apex Court, while dealing with a similar situation wherein the justification for forfeiture of past service of a Railway servant for participation in an illegal strike was sought to be based on the clear provisions of Paragraphs 1301 and 1304 of the IREM, cited with approval the principle which the Apex Court had in the case of Dayal Saran Vs Union of India [AIR 1980 SC 554] enuncited in the following terms:

> "..Again we think that whatever relevance forfeiture of past service under Art. 420 of the Civil Services Regulations may have in connection with matters relating to advancement in service etc. it has no bearing on the question of the grant or the withholding of pension. We do not also think that an order of forfeiture of past service can be made without observing the principles of natural justice."
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> (AIR 1980 SC 554 at page 556)

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While reiterating the principle that an order with regard to break in service which results in forfeiture of past service of a Railway employee cannot be made without observing the principles of natural justice, the Supreme Court held in Shiv Shanker's case cited supra:

> "..We are not now on the question of competence of the Railway authority to make an order of forfeiture of service. The question before us is whether the principles of natural justice should be observed when an order of forfeiture of service on the ground of participation in an illegal strike is to be made. Neither para 1301 nor para 1304 of the Railway Establishment Manual excludes the observance of the principles of natural justice either expressly or by necessary implication."
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> (AIR 1985 SC 514 at Page 515)

10. We hold that the facts and circumstances are similar in this case and that therefore the principles laid down by

the Apex Court in the above cases are applicable to this case. Accordingly, we hold that the applicant is bound to succeed. The impugned A-2 pension calculation sheet dated 10.4.2001 is set aside in so far as it is prejudicial to the applicant. The impugned A-6 dated 18.9.2001 is quashed. The respondents are directed to recalculate and disburse the pension and pensionary benefits with reference to his service from 6.3.62 onwards by passing appropriate orders within a period of two months from the date of receipt of copy of this order. On the facts and in the circumstances of the case, we do not order grant of interest on the amount to be paid to the applicant in pursuance of the above directions. There is no order as to costs.

Dated, the 16th September, 2003.

T.N.T.NAYAR
ADMINISTRATIVE MEMBER

A.V.HARIDASAN
VICE CHAIRMAN

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