

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.273/2008

Dated this the 1st day of April, 2010

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

David Antony S/o David
Retd. Trackman/Keyman
O/o the Section Engineer/Permanent Way
Southern Railway, Punalur
residing at Paruvathundil Veedu
Urukunnu P.O. Ottakkal
Quilon District Kerala State.

Applicant

By Advocate Mr.T.C. Govindaswamy

Vs

1 Union of India represented by the
General Manager, Southern Railway
Hqrs, Park Town PO
Chennai-3

2 The Divisional Personnel Officer
Southern railway, Madurai Division
Madurai-10

Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

**The Application having been heard on 3.2.2010/29.3.2010, the
Tribunal delivered the following:**

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the refusal of the respondents to grant him pension and other retiral benefits.

2 Applicant was initially appointed as a Substitute Gangman w.e.f. 2.8.1974, confirmed w.e.f. 2.8.1975 and was promoted as Keyman w.e.f. 1.3.1991. While working as such, he was suspended from duty w.e.f the f/n of 13.1.1996 to 17.2.1996 and was imposed with a penalty of reduction in stage by A-1 dated 28.9.2006. He superannuated from service on 31.10.2006. The grievance of the applicant is that he was paid only a paltry sum of Rs. 26,160/- as settlement benefits out of which an amount of Rs. 5000/- was also withheld without assigning any reasons. Aggrieved, the applicant submitted a representation on 11.11.2006 (A-3) which has not yet been disposed of. Therefore, he filed this O.A seeking a direction to settle his pension and other retirement benefits. The grounds raised by the applicant are that having been regularly appointed in service on 2.8.1974 he had more than the requisite qualifying service for the purpose of grant of pension and other retirement benefits, he is entitled to be paid composite transfer grant on retirement, he has not been paid salary for the period between 20.10.2006 to 31.10.2006, he has worked for the period 1.4.2006 to 31.10.2006 during the financial year 2006-2007 and therefore, he is entitled to be paid the proportionate amount of productivity linked bonus and there is no reason for withholding the amount of Rs. 5,000/- from his gratuity as there are no dues outstanding from him.

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3 The respondents opposed the O.A by filing reply statement. They submitted that the applicant was initially appointed as a Substitute Gangman on 2.8.1974, confirmed in the post on 2.8.1975 and promoted as Keyman on 1.3.1991. While so, he was suspended which was revoked from 17.2.1996. However, he did not report for duty and remained absent for nearly six years without intimation. The applicant appeared on 26.7.2002 and requested for reinstatement. He was sent for medical examination having been declared fit in Bee One by the DMO, Madurai, he was taken back on duty on 3.9.2002 and continued in service till superannuation on 31.10.2006. They submitted that the applicant had remained absent unauthorisedly for more than 6 years from 18.2.96 to 2.9.2002, a major penalty charge memorandum was issued to him. The disciplinary proceedings initiated in 1999 were finalised in the year 2006 imposing a penalty of reduction of pay by one stage by penalty advice dated 16.10.2006, subsequently he superannuated on 31.10.2006. The period of absence from 18.2.1996 to 2.9.2002 has not been regularised either as duty or leave and remained as unauthorised absence. As there is more than six years break in service which has not been regularised/condoned the applicant does not qualify for grant of pension.

4 The applicant has filed rejoinder denying the averments in the reply statement. He submitted that Rule 17-A is pari materia to Rule 510 of IREC Vol. I. Rule 17-A of FR read that reasonable opportunity is to be afforded to the affected employee before invoking the penal provision and that condonation of break in service is required to be done suo motu.



5 We have heard learned counsel appearing on both sides.

6 The learned counsel for the applicant submitted that the applicant was under suspension from 13.1.1996 to 19.2.1996 and that he was absent from duty from 20.2.1996 to 25.7.2002. However, he was permitted to rejoin duty they have not taken any further action. When A-1 order is silent on the matter, the service of the applicant should have been regularised especially in the context of the Disciplinary Authority recording his absence as "due to illness".

7 The learned counsel for the respondents on the other hand argued that in terms of Rule 42(1) of Railway Services (Pension) Rules, 1993, an interruption in the service of a railway servant shall lead to forfeiture of his past service and that Rule 510 of Indian Railway Establishment Code Vol.I stipulates that no Railway Servant shall be granted leave of any kind for a continuous period exceeding 5 years. The applicant was absent for more than six years. Therefore his service was intervened by a break of more than 5 years which has resulted in his forfeiting his past service. In the circumstances, the learned counsel argued that the applicant is not entitled to pension and that payments like settlement salary, composite transfer grant, productivity linked bonus for 2006-07 etc. have already been paid.

8 There is no dispute that the applicant while working as Keyman was suspended from service in connection with detention of train and subsequently he absented himself for more than six years and that the respondents have issued a major penalty charge memorandum in 1999 for unauthorised absence on 20.2.1996 and imposed the penalty of



reduction of pay by one stage by advice dated 16.10.2006. However, when he reported for duty after six years, the respondents permitted him to join duty after subjecting him to medical test. It is also true that the applicant did not submit any application for regularisation of the period of his absence. The plea of the applicant relying on FR 17-A is that the respondents should have regularised the absence of the applicant suo motu. The relevant portions of Rule 17-A and Govt. of India orders are extracted below:

FR-17-A without prejudice to the provisions of Rule 27 of the Central Civil Services (Pension) Rules, 1972, a period of an unauthorised absence:

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(iii) in the case of an individual employee, remaining absent unauthorisedly deserting the post

shall be deemed to cause an interruption or break in the service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in departmental examinations, for which a minimum period of continuous service is required.

Government of India's orders

(1) Reasonable opportunity to be given before invoking the penal provisions- FR 17-A provides that a period of an unauthorised absence in the category of cases mentioned therein, shall be deemed to cause an interruption or break in service of the employees unless otherwise decided by the competent authority for certain purposes. An order passed by the P&T authorities in the case of some of their employees invoking FR 17-A was struck down by the Lucknow Bench of Allahabad High Court on the ground that issue of such an order without giving a reasonable opportunity of representation and being heard in person, if so desired, to the person concerned,



would be against the principle of natural justice. The question of amending FR 17-A as also Rule 28 of CCS (Pension) Rules and SR 200 is under consideration in consultation with the Ministry of Law.

2. The above position is brought to the notice of all Ministries/Departments so that if there are occasions for invoking FR 17-A, etc. They may keep in mind the procedural requirement that an order under FR 17-A etc. should be preceded by extending to the person concerned a reasonable opportunity of representation and being heard in person if so desired by him/her.

DG, P&T Instructions

(1)Condonation of unauthorised absence for purpose of pension-It needs to be pointed out that the principles to be adopted for condonation of break in service for purposes of pension and that for purposes of other disabilities enumerated in FR 17-A are different. The fact that break in service has not been condoned for purposes of Leave Travel Concession quasi-permanency and eligibility to appear at Departmental examinations should and need not influence the appointing authority adversely in deciding the question of consideration of break for counting the past service of the official for purposes of pension. It is not the intention of the government to deny the pensionary benefits to the employees in all cases of break of service. If necessary, the appointing authority may in its discretion not condone the break in service on account of unauthorised absence for purposes of pension only in exceptional and grave circumstances and not as a matter of course. The question of condonation of break in service for the purpose of Pension Rules may be considered suo motu without waiting for a representation from the affected officials and orders issued, so that the retired employees are not put to financial hardship.(DG P&T's letter No. 14/12/82-Vig.III dated the 23rd September, 1982) (emphasis applied)

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From the above, it is evident that the break in service which has not been condoned for purpose of LTC etc. should and need not influence the Appointing Authority in deciding the question of condonation of break for counting the past service of the official for purposes of pension.

9 The respondents have relied on Rule 510 of Indian Railway Establishment Code Vol. I to argue that no Railway servant shall be granted leave of any kind for a continuous period exceeding 5 years. The Rule 510 is extracted below:

510-Maximum amount of continuous leave - Unless the President in view of the exceptional circumstances of the case otherwise determines, no Railway servant shall be granted leave of any kind for a continuous period exceeding 5 years.

Rule 510 is regarding the maximum period of leave which can be granted to an employee. In this case the applicant is seeking pension for his service having unauthorised absence for more than six months - in other words, he seeks for condonation of the period of absence to enable him to be eligible for pension. It is made clear from the DGP&T instruction extracted above that the Department may suo motu consider the condonation of period of absence for the purpose of grant of pension.

10 The applicant was a regular employee w.e.f. 2.8.1975 and retired on superannuation on 31.10.2006 with break of service from 18.2.1996 till 25.7.2002. If the period of absence is condoned, he will be eligible for full pension.

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11 The learned counsel for the respondents have produced an order of Sr. Divisional Personnel Officer addressed to the counsel that the Special Drive Committee formed by the Southern Railway Administration with CPO, CCM and SDGM as Members as per the advice of the Member Staff of Railway Board to review the pending Court cases, has recommended for treating the period of absence of the applicant from duty from 20.2.1996 to 2.9.2002 as extraordinary leave and that necessary instructions were already given to the concerned section to issue orders for the same and to arrange payment of settlement dues by taking into account the earlier period of service from 2.8.1974 to 19.2.1996. I order to take on record the above letter.

12 In the circumstances, I am of the view that the O.A can be disposed of with direction to the respondents. Accordingly, the O.A is disposed of directing the respondents to comply with the order of the Sr. Divisional Personnel Officer No. U/P-353/OA 273/2008 dated 12.3.2010 produced before me by the learned counsel for the respondents and disburse all retiral benefits to the applicant within two months from the date of receipt of this order. No costs.

Dated 1st April, 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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