

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.357/2002.

Thursday this the 12th day of August 2004.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

P.S.Chellappan Pillai (P.C.Pillai),
S/o late Narayana Pillai,
Retired Ambulance Driver, Railway Hospital,
Kurdha Road, South Eastern Railway, Jatri
residing at Nirmalyam,
Opposite Srambikal Temple,
Edappally P.O., Cochin-24. Applicant

(By Advocate Shri V.R.Ramachandran Nair)

vs.

1. Union of India, represented by
The General Manager,
South Eastern Railway, Kurdha Road.
2. General Manager,
South Eastern Railway, Kurdha Road.
3. Senior Divisional Personal Officer,
South Eastern Railway, Kurdha Road.
4. Senior Divisional Accounts Officer,
South Eastern Railway, Kurdha Division,
Kurdha Road.
5. The Divisional Railway Manager,
South Eastern Railway,
Kurdha Road.

(By Advocate Mrs. Sumathi Dandapani)

The application having been heard on 12.8.2004, the Tribunal on the same day delivered the following:

ORDER

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

The applicant has filed this application aggrieved by A-4 order dated 31.7.01 by which on his Mercy appeal dated 12.4.2001 seeking regularisation of his service for the period 5.1.81 to 17.8.84, he was told that he had been re-appointed afresh after removal from service with the approval of D.R.M. and as such there was no continuity of service with the previous employment.

2. The short facts necessary for understanding the issue in this case can be stated thus:

The applicant was engaged as Casual Pump Driver, Truck Driver etc. during various spells upto 25.3.1968. Subsequently he was selected and appointed as Khalasi on 9.5.1974. According to the applicant he was absent from 25.3.1978 to 8.3.1984, on account of his mental ailment. When he reported for duty back in 1984 on his Appeal, he was allowed to join duty as Khalasi on 18.8.84. He ultimately retired on superannuation on 31.10.2001. Shortly before the date of the applicant's superannuation he submitted the Mercy appeal dated 12.4.2001(A3) seeking that his service from 9.5.74 till his retirement be taken as qualifying service for pension. It was in reply to this that the impugned order was issued. The applicant states that he had never been removed from service and that the action on the part of the respondents in not reckoning the period from 2.11.78 to 17.8.84 as qualifying service for pension, is illegal and unjustified.

3. The respondents in their reply statement contend that the applicant remained absent from 6.3.78 unauthorisedly that he was removed from service on 5.1.81 in terms of the order No.DSTE(M)KUR's Notice No.S&T/GM/CS/Pillai/KH/40 dated 18/19.12.1980 that in August 1984, on his acceptance of re-appointment as a fresh entrant by letter dated 4.8.1984, he was re-appointed on 18.8.1984 and therefore, the applicant is not entitled to claim the benefits of service rendered by him prior to 18.8.1984 as there was no continuity. It is also contended that the applicant did not intimate his sickness or his alleged treatment on time. The applicant in his rejoinder has refuted the allegation that he was removed from service.

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4. We have very carefully gone through the pleadings and materials placed on record and heard Shri VR Ramachandran Nair learned counsel appearing for the applicant and Smt. Sumathi Dandapani, learned counsel appearing for the respondents. Learned counsel of the applicant argued that the contention of the respondents that the applicant was removed from service cannot be accepted because, the respondents have not made available any document supporting this contention. He further argued that the case made out by the respondents that the applicant was appointed as a fresh entrant is not true to fact.

5. Learned counsel of the respondents on the other hand argued that the applicant was, in terms of Annexure R-1 order appointed at the beginning of the scale of pay of Rs.196-232/-as Khalasi with effect from 18.8.84 making it clear that the re-appointment was as a fresh entrant purely on temporary basis and therefore, the applicant's contention to the contrary has no bonafides.

6. It is true that the disciplinary proceedings or the order by which the applicant was removed from service has not been produced by the respondents. The respondents in their reply statement given the number and date of the order by which the applicant was removed from service for unauthorized absence. Further the respondents have produced a copy of the order dated 18.8.84 pursuant to which the applicant re-commenced his service. It is evident from Annexure R-1 order that the applicant was appointed as a fresh entrant in service as Khalasi in the scale Rs.196-232/-. It is also evident from the applicant's own Mercy Appeal dated 12.4.2001(A3) that the applicant was aware of the fact that his new service started from 18.8.84 and that the

period between 25.11.78 to 17.8.84 had been treated as absence. The applicant would try to explain not mentioning this in the O.A. saying that he was even after rejoining duty on 18.8.84 consuming psychiatric drugs and was not well aware ^{of} ~~with~~ the implications of the fresh appointment. The argument of the learned counsel of the respondents that this contention of the applicant is an after-thought made without any bonafides has considerable force. We find that the respondents reappointed the applicant as a fresh entrant in service in August, 1984 while he was absent from 6.3.1978 without any intimation. In the order of reappointment (R-1) it was very clearly stated that it was an appointment as a fresh entrant purely on temporary basis. It is only 17 years after he commenced his fresh service that he made his representation on 12.4.2001. We have no reason to believe that the respondents who have been kind enough to reappoint the applicant did play a fraud on the applicant for, there was no reason to do so. In the face of Annexure R-1 and the conduct of the applicant thereafter till he made representation on 12.4.2001, the applicant is estopped from contending that he had continuity of service. We are unable to persuade ourselves to accept the far fetched claim of the applicant.

7. In the conspectus of facts and circumstances, the application which is devoid of merit, is dismissed leaving the parties to suffer their costs.

Dated 12th August, 2004.

H.P.DAS

ADMINISTRATIVE MEMBER

A.V.HARIDASAN
VICE CHAIRMAN

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