

continuous service on 1.3.1982 which after break was to start only from the year 1980. The applicant protested against the same and made representation that there cannot be any break in service and it can only be punishment and no punishment can be given without affording any opportunity of hearing.

2. The applicant no. 2 earlier filed an application before this tribunal registered as O. . No. 384 of 1991 by which he challenged the order dated 23.10.89 against the punishment of censure and interim order was passed by the Tribunal that this punishment will not be taken into account by considering his case for promotion.

3. The applicant no. 1 instead of approaching the Tribunal filed a revision application against the same before the departmental authority which according to him is still pending. Prior to that the applicant was placed under suspension in the month of August and September, 1987 respectively against which they made a representation which was allowed on 23.3.89 and they were allowed full pay & allowances for a period of suspension and their services were to be regularised. The applicants were allowed to cross the Efficiency Bar as and when it fell due. Thus the sole question for determination is as to whether there was a break in the service of the applicant or not? The respondents in their reply have stated that the relaxation was admissible to those who ^{have} ~~were~~ rendered three years continuous service. The applicants have not rendered three years continuous service and as such there was no occasion to grant them relaxation.

rest

4. There was an interruption in their service because of a down strike, the applicants were absent from duty w.e.f. 2.12.80 to 6.12.80 and according to the clarification of duty, in case they are in absence from duty unauthorisely, the employee unless otherwise decided by the competent authority, it will cause the interruption of break in service of the employee and the applicant was given information of the same on 10.2.83 about their non admission of the examination. The break in service is governed by Fundamental Rule 17- which reads as follows:- "Without prejudice to the provisions of Rule 27 of the Central Civil Services (Pension) Rules, 1972, a period of an unauthorised absence -

(1) in the case of employee working in industrial establishments, during a strike which has been declared illegal under the provisions of the Industrial Disputes Act, 1947, or any other law for the time being in force ;

(ii) In the case of other employees as a result of acting in combination or in concerted manner, such as during a strike, without any authority from, or valid reasons to the satisfaction of, the competent authority and

(iii) in the case of an individual employee, remaining absent unauthorisedly or 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, seniority and eligibility for promotion in departmental examinations, for which a minimum period of continuous service is required."

As a break in service affects the civil rights of a particular person and in the nature of punishment in as much as the person loses the

benefit of his previous service, no punishment should be given to a person unless he is heard otherwise his claim which tantamounts ^{to} ~~and it would~~ condemnation of a person without being heard, that is the rule of Audi alteram partem which thereby was followed in breach. The Fundamental Rule 17-1 was struck down by the Lucknow Bench of Allahabad High Court, as such order cannot be passed without giving a reasonable opportunity of representation and being heard in person, if so desired. It is thereafter the Government xxx of India, Department of Personnel and Training issued Office Memorandum dated 20/23rd of May, 1985 in this behalf, which may be that the said notification was issued thereafter, but the position remains the same that no order to the detriment of a person affecting his civil right of promotional prospects or service benefit could be passed without reasonable opportunity of hearing. In this case it may be that there was pay down strike and same was treated as a break in service by the department, but it could have been done only after giving a hearing to a person concerned, but the same was not done. The order so passed unilaterally was obviously violative of principle of natural justice and consequently the said order cannot be given legal recognition too and being no order in the eyes of law and accordingly without giving an opportunity of being heard to the applicant and thereafter deciding whether or not there may be a break in service or not. The respondent's own level should not have been treated as temporary service. The application in these circumstances deserves to be allowed and the respondents are directed to consider the case of the applicant.

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for the promotional post of the Deputy Director by ^{the applicant} holding a supplementary examination within a period of four months. However it is also made ~~de~~ clear that it will be open for the respondents to decide the question of break in service within a period of two months, but that after giving an opportunity of hearing. In case the department decides to ~~take~~ take up this matter again, the department will decide this question in accordance with law and the previous decisions given by them in this behalf and that too after giving the full opportunity of hearing to the applicant. No order as to the costs.


Member (1)


Vice Chairman.

Dt: May 21, 1992.

(DP)

Corrected
5/21/92