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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 33/89

Transferred Application No: x

DATE OF DECISION: 16.8.1994,

Shri Nakul Alloo Bajage Petitioner

Shri Y.R. Singh Advocate for the Petitioners

Versus

General Manager, Respondent
Central Railway, Bombay.

Shri J.G. Sawant. Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (A)

The Hon'ble Shri MR. Kolhatkar, Member (A)

1. To be referred to the Reporter or not? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal?


(B.S. Hegde)
Member (J)

(S)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 33/89

Shri Nakul Alloo Bajage
V/s.

... Applicant.

General Manager,
Central Railway,
Bombay V.T.

Divisional Engineer (NE)
Central Railway.

... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearance:

Shri Y.R. Singh, counsel
for the applicant.

Shri J.G. Sawant, counsel
for the respondents.

JUDGEMENT

Dated: 16.8.1994.

(Per Shri B.S. Hegde, Member (J))

The applicant [redacted] joined as Gangman in respondent's office in the year 1972 and he worked in that capacity till 26.3.79. On 26.3.79 the applicant was directed by his supervisor to work as a Gatekeeper at interlocked level crossing gate No. 49 - C at KM 60/15. An accident took place at the above mentioned gate during the applicant's duty period in that, Lucknow - Bombay Express train, 116 Up dashed against the rear portion of the road roller which was crossing the said gate and caused death of the driver of the said road roller. Because of the death of the Driver of the road roller, the applicant was proceeded with under Railway Servants (Discipline & Appeal) Rules, 1968. A major penalty charge memorandum under rule 9 was issued to the applicant and there by the applicant was removed from service with effect from 15.10.79.

Against the criminal charge levelled against the applicant, the Judicial Magistrate First Class (Railways) Kalyan, vide his order dated 6.11.84 acquitted the accused of the offences U/s. 101, 129 I.R.A. and 304 (A) I.P.C. Persuant to that the applicant made representation to the competent authority for employment in the respondents office. The respondents vide order dated 21.2.85 had taken him on duty as fresh employee and posted him as Gangman in the grade of Rs. 200 - 250 (RS) under PWI VSD in Gate No.9. Persuant to the re-instatement he made a representation dated 24.2.86 to the Divisional Railway Manager for treating the period from removal from service i.e. 15.10.79 to the reinstatement i.e. 9.3.85 as duty for all purposes including payment of wages and allowances for the said period.

We have heard learned counsel for both the parties and perused the proceedings. Shri Y.R. Singh counsel for the applicant has argued regarding the backwages. In view of principle of no work no pay laid down in the decisions of the Supreme Court, he urged that he may be notionally re-instated in service i.e. from 15.10.79. The applicant has filed this application in the year 1989 and has filed an application for condonation of delay, stating that the applicant is illiterate and an uninformed person. He did not understand in the beginning that he was being taken on duty as a fresh employee and would lose previous service. However, he came to know about it after completion of one year in service. He made representation on 24.2.86, but he has not received any reply from the respondents, hence,

he filed this application.

Counsel for the respondents submits that considering the facts of the case and his acquittal on benefit of doubt, the applicant was taken on duty as a fresh employee and posted as Gangman in the grade of Rs. 200, 250 (RS) under Permanent Way Inspector. The applicant has challenged the order of removal from service dated 6.10.79 and the office order dated 21.2.85 and 23.2.85. The application is absolutely barred by time and the same is liable to be dismissed. However we have to consider whether the ground taken in the belated petition is germane to the issue of condoning delay. He however, contended that the applicant cannot at this late stage seek to challenge the penalty of removal from service imposed upon him as back as 79. The applicant failed to avail of his right under the Railway Servants (Discipline and Appeal) Rules 1968. The applicant was removed from service after completion of proper enquiry under Railway Rules. Since the applicant has reported for duty vide order dated 21.2.85 without having knowledge that he was being taken on duty as a fresh entrant and loss of previous service. Such a contention is not tenable.

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We have considered the rival contentions of the parties and have gone through the pleadings. The grounds stated in the condonation of delay application by the applicant is not germane to the issue involved, and he has not challenged the termination order therefore without challenging the termination order, he wants the Tribunal to give

the benefit of service from the date of his removal i.e. 1979. Therefore, the condonation of delay application is not tenable. Accordingly the application for condonation of delay is not sustainable and the same is liable to be dismissed on that score. Even on merits, since he has already been taken on duty from 9.3.85 onwards and he will be superannuated in the year 2012. We see no injustice has caused to the applicant. In any event, after acquittal by the Court of Law, he has been reinstated into service on humanitarian ground as a fresh entrant. In the circumstances, we see no merits in the OA and the same is dismissed, but no order as to costs.

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)

B.S.Hegde

(B.S.Hegde)
Member (J)

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