

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 92/96

Date of Decision : 14.6.2000

G.B.Parmar Applicant.

Shri G.S.Walia Advocate for the  
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri V.S.Masurkar Advocate for the  
Respondents.

CORAM :

The Hon'ble Shri L.Hmingliana, Member (A)

The Hon'ble Shri Rafiquddin, Member (J)

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library

Yes  
Rafiquddin  
(RAFIQUDDIN)  
MEMBER (J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.92/96

Dated this the 14th day of June 2000.

CORAM : Hon'ble Shri L.Hmingliana, Member (A)

Hon'ble Shri Rafiquddin, Member (J)

G.B.Parmar,  
Sr.Clerk, DRM's Office,  
Western Railway, Bombay  
Central, Bombay.

... Applicant

By Advocate Shri G.S.Walia

V/S.

1. Union of India  
through General Manager,  
Western Railway,  
Head Quarters Office,  
Churchgate, Bombay.
2. Divisional Railway Manager,  
Bombay Division of Western  
Railway, Bombay Central,  
Bombay.
3. Chief Personnel Officer,  
Western Railway,  
Headquarters Office,  
Churchgate, Bombay.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R

{Per: Shri Rafiquddin, Member (J)}

The applicant seeks a direction to be issued to the respondents to count the service rendered by him as a Motorman for the purpose of granting him pensionary benefits after his reappointment or reinstatement as Junior Clerk after setting aside the impugned order issued vide letter dated 23.3.1994.

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2. In brief the facts of the case are that the applicant was appointed as a Motorman in the Western Railway on 2.5.1962. However, the applicant was removed from service vide order dt.3.5.1985 after holding departmental enquiry.

3. The case of the applicant is that he was reappointed as a Junior Clerk in the scale of Rs.950-1500 (RPS) by the appellate authority when he preferred an appeal against the aforesaid punishment order. The applicant joined as a Junior Clerk and has also been promoted as Senior Clerk. The applicant vide his representation dated 6.6.1991 appealed the respondents for restoration of continuity of his service for the purpose of pensionary benefits. The aforesaid representation of the applicant was, however, rejected vide reply dated 18.7.1991. The applicant states that he made further representation dated 1.7.1992 to the General Manager, Western Railway (Respondent No. 1) which was also rejected by Additional Divisional Railway Manager (CG), Bombay on the ground that the applicant was given a fresh appointment as a Junior Clerk and as such question of treatment of interim period as continuous service did not arise. Consequently, the applicant again submitted a representation to Respondent No. 3 on 22.9.1993. The Respondent No. 3 vide impugned order dated 23.4.1994 rejected the appeal and directed the applicant to submit the representation to the President of India. The applicant accordingly submitted a memorial to the President of India under Rule 31 of Railway Servants Disciplinary Rule 1968 narrating all the facts and circumstances under which

he was removed from service and how the discontinuity of his service is prejudiced in respect of pensionary benefits. Since the applicant has not received any reply to this memorial, he has filed present OA. challenging the order dt.23.3.94 (Ex.A1).

4. The main grounds for challenging the action of the respondents are that it is in violation of principles of natural justice, is harsh, discriminatory, and unconstitutional. The reappointment of the applicant as Junior Clerk is in fact a reduction in rank and punitive in nature.

5. The respondents in their counter reply have contested the claim of the applicant mainly on the ground that the claim is grossly time barred and that the applicant is not entitled for counting of his past service prior to removal from service because the applicant had not challenged the order of removal and hence the same has become final. Besides, the applicant having been reappointed as a fresh recruits, and placed on the probation for one year, his previous service cannot legally be counted for any purpose.

6. We have heard counsel for both the parties and perused the record.

7. It has been urged on behalf of respondents that the claim of the applicant is based on the letter of his appointment dated 20.1.1987. Hence the same is not maintainable being barred by

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limitation. However, we find that the applicant in this present OA. has merely sought counting of his previous service rendered by him as a Motorman. This claim of the applicant may be made even after his retirement. The applicant is still in service. The claim of counting of service being in nature of pensionary benefits, the same can be claimed by him even after the retirement. We, therefore, do not find any force in this contention of the respondents that the claim is barred by time.

8. The claim of the applicant for counting his service as Motorman is based on the assumption that the order dated 20.1.1987 reappointing him as Junior Clerk was passed by the appellate authority after considering his appeal preferred against punishment order. The respondents have, however, denied this claim of the applicant and have pleaded that the order dated 20.1.1987 is a fresh reappointment order and has nothing to do with the departmental proceedings. In order to appreciate the rival contentions of the parties' counsel, it is necessary to examine the contents of the letter which is reproduced as under:-

"

PASCHIM RAILWAY

No.PR/2/367/2/1.Vol.XI.

DRM's Office, BCT

Dt.20.1.1987

M.O. Staff Office Order No.19

Sub:- Re-appointment of Shri G.B.Parmar  
Ex.Motorman BCT as Junior Clerk.

Ref:- APO(II) BCT's Note No.E/ELT/839/  
21/1 of 7.1.87.

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Shri G.B.Parmar, Ex. Motorman is re-appointed as Junior Clerk in scale Rs.260-400 (R)/950-1500 (RS) on pay Rs.950/-p.m. on probation of one year with effect from 13.1.87 and posted in E/PB/T neotion vide Smt.Jyoti Khandekar who is promoted as Sr.Clerk. His date of birth as shown in his school leaving certificate is 31.1.1941.

Shri G.B.Parmar should note that his appointment as Junior Clerk in scale Rs.260-400(R)/950-1500 (RS) is a fresh appointment on a probation of one year.

OS(E) PB should send a tri-monthly report about the working and behaviour of Shri G.B.Parmar, so that a final decision may be taken at the end of the one year probationary period.

DPO BCT. "

9. A perusal of this letter clearly indicates the following :-

- (1) The applicant has been described as Ex.Motorman, BCT which means that the applicant was no more a Motorman at the time of issuance of this letter.
- (2) This order has been issued by the DRM who is the appointing as well as disciplinary authority of the applicant whereas the appellate authority of the applicant is General Manager.
- (3) There is no reference to any appeal of the applicant in connection with his punishment order in this letter.
- (4) There is a clear mention to the effect that it is a fresh appointment of the applicant on probation of one year.

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10. On the basis of these facts, it is not possible to form a conclusion that the order in question was passed by the appellate authority of the applicant during the departmental proceedings as claimed by the applicant. It is a clear order of fresh reappointment of the applicant as Junior Clerk.

11. Shri G.S.Walia, learned counsel for the applicant has made an attempt to convince us that the order in question is merely an order passed on the appeal of the applicant preferred by him during departmental proceedings. He has urged that this order amounts to deduction in rank by virtue of the power exercised by the General Manager in D.A. Rules. Hence the applicant is entitled to all the previous service to be counted for pensionary benefits. In other words, it is admitted to the applicant that the order in question is the order of punishment. It is, however, not explained as to why this order was not challenged when it was passed in the year 1987? It also goes to show that the order in question is not the order passed under DAR as claimed by the applicant. The order, as stated above, has not been passed by the appellate authority of the applicant who is the General Manager. Thus, the argument of the learned counsel for applicant does not impress us on this point. The learned counsel for the applicant has placed reliance on a decision of Division Bench of Hyderabad bench of this Tribunal, namely, Shaik Mahaboob vs. General Manager & Ors., 1994 (1) ATJ 605. In this case, the order of reappointment of the delinquent employee was

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passed by the appellate authority. Therefore, the Bench took the view that since the order of reappointment of the delinquent employee was void on the ground that having been passed dehors the rules and if by reading down, it is possible to hold that the said order is in-conformity with the rules, then it is proper to hold such orders as per rules and the employee should be given the benefit of counting of service. However, the facts of the present case are different because the order of reappointment has not been passed by the appellate authority. Hence this ruling will not be of any help to the applicant. Similarly, the views expressed by the Jabalpur bench of this Tribunal in the case of P.C.Pandey vs. Union of India & Anr., 1996 (33) ATC 1 are also not of any help to the applicant because in that case also the appellate authority, who is permitted by rules to confirm, enhance, reduce or set aside the penalty, adopted a different course of action by reappointing the employee to a lower post at minimum of the grade as fresh entrant but we find in the present case that the order of reappointment has not been passed by the appellate authority but by the appointing authority of course dehors the rules but not during the disciplinary proceedings. The Division Bench of this Tribunal (Bombay bench) while deciding OA.NO.238/94 S.P.Badgujar vs. Union of india & Ors. decided on 8.8.1994 also followed the views taken by the Hyderabad bench under the facts and circumstances of the case because the order or reappointment of the delinquent employee was passed by the appointing authority.

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12. The learned counsel for the respondents has rightly contended that in the present case the applicant has been reappointed after his removal from service after taking disciplinary proceedings vide order dated 3.5.1985 which had become final. The applicant who requested higher authority for sympathetic consideration was reappointed on specific terms and so long as the order of removal dated 3.5.1985 is valid, his service cannot be counted for the purpose of pensionary benefits in terms of Rule 426 of Railway pension Rules, 1950 which provides resignation from service, dismissal or removal or compulsory retirement also entails forfeiture of past qualifying service. We also agree with this contention and in view of clear provisions of rule which clearly lays down that a Railway employee who has been removed from service is not entitled for the benefit of past qualifying service. The facts of the case clearly shows that the order of removal of applicant has become final, therefore, he is not entitled for counting qualifying past service in view of provisions of this rule. This Tribunal is not a court of equity and is not in a position to grant the benefit of counting qualifying service on equitable grounds.

13. The learned counsel for the applicant has also urged that the order of reappointment of the applicant has been passed without any authority and has been passed de hors the rules. Since this order of reappointment of the applicant has not been

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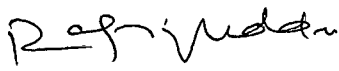
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12. The learned counsel for the respondents has rightly contended that in the present case the applicant has been reappointed after his removal from service after taking disciplinary proceedings vide order dated 2.5.1983 which had become final. The applicant who requested higher authority for sympathetic consideration was reappointed on specific terms and so long as the order of removal dated 2.5.1983 is valid, his service cannot be counted for the purpose of pensionary benefits in terms of Rule 426 of Railway Pension Rules, 1950 which provides resignation from service, dismissal or removal or compulsory retirement also entails forfeiture of past qualifying service. We also agree with this contention and in view of clear provisions of rule which clearly lays down that a Railway employee who has been removed from service is not entitled for the benefit of past qualifying service. The facts of the case clearly shows that the order of removal of applicant has become final, therefore, he is not entitled for counting qualifying past service in view of provisions of this rule. This Tribunal is not a court of equity and is not in a position to grant the benefit of counting qualifying service on equitable grounds.

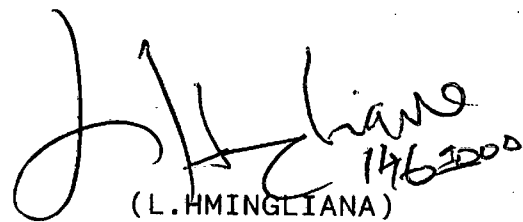
13. The learned counsel for the applicant has also urged that the order of reappointment of the applicant has been passed without any authority and has been passed before the rules. Since this order of reappointment of the applicant has not been

challenged in this OA., we are refrained from making any observation regarding the legality or otherwise of this order. The legality or otherwise of this order is not relevant for the purpose of decision of this OA.

14. In view of what has been discussed above, we hold that applicant is not entitled for counting his previous service rendered by him because he has failed to prove that his reappointment order was passed by the appellate authority after considering the appeal preferred by him against punishment order. Accordingly, the OA. is dismissed with no order as to costs.

  
(RAFIQUDDIN)

MEMBER (J)

  
(L. HMINGLIANA)

MEMBER (A)

mrj.