

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 819/2000

MONDAY, THE 27TH DAY OF AUGUST, 2001

CORAM: SHRI JUSTICE ASHOK AGARWAL.
SMT. SHANTA SHASTRY.

CHAIRMAN
MEMBER (A)

Shri Mukunda Gyanaba Pandhare,
Gangman under C.P.W.I.,
Murtizapur, Central Railway,
residing at C/o Shri D.K. Kamble,
Railway Quarters, Behind Railway Hospital,
Murtizapur, Dist. Akola,
Maharashtra. ... Applicant

By Advocate Shri H.A. Sawant.

Versus

1. Union of India, through
General Manager, Central Railway,
CSTM, Central Railway HQ office,
Fort, Mumbai-1.
2. The Divisional Railway Manager,
Bhusawal Division, C. Railway,
Divisional Office, Bhusawal,
3. The Chief Permanent Way Inspector,
Central Railway, Akola,
Bhusawal Division, Central
Railway. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R (ORAL)

Smt. Shanta Shastri.

... Member (A)

The present application is filed by the applicant against the order dated 18.8.1992 thereby directing break in service and treating the applicant as freshly employed as monthly rated casual labour from 13.1.1992.

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2. The applicant is working as a gangman in the Central Railway from 31.1.1984. At that relevant time, he was working as Akola under CPWI. Around 54 gangmen were transferred. The applicant was one of them. All these gangmen agitated against the transfer. later on, they resorted to hunger strike from 20.11.91 to 22.11.91. The authorities concerned issued a charge sheet to all of them and finally imposed the punishment of break in service vide order dated 18.8.1992. Their services were terminated on 16.1.1992 and they were freshly appointed from the next day i;e; on 18.1.1992. The break in service was imposed from 22.11.1991 to 17.1.1992. The applicant was also informed about the break in service vide impugned order dated 18.8.1992. According to the applicant he reported for duty on 25.11.91 but was taken back on duty only from 13.1.92.

3. Thereafter, two employees amongst similarly situated employees filed OA 1160/93 and 1161/93 before this Tribunal against the punishment of break in service. The judgment was delivered on 20.3.1997 condoning the break in service and setting aside the impugned order dated 18.8.1992 in respect of those two employees. The applicant has prayed that the benefit of the aforesaid judgments of the Tribunal should be

extended to the applicant, since he was similarly placed and he too had participated in the hunger strike. The applicant also had made representation against the punishment of 'break in service'. The applicant is further aggrieved that he not only was given the punishment of break in service, but the respondents also stopped his three passes and PTOs. According to the applicant since he was similarly placed to others, who had filed OAs 1160/93 and 1161/93 before this Tribunal and had got a decision in their favour, the applicant is also entitled to get the break in service set aside.

4. The respondents submit that the applicant has filed this application belatedly. The cause of action arose in 1992 and the applicant was clearly informed of the decision to impose the penalty of break in service on 18.8.1992. The applicant kept quiet till OAs 1160/93 and 1161/93 were decided by this Tribunal on 20.3.97. Even thereafter the applicant has approached this Tribunal only in the year 2000 i.e. after three years of the decision. The application is barred by limitation. The learned counsel for the respondents has cited several judgments in support that such belated applications, barred by limitation do not deserve to be considered.

5. On merits, the respondents have stated that the applicant, even after the period of hunger strike continued to remain absent unauthorisedly. Therefore, further action was initiated against the applicant under the provisions of Railway Servants (Discipline & Appeal) Rules, 1968 after giving him due opportunity. The applicant was issued punishment order dated 18.8.92 and the same has become final and has been implemented. the applicant has not challenged the aforesaid punishment order and therefore, on the ground of delay and laches in challenging the earlier order dated 18.8.92 the respondents urge that the application should be dismissed. The learned counsel for the respondents is also relying on the case of State of Karnataka Vs. S.M. Kotrayya & Others reported in 1996 (6) SCC 267 wherein, it was held that the mere fact that the applicant filed belated application immediately after coming to know that in similar claims reliefs has been granted by the Tribunal was not a proper explanation to justify the condonation of delay. The explanation must relate to failure to avail the remedy within the limitation period. The respondents, therefore hold that their action in treating the applicant as a fresh employee from 19.3.1992 is correct.

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6. The learned counsel for the applicant is however relying on the judgment of Supreme Court in the case of K.C. Sharma & Others Vs. Union of India & Others reported in 1997 (6) SCC 721 wherein, it has been held that limitation would not apply when the judgment is in rem. As such, such delay needs to be condoned and the benefit of the judgment to others similarly situated need to be extended in the present case. This judgment is by a five judges. In view of this, delay and limitation needs to be condoned. The applicant has also filed an application for condonation of delay wherein he has explained that immediately after the judgment in 1997 in OA 1160/93 and 1161/93 the applicant had approached the labour court for redressal of his grievance in regard to break in service and therefore there was delay on his part in approaching this Tribunal.

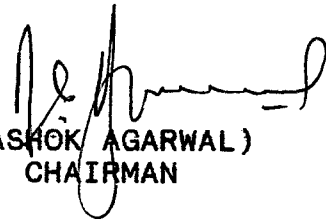
7. We have carefully considered the rival contentions and we find that the applicant was one of the 54 employees who had resorted to hunger strike and thereafter transferred and who were all punished with break in service. Two of the employees obtained a decision in their favour by approaching this Tribunal. Since the applicant is identically placed to those

applicants, the judgments in those two OAs needs to be extended to the applicant also. The argument advanced by the learned counsel for the respondents that application is totally barred by limitation and suffers from delay and laches cannot be accepted in view of the fact that the Apex court has held otherwise in the judgment in the case of K.C. Sharma & Others Vs. UOI & Others and had held that dismissal of the application on the ground of limitation was not proper in a case where there is a judgment in rem. considering this, we are also inclined to condone the delay in this matter. The respondents have also contended that the applicant's case is slightly different than the case of those applicants who had approached this Tribunal earlier and obtained decision in their favour on 20.3.1997 in that, the applicant had continued to remain absent even beyond the period of hunger strike. In our considered view, that is a different cause of action for which the applicant has been separately punished. As far as the break in service is concerned, in our view, the applicant is identically placed to other employees in OA 1160/93 and 1161/93 and therefore, the applicant needs to be given the benefit of the judgment dated 20.3.97. We, therefore, direct the respondents to grant the benefit of the judgment dated 20.3.97 in OA 1160/93 and

1161/93 to the applicant and quash and set aside the impugned order dated 18.8.92 with all consequential benefits. The OA is allowed as above. We do not order any costs.



(SHANTA SHASTRY)
MEMBER (A)



(ASHOK AGARWAL)
CHAIRMAN

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