

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

O.A.No.700/2000

&

O.A.No.757/2000

Date of Decision: 6.10.2003

CORAM: HON'BLE SHRI JUSTICE P. PANIGRAHI, VICE CHAIRMAN
HON'BLE SHRI S.P. ARYA, MEMBER (A)

Shri Khanderao Nagorao Muneshwar,
aged about 53 years and working as
Khalasi under CIOW (SS) Bhusawal
Central Railway Bhusawal, and resident
of Bhusawal, Dist. Jalgaon,
Maharashtra State.

... Applicant
in both the
OAs.

(Applicant by Shri H.A. Sawant, Advocate)

vs.

1. The Divisional Railway Manager
Divisional Railway Office,
Bhusawal Division,
Central Railway,
Jalgaon Dist.

2. Union of India,
Acting through the
General Manager Personnel,
Central Railway, HQ Office,
CSTM, Mumbai No.1,
Maharashtra State.

.... (R.1 and R.2 are common
in both the OAs.)

3. Shri Mohan Roopchand Jangale
IOW, (Horticulture), Bhusawal
under Sr. DEN (O),
Bhusawal

Respondent in O.A.No.
... 757/00 only.

(Shri S.C.Dhawan, Advocate for respondents)

ORDER (ORAL)

[Per: Justice B. Panigrahi, Vice Chairman]:

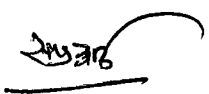
Heard both the matters. Since in both the matters there
is a common question of law and facts involved, we have heard the
matters together and dispose of these two OAs. by this common
order.

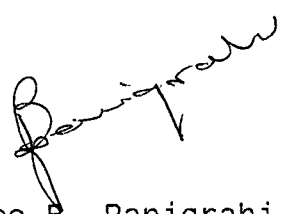
2. The applicant was appointed as Khalasi in Group 'D' category. During the continuance of his service a Charge Memo was served on him for his unauthorised absence from 3.3.1991 till 18.12.1991. The applicant claimed to have submitted application for leave but at any rate, the disciplinary authority, have not satisfied with the explanation and the written statement of defence submitted by the applicant. Therefore, they removed him from service by imposing the major penalty. Thereafter it appeared that the applicant having been aggrieved by such order of removal filed an application before the Tribunal vide O.A.No.1357/92 challenging the illegal order of termination dated 18.12.1991. Simultaneously, he also filed an appeal before the appellate authority. The O.A. was kept pending for a longer time and in the meantime the appellate authority after considering the facts and circumstances of the case had reduced the quantum of penalty order of termination by imposing a token penalty of stoppage of privilege pass for a period of three years. The applicant was also directed to be reinstated in service forthwith. His period of absence of 129 days will be considered as Leave without Pay. The period of absence from the date of removal to the date of reinstatement will also be treated as Leave Due/Leave Without Pay. After such order was passed by the appellate authority the No. O.A.1357/92 filed by the applicant before the Tribunal became automatically infructuous. The applicant filed another case being O.A.No.276/99 claiming all service benefits, but due to certain technical defects, he preferred to withdraw the same with leave to file another comprehensive application. Thereafter he has filed these two cases claiming all service benefits.

3. It is true that the respondents had initiated disciplinary proceedings on the charges of unauthorised absence which culminated by passing an order of removal of the delinquent employee from the service by the disciplinary authority and the appellate authority as well, but, it did not sustain before the revisionary authority. The revisionary authority, on the contrary has taken a lenient view by replacing the order of removal by an order imposing a token punishment of withholding of one privilege pass for a period of three years. Therefore, in this background, we have no alternative, but to hold that the applicant, for no fault of his had to suffer, by remaining out of duty for a period of about 4 years, is eligible for all his service benefits including pensionary benefits without any break in service. However, when the question of payment of arrears of salary comes, we are of the view that since the applicant has not rendered the service during the above period, we are not inclined to grant any arrears of salary and allowances for those period. In so far as other service benefits such as promotion and pensionary benefits are concerned, his right to get all such service benefits cannot be denied. The applicant was stated to have remained without leave for a period of 129 days which the revisionary authority has directed to treat the same as "Leave Without Pay". If this period shall be treated as Leave Without Pay there will be a break in service which would be prejudicial to the interests of the applicant. Therefore, in this situation, we direct the authorities to treat the period of absence not as break in service while providing service benefits including the pensionary benefits to the applicant. The uncovered portion of period shall be treated as Extra Ordinary Leave without pay and allowances which shall be countable for seniority and pensionary benefits.

4. In O.A.No.757/2000 the applicant has claimed seniority over respondent No.3. It may be clarified that the applicant out of his own volition sought transfer from one department to the other department, thereby foregoing his seniority. Thus, in our opinion, he could not have claimed his seniority over the respondent No.3. It may be stated here that the respondents shall consider applicant's case for promotion if he is otherwise eligible when his turn comes in future. The applicant's seniority in the present assignment shall be determined from the date when he joined in his new posting. While determining the seniority the period of absence of the applicant shall be treated as Leave Due and the uncovered portion shall be treated as Extra Ordinary Leave (EOL) countable for the purpose of seniority and pensionary benefits.

5. With the above directions, both the O.As. are disposed of. There shall be no order as to costs.


(S.P.Arya)
Member (A)


(Justice B. Panigrahi)
Vice Chairman

sj*

CENTRAL ADMINISTRATIVE-TRIBUNAL
MUMBAI BENCH, MUMBAI

Nos. R.P. 31 of 2004 with
M.P.507 of 2004
(arising out of O.A.700 of 2000)

Date of Order: 20.8.04

CORAM : HON'BLE SHRI JUSTICE B.PANIGRAHI, VICE CHAIRMAN
HON'BLE SHRI S.P.ARYA, MEMBER(A).

Shri Khanderao Nagorao Muneshwar,
aged about 53 years and working as
Khalasi under CIOW (SS) Bhusawal;
Central Railway Bhusawal, and resident
of Bhusawal, Dist Jalgaon;
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.....Applicants

VS.

1. The Divisional Railway Manager
Divisional Railway Office,
Bhusawal Division, Central Railway,
Jalgaon Dist.
2. Union of India,
Acting through the
General Manager Personnel,
Central Railway, HQ Office,
CSTM, Mumbai No.1,
Maharashtra State

For the Applicant : Mr. D.V. Gangal, Counsel

For the Respondents : Mr. S.C. Dhawan, Counsel

ORDER

PER JUSTICE B. PANIGRAHI, VC:

This Review Petition has been filed along with the application for condonation of delay in terms of liberty granted by the Hon'ble Bombay High Court in Writ Petition No.1302 of 2004 vide order dated 10.06.2004, seeking review and recall of the order dated 06.10.2003 and for rehearing of O.A. No.700 of 2000.

2. The applicant while working as Khalasi at Bhusawal under the Chief Inspector of Works, Central Railway, was issued with a charge memo dated 19.7.1991 for his unauthorised absence from duty and ultimately removed from service after conclusion of D.A. proceeding. The applicant challenged the said removal order dated 18.12.1991 before the Tribunal by filing O.A. No.1357 of 1992. During the pendency of the O.A. No.1357 of 1992, the appellate authority i.e. DRM by order dated 24.8.1996 considered the appeal and set aside the penalty of removal and the applicant was directed to be reinstated in

service. The period of his absence for 129 days was treated as leave without pay and the period from the date of removal till the date of reinstatement was ordered treated to be as leave due or leave without pay, as the case may be. However, the appellate authority imposed a token punishment of withholding of one privilege pass for three years. In view of this order of the appellate authority, the O.A. No.1357 of 1992 became infructuous and by order dated 5.9.1997 it was dismissed on that ground. Subsequently, the applicant filed O.A. No.276 of 1999 claiming regularisation of the period of absence and also for payment of salary etc. with interest. This O.A. was withdrawn vide order dated 07.10.1999 on the ground that the respondents had agreed to grant his prayers. However, liberty was granted to the applicant to file a fresh application if he was aggrieved by the orders of the respondents to be passed in respect of the reliefs claimed in the said O.A.

3. It appears that subsequently the applicant filed O.A. No.700 of 2000 in which he inter alia prayed for treating the period from the date of removal from his service i.e.18.12.1991 till the date of reinstatement as on duty and for payment of arrear pay and allowances etc. with all consequential benefits. However, he also prayed for setting aside the penalty order, without however mentioning which penalty order. Simultaneously, the applicant also filed another O.A. bearing No.757 of 2000 in which he prayed for his seniority over respondent no.03 therein. Both these O.A.s were heard and disposed of by a common order dated 06.10.2003. By the said order, the Tribunal directed the period of absence for 129 days for which the disciplinary proceeding was initiated against him, should not be treated as break in service and the uncovered period shall be treated as E.O.L. without pay and allowances as he did not work during the period. So far as the other O.A. i.e. O.A.757 OF 2000 was concerned, necessary direction was also issued.

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4. It appears now that the applicant had filed a Writ Petition before the Hon'ble High Court against this common order dated 06.10.2003. The Hon'ble High Court by its order dated 10.6.2004 observed as under:-

"The learned Counsel is urging points which are not reflected in the order passed by the Tribunal. Learned Counsel states that all these points were raised, but not answered by the Tribunal. If that be the case it will be appropriate for the petitioner to file a Review Petition wherein he can raise the contentions that were urged but not answered if in fact it was so. In the light of that petition rejected. The question of condonation of delay will be considered by the Tribunal on its own merits bearing in mind that the petition was also filed by the petitioner before this Court."

5. As already stated above the applicant has only sought for review of the direction of the Tribunal so far as O.A. No. 700 of 2000 is concerned. As indicated earlier in the said O.A. the applicant had mainly claimed for the reliefs of setting aside the penalty order and also consequential benefits including the pay and allowances for the period during which he was out of employment from the date of removal till the date of reinstatement which was ordered by the appellate authority to be treated as leave due or leave without pay as the case may be.

6. Since in the O.A. the applicant had claimed multiple reliefs, which were not consequential to each other, the Tribunal considered only the relief so far as the service benefits were concerned. This was so because plural remedy cannot be sought in an Application under Rule 10 of CAT Procedural Rules. Besides the applicant in relief No. 8.2 (ii) did not specifically mention which penalty order he wanted to assail. However, from the para 01.1, the applicant mentioned that the application was being filed with reference to the order passed in O.A. No. 276 of 1999 dated 7.10.1999 and it was indicated that in the said O.A. the applicant had challenged the judgment and order dated 06.09.1997 in O.A. No. 1357 of 1992, charge memo dated 19.7.1991 and penalty order dated 11.11.1991 and order of the DRM dated 24.8.1996. However, from the copy of the O.A. No. 276 of 1999 Annexed at A/4 to

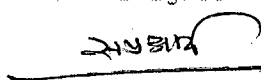
the O.A. No.700 of 2000, it appears that in para-8 the applicant had claimed only two reliefs i.e. for regularisation of the period of absence and for payment of salary. There was no challenge to the original penalty order or the order of the appellate authority or the DRM. In that view of the matter, O.A. No. 700 of 2000 was considered only with reference to his other reliefs. Apart from this even the other relief regarding the challenge of the penalty order, though not specifically mentioned, which was in operation at that time i.e. appellate authority's order, by which the applicant was reinstated in service by setting aside the earlier penalty order passed by the disciplinary authority and only a token punishment of withholding of pass for three years was passed, was considered and eventually set aside, that would amount to revival of the original penalty order of dismissal from service, which could not be the intention of the applicant.

7. In that view of the matter, the grounds which were urged in the O.A. being similar to the grounds taken in the O.A. 1357 of 1992 in which the original penalty order was challenged, were considered as being irrelevant and not discussed.

8. Be that as it may, in view of the order of the Hon'ble High Court quoted as above this review petition cannot, perhaps, be disposed of by way of circulation. Accordingly, I am of the opinion that the Review Petition requires hearing.

9. Accordingly, let the matter be placed before the Hon'ble V.C. in terms of the order of the Principle Bench dated 18.2.1992 as available at Appendix IV of the CAT Rules of Practice, 1993.

I agree


(S.P. ARYA)

MEMBER(A)


(B. PANIGRAHI)

VICE-CHAIRMAN