

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)

O R D E R (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)

sj*

(Justice B. Panigrahi)
Vice Chairman