

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 1232/93

DATE OF DECISION: 22nd Sept., 99

Smt. Sudha Vishwanath Tamhane _____

Applicant.

Shri P.G. Zare. _____

Advocate for
Applicant.

Versus

Union of India and others _____

Respondents.

Shri S.C. Dhawan. _____

Advocate for
Respondent(s)

CORAM

Hon'ble Shri B.N. Bahadur, Member(A)

Hon'ble Shri S.L. Jain, Member (J)

(1) To be referred to the Reporter or not? no
(2) Whether it needs to be circulated to no
other Benches of the Tribunal?

S.L. Jain
(S.L. Jain)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 1232/93

22nd the day of SEPTEMBER 1999.

CORAM: Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Smt. Sudha Vishwanath Tamhane
Residing at
Patankar Building,
Near Ghantali Mandir,
Naupada,
Thane (West) ... Applicant.

By Advocate Shri P.G.Zare.

V/s.

1. Union of India through
General Manager
Central Railway,
Bombay V.T.
2. The Chief Personnel Officer
Central Railway
Bombay VT.
3. The Controller of Stores,
Central Railway,
Bombay V.T. ... Respondents

By Advocate Shri S.C.Dhawan.

O R D E R

{Per Shri S.L.Jain, Member(J)}

This is an application Under Section 19 of the
Administrative Tribunals Act 1985 for a direction to the
respondents to condone the break in service of the applicant from
22.4.1965 to 16.4.1976 and treat the same as "Dies-non" in
relaxation of Rule 2437(2) (C) R II and para 427(iii) (C) of the
Manual of Railway Pension Rules 1950 ^{and} for Pensionary benefits,
^{and} payment of gratuity and two sets of Complementary retirement
passes alongwith costs.

S.L.Jain

2. The applicant was originally appointed as Junior Clerk in the office of Controller of Stores, Central Railway, Bombay VT on 1.8.1955, resigned from the Central Railway service on 24.2.1965. She was on her application reappointed/reemployed as Junior Clerk and again posted in the same office of the Controller of Stores Bombay VT on 13.4.1976. For intervening/break period in service, she applied ~~for~~ treating the same~~s~~ as "dies -non", her case was referred to the Railway Board, New Delhi, which was rejected by order dated 14.9.1987.

3. The applicant's case in brief is that due to her forcefull domestic circumstances which were beyond her control, caused on account of mental depression due to loss of her very first child, she was compelled to resign. Her case was recommended by the General Manager, Central Railway, Bombay VT.. but the Railway Board has rejected the same. She again approached by various letters and lastly by letter dated 10.12.1992 and 18.5.1993, but no response from the respondents. Hence this OA for the above stated relief on the ground of discrimination.

4. The respondents have contested the claim of the applicant alleging that the claim is barred by time and also lacks in merits.

5. By way of rejoinder, the applicant reiterated the same facts and law.

6. The learned counsel for the respondents submitted that as claim was rejected on 14.9.1987, OA is filed in 1993 is barred by time. The contention of the learned counsel for the applicant is two fold. One the applicant has pursued the matter by successive representations and secondly on retirement i.e. to say 31.5.1993 right to pension and retiral benefits accrues.

7. Regarding the first contention it is suffice to say that in view of Section 21 (1)(a) of the Administrative Tribunals Act 1985, the period of limitation is one year from the date on which the final order^v has been made. Successive representations do not extend the period of limitation and they do not give any fresh cause of action.

8. It is true that right to pension and retiral benefits accrues only after reitrement but this right is dependent on the fact of continuous and qualified service, as there was no continuous service, the matter was agitated and rejected as early as on 14.9.1987. Hence the claim is barred by limitation.

9. If we have not taken the view regarding limitation as stated above, even on merits, the claim is liable to be rejected as stated below:

10. The applicant has relied on an order passed by this Tribunal in OA No.107/89 Krishnamachari Gopalachari V/s General Manager Central Railway Bombay and others decided on 1.4.1992. On perusal of the same we find that the period was from 3.3.1990 -15.4.1971 hardly a period of one year and 13 days. Further more the Tribunal only ordered to re-consider the prayer. On the ground that "once the applicant's genuine prayer was accepted and the Railway Board is of the view that he should be taken back in service there is no reason why a prayer for the break in service should not have been considered.

11. The applicants counsel relied on the cases cited in para 8 of this OA and argued for discrimination. If we take the case of Govind Bhavdu, Smt. L.S.Jogdev, Smt. V.V.Chitre we find that period from 21.9.1968 to 9.2.1970, 3.2.1973 to 10.2.1975, 4.6.1977 to 28.9.1980^{respectively} was condoned by the Railway Board. In no case a period of more than 9 years was condoned.

12. In the case of Shri Manyalal Shoba Ram, the period from 27.12.1963 to 2.4.1974 was condoned by the Railway Board, for which the respondents have explained that in case the said period is not condoned he was not entitled for any pension. In the present case the applicant who has even after reappointment served for more than 17 years is entitled for pension. Hence her case cannot be compared with the case of Shri Manyalal Shoba Ram and thus we find no discrimination.

13. On perusal of para 427 of Manual, we find that the power to condone the break is for not more than a year. Further more, the applicant was governed by SRPF Rules and she has received her dues including Provident Fund dues at the time of her resignation, hence she is not entitled for the reliefs sought. Facing this situation the learned counsel for the applicant submitted that she is willing to return the same. Such an offer after the lapse of about 23 years cannot be accepted, particularly when the Apex Court of the land has held as such in case of State of U.P. V/s Brhamadatt Sharma reported in AIR 1987 SC 943.

DSW

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15. In view of above discussion, the claim of the applicant is barred by time and also lacks in merit, deserves to be dismissed and is dismissed accordingly. No order as to costs.

SL Jain
(S.L.JAIN)
MEMBER(J)

B.N.Bhadur

(B.N.BHADUR)
MEMBER(A)

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