

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 350 of 1993

Date of Decision: 20.06.2000

Tikam Shewaram Ahuja

Applicant.

Shri M.S. Ramamurthy.

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.C. Dhawan.

Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. Rafiquddin, Member (J)

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

[Signature]
20.6.2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

REGISTRATION NO. OA 350 OF 1993

DATE OF ORDER : 29.06.2000

Tikam Shewaram Ahuja, Adult, Indian Inhabitant, resident of 6, Sai Kripa Apartment, 2nd Floor, Near Barrack No. 190, Ulhasnagar - 421 001.

..... APPLICANT.

By Advocate Shri M.S. Ramamurthy.

Versus

1. Union of India through the General Manager, Central Railway, Bombay V.T.
2. Chief Personnel Officer, Administration, Central Railway, Bombay V.T.
3. Divisional Railway Manager, Commercial, Central Railway, Bombay V.T.

..... RESPONDENTS

By Advocate Shri S.C. Dhawan.

C O R A M

Hon'ble Mr. L. Hmingliana, Member (A)

Hon'ble Mr. Rafiquddin, Member (J)


O R D E R

L.Hmingliana, Member (A):-

The applicant joined service as Clerk In-charge, Canteen, Grain Shop Department, and he was absorbed as Coaching Clerk under the Central Railway from 8.6.1959. He submitted his application for resignation, which was accepted, and he was relieved of his charge on 27.6.1969. Then, he applied for withdrawal of his resignation on 4.12.1969, and he was taken back in service on 26.8.1970,

after he refunded the settlement dues paid to him, and also paid a security deposit of Rs. 300/-. He was promoted till he was Head Luggage Clerk in the grade of Rs. 425-640/- Then the DPO, Bombay VT wrote a letter dated 11.2.1986 (Ext.-A) to CLS VT, CGS Thalvaisheet that he was reverted and posted as General Clerk in the grade of Rs. 330-560/- at Thalvaisheet. And that he should be relieved of his post, and directed to join the post on his reversion. His application is for quashing this letter and for refixation of his pay in the grade of Rs. 425-640/- and also for grant of arrears of pay.

2. It is stated in the written statement filed on behalf of the respondents that the applicant was compulsorily retired after a departmental inquiry by order dated 12.2.1986, and he filed OA 927/88 in the Tribunal, which was disposed of with direction to the appellate authority to give him personal hearing and pass speaking order, and the appellate authority passed the order dated 29.3.1994 upholding the order of his compulsory retirement. It is stated in the OA that the impugned order of his compulsory retirement was not served upon him, and all along he remained oblivious of it and that he was informed by the office of the Chief




Luggage Superintendent that the letter of his reversion was returned unserved back to the Divisional Railway Manager, Commercial, Central Rly. Bombay VT. ^{It} ~~This~~ has been confirmed by the respondents in their written

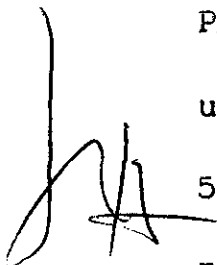
statement, *that the reversion order was not served on him as he had been compulsorily retired.*

3. Shri S.C. Dhawan, the learned counsel for the respondents contended that the challenge to the letter ^{the} of applicant's reversion would be infructuous for the present, as the order has never been served upon him because of his compulsory retirement. We agree with the learned counsel. The applicant can challenge the order of his reversion only if he succeeds in his challenge to the order of his compulsory retirement, and the order is quashed.

4. Shri M.S. Ramamurthy, the learned counsel for the applicant dwelt mostly on the question whether the applicant would be entitled to condonation of the break in his service from the date he was relieved, consequent upon the acceptance of his resignation till the date he was taken back in service. He pointed out that the applicant was reinstated in service with the sanction of the General Manager of the Central Railway vide letter dated 30.8.1971 of the Chief Personnel Officer (T & C)



to the Head Quarters office, Bombay VT, and it was only when the question of fixation of his pay after his reinstatement came up, and the applicant made an application for fixation of his seniority and fixation of his pay, taking into account his grain shop services that the condonation of the break in his service with the sanction of the General Manager was questioned, *and* the sanction of the President to the condonation of the break in his service for the retirement benefits only was conveyed by the Railway Board to the General Manager vide letter dated 19.8.1985. The learned counsel pointed out that the reinstatement of the applicant was after he was made to refund the settlement dues he had received, and he paid a security deposit of Rs.300/- , and he contended that the General Manager, as the controlling officer of the applicant, was competent to sanction the condonation of the break in his service, even though it exceeded the period of one year, and that the revision of the condonation with the sanction of the President after the lapse of several years was unwarranted.

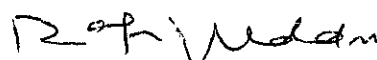
 5. Shri S.C. Dhawan, the learned counsel for the respondents contended that the application which was

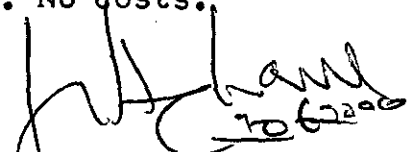
filed in March, 1993 was barred by limitation as far as the challenge to the condonation of the break in service of the applicant with the sanction of the President for the purpose of retirement benefits is concerned. The learned counsel pointed out that there is not even an application for condonation of the break. The learned counsel for the applicant stated that the applicant came to know of the impugned order of his reversion as late as in 1992, and the application is not hit by limitation. To this, the learned counsel for the respondents pointed out that the applicant was aware of the revised condonation of the break in his service. He referred to the letter dated 8.10.1985 written by him to the Divisional Railway Manager, Bombay VT at Ext.- O, in which the applicant requested for clarification from the Railway Board in regard to the Railway Board's letter of 19.8.1985, which was the letter by which the condonation of the break in service for the purpose of retirement benefits only with the sanction of the President was conveyed by the Railway Board to the General Manager.

6. It is abundantly clear that the application was filed long after the period of limitation was ~~over~~, as far as the challenge to the revised condonation of the break in service of the applicant with the sanction

of the President is concerned. Though we hardly see any need to go into the merit of the case, we may say that in regard to the condonation of the break in service exceeding one year, the policy of the Railway Board appears to be that it has to be done only with the sanction of the President, and the sanction given by the General Manager was not valid. The learned counsel for the applicant was all the while arguing on the basis of the provisions of the Railway Provident Funds Rules that the General Manager as the controlling authority was competent to sanction the condonation of the break in service, even exceeding one year. We do not see the connection between the State Provident Fund Rules of the Railways and the condonation of the break in service for all purposes, as claimed by the applicant, and even on merit, the application is bound to fail.

7. The application is dismissed. No costs.


(RAFIQUDDIN)
MEMBER (J)


(C. HMINGLIANA)
MEMBER (A)

/CBS/