

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 84/94

Date of Decision:

Shri Mohan Gopal Solanki

Applicant.

Shri D.V.Gangal

Advocate for
Applicant.

Versus

U.O.I. & anr.

Respondent(s)

Shri Suresh Kumar

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice K.M.AGARWAL, CHAIRMAN

Hon'ble Shri. R.K.AHOOJA, MEMBER(A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

(K.M.AGARWAL)
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

D.A. No.84/94

THIS THE 23 DAY OF JUNE, 1999.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.R.K.AHOOJA, MEMBER(A)

Shri Mohan Gopal Solanki
working as Safaiwala
under Carriage Foreman,
Western Railway Bombay and
residing at Western Railway
Chawl No.42, Room No.5, Jacob
Circle, Bombay-400 011

.... Applicant

(BY ADVOCATE SHRI D.V.GANGAL)

Vs.

The Union of India through

1. The General Manager
Western Railway
Churchgate
Bombay.

2. The Divisional Railway Manager
Western Railway
Bombay Central,
Churchgate
Bombay-400 008.

.... Respondents

(BY ADVOCATE SHRI SURESH KUMAR)

ORDER

R.K.AHOOJA, MEMBER(A):

The applicant who was working as a Safaiwala in the Carriage and Wagon Department of Bombay Central was removed from service on the basis of a departmental enquiry, with effect from 9-12-1977. His appeal, review, revision and mercy appeal were also rejected. Thereafter the applicant approached this Tribunal by way of D.A. No.753/87 which was also dismissed by the Tribunal by its order dated 3.12.1987. The applicant thereafter filed a S.L.P before the Supreme Court which was also dismissed with the following observation:-

"The Special Leave Petition is dismissed. However having regard to the fact that the petitioner was a poor low paid employee, we hope that the government will be

able to give him a fresh appointment to some suitable post at a very early date on his application in that regard."

2. It is stated that on a representation being made by the applicant, the respondents re-considered his case and offered him a fresh appointment with effect from 27.6.1989 by order dated 27.6.1989, Annexure A-3. This appointment letter states that the applicant's "appointment is fresh for all purposes" and further that "under no circumstances conditions in break of service shall be allowed."

3. It is stated that the applicant has been making representations for condonation of the break in his service during the period between 9.12.1977 to 27.6.1989 in order to obtain the benefit of his earlier service for the purposes of calculation of his pensionary benefits, but the respondents did not accede to his request. This compelled him to come to the Tribunal again by filing O.A. No.430/91 which was disposed of by order dated 6.8.1991 with the direction to the respondents to dispose of applicant's representation within a period of 2 months. It is now stated that the said representation has been rejected on the ground that it was a condition that his fresh appointment under no circumstances would give rise to condonation of break in service and that this condition had been accepted by the applicant. It is against this order that the applicant has now come before this Tribunal for the third time.

4. We have heard the learned counsel for the parties. Shri D.C.Gangal, learned counsel for the applicant submitted that the Hon'ble Supreme Court in Civil Appeal No.3479/91- R.T.Lynch Md. Salim Sheikh vs. Union of India & anr- dated 4-9-1991 has observed as follows:-

On
" Whatever may be the reason for his re-employment, the employer-respondent obviously condoned the lapses to

call him back to duty and it is a usual relief available in these circumstances to give continuity of service for purposes of pension. We accordingly grant the relief to the appellant only with regard to continuity in service between 1965 and 1968 for purposes of pension only."

Shri Gangal argued that by giving him the fresh appointment, the respondents have in fact condoned his lapses and the applicant was, therefore, in the ratio of the aforesaid judgement of the Supreme Court entitled to continuity in service for the purpose of pension.

5. On being given careful consideration to the aforesaid argument of the learned counsel for the applicant, we are still of the opinion that the case of the applicant has no merit as the order of the Supreme Court in the case of the applicant reproduced above says that "the government will be able to give him fresh appointment to some suitable post." (Emphasis supplied).

Shri Gangal argued that the order of the Supreme Court is dated 15.11.1989 while the applicant had been given fresh appointment on 27.6.1989 i.e. prior to the order of the Supreme Court and hence his fresh appointment is not governed by the observation of the Hon'ble Supreme Court. This line of reasoning is erroneous. The order of fresh appointment clearly stipulated that under no circumstances conditions in break of service shall be allowed. The observation of the supreme Court though it came later than the order of fresh appointment also spoke of "fresh appointment". In other words, the condition imposed was in consonance with the observation of the Supreme Court. The present case has to be dealt with in terms of the orders of the Supreme Court given in the facts and circumstances of the case and not on the ^{order &} ~~case~~ which was entirely on different set of facts. We do not, therefore, find that the fresh appointment of the applicant constituted the

condonation of the lapses committed by the applicant; in fact the order of the Supreme Court shows that the findings of the disciplinary authority, appellate authority as well as of this Tribunal were upheld by the Supreme Court.

6. In view of the above discussion, we find no merit in this G.A. It is hereby dismissed but without any order as to costs.

Fm.

(K.M.AGARWAL)
Chairman

R.K.Ahooja
(R.K.AHOOJA)
MEMBER(A)