

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

Original Application No. 238/94.

S.P. Badgujar.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri V.Ramakrishnan, Member(A).

Appearances:-

Applicant by Shri G.S.Walia.

Respondents by Shri A.L.Kasturey.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 8.8.1994.

The only point which is placed before us by Shri Walia, the learned counsel for the applicant is that the applicant who has been retired on 31.12.1993 should be granted continuity of service for the purposes of pension.

2. The applicant was appointed as a Class - IV employee on 8.12.1955 and was appointed as Senior Clerk in September, 1973. He proceeded on 19 days sanctioned leave in September, 1975 on the ground of illness of his son, but unfortunately lost his son and also his father while he was at his native place. In 1976 a charge sheet for unauthorised absence was served on him and on 4.6.1976 an ex parte order of removal was passed. The applicant appealed and on 16.3.1979 the appellate authority considering the question of punishment and passed an order re-appointing him as a Clerk. The applicant filed a review application on 24.4.1980 asking for continuity of service, but no order was passed on that application. The Review

...2.

Committee which assembled in January, 1990 found the applicant fit to be continued as Head Clerk. The applicant retired on superannuation on 31.12.1993.

3. The only question which has been canvassed is that since it was open to the Respondents to impose a penalty under Rule 6(5) of the Railway Servants (Discipline and Appeal) Rules and the applicant was exonerated, it was open to the authority to pass an order for considering as to how the period from the date of suspension/removal till the date of appointment should be dealt with. Since the appellate authority directed re-appointment of the applicant, on the lines of the decision in OA No.281/93 Shaik Mahaboob V/s. General Manager and others (1994(1) ATC 605) it must be held that the appellate authority ~~felt~~ that the intervening period should be held as dies non. In that case in similar circumstances, the order passed by the appellate authority was construed as an order imposing penalty under Rule 6(5) and since the appellate authority was empowered to pass such an order, it was held that instead of treating the order as a void order, the better construction would be to grant continuity of service. A similar approach was taken by the Supreme Court in R.T.Lynch M.D.Salim Sheikh V/s. Union of India & Anr. in Civil Appeal No.3479/91 decided on September 4, 1991.

4. We therefore, direct that the period of unauthorised absence of the applicant should be treated as dies non and the entire service from his entry in the year 1955 till his superannuation on 31.12.1993 should be treated as continuous service for the purposes of all retiral benefits. The Respondents shall implement

this order within three months from the date of receipt of a copy of this order. The Original Application is accordingly disposed of with no order as to costs.

V. Ramakrishnan
(V. RAMAKRISHNAN)
MEMBER (A)

M. S. Deshpande
(M. S. DESHPANDE)
VICE-CHAIRMAN

B.