

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 623/97

13.8.98

Date of Decision:

V.K.Athavale

.. Applicant

Shri E.R.Naik

.. Advocate for  
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar

.. Advocate for  
Respondent(s)

CORAM:

The Hon'ble Shri D.S.Bawej, Member (A)

The Hon'ble

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?

*D.S.Bawej*  
(D.S.BAWEJ)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

DA. NO. 623/97

Printed this the 13th day of August 1998

CORAM: Hon'ble Shri D.S.Bawej, Member (A)

Vasant Kashinath Athavale,  
R/o Unit No.1, Bharat Nagar  
Cogop.Hsg.Socy.Ltd., Near  
Dombivali Gymkhana, Kalyan Road,  
Dombivali(E), Dist.Thane.

By Advocate Shri E.R.Naik ... Applicant

v/s.

The Union of India through  
The General Manager,  
Western Railway,  
Churchgate, Mumbai.

By Advocate Shri V.S.Masurkar ... Respondents  
C.G.S.C.

O R D E R

(Per: Shri D.S.Bawej, Member (A)

The applicant was appointed as Assistant  
Coaching Clerk on Central Railway on 20.3.1962.  
During the course of service, he was issued a  
major penalty chargesheet dated 22.7.1981. An  
enquiry was conducted and findings were submitted  
by the Enquiry Officer on 3.2.1983. Based on the  
findings of the Enquiry Officer, the disciplinary  
authority as per order dated 29.4.1983 imposed  
punishment of dismissal from service. The applicant  
made an appeal against this order but the appeal was  
rejected by the appellate authority as per order dated  
30.5.1983. Applicant then filed a Mercy Appeal on  
11.7.1983 which was treated by the respondents as  
Review Petition. The Review Petition was disposed

(i)

of as per order dated 18.8.1983 modifying the punishment of dismissing from service to removal from service. The Reviewing Authority also indicated in the order that if the applicant wants reappointment on humanitarian grounds, he may apply for the same separately. The applicant made a representation on 24.8.1983 requesting for reappointment. As per order dated 5.10.1983 the competent authority allowed appointment of the applicant as a Train Clerk as a fresh appointee for all purposes. The applicant joined on the post of Train Clerk on 6.10.1983 and finally retired from service on 30.6.1992. The applicant was not given any pension on retirement as he had not completed the required period of service which makes him eligible for getting the benefit of pension. The applicant claimed that he is entitled for grant of pension as he has completed more than 29 years of service including the period of service before imposing penalty of removal from service. Being aggrieved, the applicant had filed the OA. NO. 1081/95. This OA. was disposed of as per order dated 14.11.1996 with the direction that applicant may represent to the Department with regard to pensionary benefits and the respondents shall consider the representation within a period of four months. The applicant accordingly made representation to the department on 9.12.1996. His representation has been rejected as per the impugned order dated 23.4.1997. Feeling aggrieved by this order, the present OA. has been filed on 7.7.1997 seeking the reliefs as under :-

(a) to quash the impugned order dated 23.4.1997,  
(b) pending hearing and final disposal of the application, to direct the respondents to release the provisional pension under Rule 10 of the Railway Service (Pension) Rules, (c) Respondents be directed to release the pensionary benefits w.e.f. 30.6.1992 retrospectively.

2. The applicant has based his claim for reliefs as detailed above on the following grounds :-

(a) the Reviewing Authority as per order dated 18.8.1983 had placed a condition that the appeal of the applicant with regard to the punishment of dismissal can be considered only if the applicant wants reappointment on humanitarian grounds. Accordingly, there was no alternative with the applicant but to make a request for reappointment. The reappointment as per the order dated 5.10.1983 had been granted with the clear stipulation that reappointment in service is for all purposes. This would imply that the applicant was entitled for all the benefits which are normally available to the confirmed employee and therefore he is entitled for pension counting the entire period of service from the date of initial appointment.

(b) The respondents have rejected his claim for pensionary benefits stating that his case does not fall within the ambit of the provisions in Para 309, 310 of the Railway Services (Pension) Rules. Such a view of the respondents is arbitrary and irrational as the applicant is entitled for the pension under Rule 6 of the Railway Services (Pension) Rules, 1993.

3. The respondents have contested the claim of the applicant through written reply. The respondents have submitted that the Tribunal in the order dated 14.11.1996 in OA.NO. 1081/95 had directed the applicant to make a representation to consider his case for grant of compassionate [grant] in terms of Para 309 and 310 of the Manual of Railway (Pension) Rules. Accordingly, the representation has been considered and the same has been rejected as the case of the applicant does not fall within the provisions of the rules contained in Para 309 and 310. The applicant was given a fresh appointment on the humanitarian grounds and service rendered thereafter on fresh appointment is to be only counted for the purpose of pension. Since this period is less than the period required for entitlement for pension, the applicant is not eligible for grant of pension. The claim of the applicant for considering the period of service before imposing the penalty of removal from service cannot be considered for pensionary benefits as per the extant rules. In view of these facts, the respondents maintain that there is no merit in the claim of the applicant. Respondents have also opposed the application on the plea that it is hit by limitation as the relief is claimed for the cause of action which arose in 1992 by filing the present OA. in 1997. OA. is also not maintainable as punishment was imposed in 1983.

4. The applicant has filed rejoinder reply rebutting the averments of the respondents in the written reply. The applicant has reiterated the grounds taken in the original application.

(Q)

5. Heard the arguments of Shri E.R.Naik, learned counsel for the applicant and Shri V.S. Masurkar, learned counsel for the respondents respectively.

6. During the arguments, the learned counsel for the applicant has relied upon the following judgements of the Apex Court :- (a) S.R.Bhanrale vs. Union of India & Ors. AIR 1997 SC 27 (b) Major G.S.Sodhi vs. Union of India (1991) 2 SCC 371.

7. The respondents have contested the application pleading that it is not only barred by limitation but is also not within the jurisdiction of the Tribunal. Respondents have stated that the applicant retired in 1992 when the cause of action arose and the present OA. is filed only in 1997 and therefore the claim of the applicant is hit by limitation. The respondents have also stated that since the applicant was dismissed from service in 1983, the claim for counting the period of service for purpose of pension, the cause of action arose in 1983 and therefore the matter is not within the jurisdiction of the Tribunal. These objections of the respondents are not sustainable keeping in view the fact that the applicant had earlier filed OA.NO. 1081/95. This OA. had been disposed of with the order dated 14.11.1996 with the direction that the applicant may make an application to the respondents with regard to his pensionary benefits and the respondents shall consider the representation and pass an order within a period of four months from the date of receipt of the representation. In pursuance of this direction, the

respondents have passed the impugned order dated 23.4.1997. The present OA. has been filed by the applicant challenging the order dated 23.4.1997. In view of this situation, the OA. is neither hit by limitation nor not being ~~within~~ the jurisdiction of the Tribunal. Since the plea of the respondents with regard to the limitation has been not accepted, the judgement in the case of S.R.Bhanrale vs. Union of India & Ors. which has been cited by the applicant to repel the ground of limitation does not call for any consideration to determine its applicability to the case of the applicant.

8. The respondents during arguments have also raised the issue of the application being attracted by the principles of res-judicata, although this has not been clearly stated so in the written reply. On going through the order dated 14.11.1996, it is noted that the applicant had filed the OA. claiming the entitlement of pension counting his previous service. However, during the arguments, the applicant confined his pleadings to consideration ~~of~~ of his case for payment ~~of~~ compassionate ~~grant~~ in terms of Para 309 and 310 of Manual of Railway Pension Rules<sup>1950</sup>. Though this aspect had been taken up in the grounds, but no specific relief had been claimed for the same. Keeping this in view, the OA. was disposed of with the direction that the applicant may file a representation to the respondents for grant of compassionate ~~grant~~ in terms of Para 309 and 310. It will be relevant here to quote Para 2 of the order dated 14.11.1996 as under :-

"2. The counsel for the applicant confines his pleadings only to fact that the previous service rendered by the applicant from 20.3.1962 to 2.5.1983, the date on which he was retired from service, would entitle him for consideration for compassionate grant in terms of para 309 and 310 of Manual of Railway Pension Rules. It is seen that there is no prayer to that effect in the OA. but, the applicant has brought out the same in the grounds for reliefs. In the absence of any prayer this relief cannot be considered in this OA. However, the applicant would be free to submit a representation to the administration bringing out all the facts for grant of compassionate grants in terms of Para 309 and 310 of the Railway Pension Rules, which the respondents are directed to considered within a period of four months from the date of receipt of representation."

 In the present OA, the thrust of arguments is that he was given fresh appointment with the stipulation that its an appointment for all purpose which would imply that he was entitled for all the benefits which are available to a permanent employee. In view of this, the applicant contends that he was entitled for counting his previous service from the date of initial appointment as a qualifying service for pension. Though the applicant has made a prayer for quashing the impugned order dated 23.4.1997, but the main relief prayed for is for the grant of pension on the date of retirement in 1992 retrospectively. It is thus clear that the applicant had agitated the issue of pension counting the entire period from the date of initial appointment taking the reappointment as continuous for all purposes. From the extract of Para 2 of the order dated 14.11.1996, it is obvious that the applicant did not press for claim for pension and confined his claim to consideration of his



case for grant of compassionate grant. Keeping this fact situation in focus, the applicant has agitated the matter again which he had dropped at the time of passing the order dated 14.11.1996 and therefore the present OA. for the relief with regard to payment of pension counting of previous service is certainly hit by principle of res-judicata. A fresh application with this relief is therefore not maintainable. Since the applicant has also made a prayer for quashing the impugned order dated 23.4.1997, the OA. is not being dismissed but the consideration of the OA. is confined to the relief number 8 (a).

(9). Respondents as per the direction contained in the order dated 14.11.1996 have considered the representation for entitlement of compassionate ground under Rule 309 and 310 of Railway Pension Rules and the same has been rejected by the impugned order. The applicant has prayed for quashing of this order but no substantial averments have been made in support of the same. The focus of the present OA. has shifted to the claim of pension counting the entire period of service. The applicant has not made out a case as to how he is eligible for compassionate grant and in which way the order passed by the competent authority denying the payment of compassionate grant is illegal and calls for judicial interference. During the arguments, however, the applicant made a pleading that in terms of the Rule 309 the competent authority was required to pass an order with regard to the payment of pension and gratuity and since no such order was passed, the applicant is entitled for payment of pension for the period.

The applicant cited the judgement of the Hon'ble Supreme Court in the case of Major G.S.Sodhi vs. Union of India as referred to earlier to support this contention. I have carefully gone through this judgement. This judgement covers the case of Army Officer who was dismissed from service by court martial. In this judgement, it is held that since no punishment of forfeiture of pension or other service benefits <sup>was</sup> inflicted by court martial, the petitioner was entitled for these benefits. The applicant has not brought on record the rules regarding the court martial to establish that the provisions of the rules are similar to the provisions of disciplinary proceedings covered under Railway Servants (Discipline & Appeal) Rules, 1968. The applicant during arguments maintained that the rules are identical. However, in the absence of the relevant rules, it is difficult to accept this contention. From the judgement, it is noted that a specific order was required to be passed with regard to forfeiture of pension and other benefits of service along with the dismissal of service. The applicant (b) could not show when asked whether there is any provision in the Railway Servants (Discipline & Appeal) Rules which lays down that while imposing the penalty of dismissal/removal from service, the specific order (b) under Rule 309 of Pension Rules is also required to be included in the punishment order. Further, on careful reading of Rule 309, it is noted that the rule does not envisage (b) passing of such an order while imposing punishment. In fact, the

rule implies that no pensionary benefits are to be granted to the Railway servant who has been removed or dismissed from service and only on the discretion of the competent authority payment of compassionate grant may be considered. Keeping these facts in view, the contention of the applicant is not tenable and the judgement in case of Major G.S.Sodhi is not applicable to the facts of the present OA. and the relevant rules by which the case of the applicant is governed. The provisions of Rule 309 and 310 envisage payment of compassionate grant with the intention to mitigate the hardship which has been inflicted due to the punishment of dismissal/removal. This grant is out of compassion and is not a matter of right. The compassion has been decided by the competent authority taking all the facts of the case. In the present case, the order dated 23.4.1997 indicates that the competent authority had shown compassion to the applicant by offering the appointment inspite of severity of offence. Keeping this picture in view, I am not able to find any infirmity in the impugned order which calls for quashing of the same.

(10) In the light of the above discussion, the OA. is not maintainable on account of being attracted by principle of res-judicata in respect of the relief for grant of pension and has no merit with regard to the quashing of the impugned order dated 23.4.1997. The OA. is accordingly dismissed with no orders as to costs.

*D.S. BAWAL*  
(D.S. BAWAL)

MEMBER (A)

mrj.