

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.847/90

DATE OF JUDGEMENT: 30 SEPT., 1992

BETWEEN

Sri K.Gopinath

.. Applicant

AND

1. Chairman,
Ministry of Railways
Railway Board
New Delhi.
 2. The General Manager
South Central Railway
Secunderabad
 3. The Chief Personnel Officer
South Central Railway
Secunderabad
 4. The Chief Operating Superintendent
South Central Railway
Secunderabad
 5. Divisional Railway Manager(MG)
South Central Railway
Secunderabad
- .. Respondents

Counsel for the Applicant : Sri V. Raja Gopala Reddy

Counsel for the Respondents : Sri D.Gopal Rao, SC for Rlys

CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

T. Chandrasekhara Reddy

JUDGEMENT OF THE SINGLE MEMBER BENCH DELIVERED BY HON'BLE
SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

This is an application filed under Section 19 of the Administrative Tribunals Act by the applicant herein to direct the respondents 1 to 5 to grant the applicant all the retirement benefits that he would be entitled considering his 36 years of long service that he had put in the South Central Railway in various capacities since his appointment in 1949 till retirement in the year 1985 and declare the action of the respondents in denying the same as illegal as per orders dated 30.8.90 and pass such other order that may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA in brief are as follows:

3. The applicant was working at Madhira Railway Station in the Secunderabad - Vijayawada Section as Station Master in the year 1975. In the same year, a charge sheet dt.22.12.75 was issued against the applicant in January, 1976 alleging that the applicant had booked small consignments in excess of the quota in contravention of the Circular No.C/C-37/DEV/77-74 dated 28.2.74. So, a Departmental Inquiry was initiated as against the applicant. An ~~The~~ Inquiry Officer was also appointed. After due inquiry, ^{all} ~~the~~ charges as against the applicant were held proved. Based on the Enquiry Report, the applicant was removed from service w.e.f. 24.5.79.

4. The applicant preferred an appeal as against the order of removal from service to the Chief Operating Superintendent who is the appellate authority. The appellate authority accepted all the findings of the Inquiry Officer. But the ^{A ppellate} ~~disciplinary~~ authority decided to re-employ the applicant ^{Asst.} ~~as a fresh entrant for all purposes~~ as Station Master in the

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scale of Rs.330-560 with a minimum pay of Rs.330/-.

The applicant joined as Asst. Station Master in Marathwada Region of Hyderabad Division on 16.8.79 ~~without any demur or protest.~~

5. While working as Asst. Station Master, he retired from service on 31.7.87. ~~The applicant was paid all his retirement benefits for both spells of service on 31.7.87.~~ After completion of the second spell of service, the applicant had been paid terminal benefits for both the spells of service. The grievance of the applicant is that his service should be treated as continuous one right from the time he was appointed, ^{W.E.F} ~~6.10.49~~ ^{6.10.49} and that the pensionary benefits that are liable to be paid to him should be paid treating his entire service from 6.10.49 to 31.7.87 as continuous one. Hence, the present OA is filed by the applicant for the relief as indicated above.

6. Counter is filed by the respondents to this OA.

in the counter of the respondents
7. It is maintained that after the applicant was removed from service, the applicant had been taken back on re-appointment and ^{by the Applicant} ~~there is~~ break of service of two months and 15 days from 24.5.79 to 6.8.79, and in view of the fresh appointment of the applicant as Asst. Station Master after he was removed from service that the applicant is not entitled to ^{be} ~~be~~ treated the break period of two months 25 days as a period on duty. It is also further maintained by the respondents ^(provident fund) that the applicant was a PF optee and that the applicant had withdrawn all the terminal benefits as PF optee and hence, he is not entitled for payment of any pension.

We have heard Mr V.Rajagopala Reddy, counsel for the applicant and Mr D.Gopala Rao, Standing Counsel for the Respondents.

The fact that the disciplinary proceedings were initiated as ~~against~~ the applicant in the year 1975 and that the applicant was removed from service w.e.f. 24.5.79 is not in dispute in this OA. The applicant had been removed from service while he was working as Station Master. On compassionate grounds, after removal from service on 24.5.79, the applicant had been taken ^{on re-appointment} as Asst. Station Master ~~for~~ ^{all purposes as a re-appointment}. 'Re-appointment' ^{to} connotes ^{first debarment} or cessation of service and thereafter re-creation. ~~So~~ by the removal of the applicant as Station Master, his services have come to an end as Station Master. Admittedly, the applicant had accepted the new post of Asst. Station Master and had served for 10 years in the said post. So, as the applicant had been removed from the ~~said~~ ^{of Station Master} post as a ^{measure} ~~matter~~ of punishment and then re-appointed, we are unable to understand how both the spells of service could be clubbed for the purpose of retirement benefits of the applicant. Reinstatement always would connote that there is continuity of service. ~~If~~ the applicant had been re-instated, then there would be no difficulty to treat the said period from 24.5.79 to 6.8.79 as duty period. But, this is not the case ~~xx~~ where the applicant had been reinstated. After he was removed from service as Station Master, there was a break of 2 months and 15 days from 24.5.79 to 6.8.79. After the said break only, the applicant had been re-
Asst.
appointed as ~~Station~~ Master which is a lower post than which the applicant was holding at the time he was removed from service. So, we are unable to understand how it is open ~~xxxx~~ for the applicant to treat the period 16.8.79 to 31.7.87 as if he had worked as Station Master. ~~Indeed,~~ ^{As} already pointed out, the fact that the applicant ~~had~~ had worked as Asst. Station Master from 16.8.79 to 31.7.87 is not in dispute in this OA.

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So in view of this position, the applicant is not entitled to the relief ~~to declare~~ that he should ^{be} ~~have~~ deemed to have been in continuous service right from the date of appointment to the date of retirement. ~~As already pointed out,~~ The applicant was not a pension optee but a Provident Fund optee. During the course of arguments, we came to know that the applicant had withdrawn all the PF amount that were due to him. After having withdrawn the PF dues it is not open for the applicant to contend that he is a pension optee and that, he is liable ^{to be} ~~for~~ pension. Absolutely, no material is placed before us to show that the applicant is a pension optee and that, he has got a right to get pension. So in view of this position, the applicant is not entitled for payment of pension.

8. The learned counsel appearing for the applicant contended that as the applicant was not in a position to bargain ~~with~~ ^{and so} the respondents ~~that~~ the applicant had accepted the post of Asst. Station Master and for all purposes, he must be deemed to have worked as Station Master right from 15.8.79. In support of his contention, he relied on a decision reported in AIR 1991 SC 101 Delhi Transport Corporation Vs DTC Mazdoor Congress - Page 104 - wherein it is ~~laid~~ laid down as follows:

"As a court of constitutional functionary exercising enquiry jurisdiction, the Supreme Court would relieve the weaker parties from unconstitutional contractual obligations, unjust, unfair, oppressive and unconscionable rules or conditions when the citizen is really unable to meet on equal terms with the state. It is to find out whether the citizen when entered into contracts or service, was in distress need or compelling circumstances to enter into contract on dotted lines or whether the citizen was in a position to either to "take it or leave it " and if it finds to be so, Supreme Court would not shrink to avoid the contract by appropriate declaration. Therefore, though certainty is an important value in normal commercial law, it is not an absolute and immutable one but is subject to change in the changing social conditions

contract


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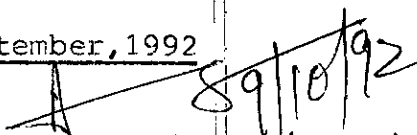
..6..

We have gone through the said decision. The said decision does not deal with the cases of re-appointment or dismissal or removal of employees. ~~So~~ the said decision does not apply to this case.

In the circumstances of the case, ~~as~~ the applicant is not entitled for any relief as prayed for by him, this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.


(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: 30 September, 1992


Deputy Registrar(Judl.)

Copy to:-

1. Chairman, Ministry of Railways, Railway Board, New Delhi.
2. The General Manager, South Central Railway, Secunderabad.
3. The Chief Personnel Officer, South Central Railway, Secunderabad.
4. The Chief Operating Superintendent, South Central Railway, Secunderabad.
5. Divisional Railway Manager(MG) South Central Railway, Sec-bad.
6. One copy to Sri. V. Raja Gopala Reddy, advocate, 3-5-942, Himayatnagar, Hyd.
7. One copy to Sri. D.Gopala Rao, SC for Railways, CAT, Hyd.
8. One copy to Deputy Registrar(Judl.), CAT, Hyd.
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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
MEMBER (J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (J)

Dated: 30/9/1992

ORDER / JUDGMENT

~~R.A./C.A./M.A.No.~~

in

O.A.No.

847/90

T.A.No.

(W.P.No.)

Admitted and interim directions
issued

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered / Rejected

~~No orders as to costs.~~

pvm.

