

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. No. 501/91.

Dt. of Decision : 21-9-94.

S. Habeebur Rahman

.. Applicant.

Vs

1. Union of India
rep. by the Chairman,
Railway Board, Rail Bhawan,
New Delhi.
2. The Chief Personnel Officer,
SC Rly, Rail Nilayam,
Secunderabad.
3. The Divisional Railway Manager
(Personnel), SC Rly,
Guntakal Division, Guntakal,
Anantapur District.

.. Respondents.

Counsel for the Applicant : Mr. T. Lakshminarayana

Counsel for the Respondents : Mr. V. Bhimanna, Addl. CGSC.

CORAM :

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

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ORDER

(As per Hon'ble Shri AV Haridasan, Member(J))

The applicant, being successful in a selection process by the Railway Service Commission, Madras, was appointed as an office clerk in the scale of Rs.110-180 thus by an order dated 10.3.1972. While he was in service, his services were terminated by an order dated 7.8.1972. The applicant challenged the termination of his services only in the year 1978 before High Court of AP, by filing W.P.No.3160/78. The Hon'ble High Court vide its judgement dated 25.11.1980 held that the termination of the services of the applicant was illegal. The High Court further directed that the applicant should be reinstated into service forth-with, but noting that the applicant approached the High Court only after a delay of six years, directed that he would be entitled to receive backwages only from the date of filing the W.P.3160/78 i.e. with effect from 6.7.1978. Pursuant to the order passed in the Writ Petition, the applicant was reinstated in service on 15.04.1981. He was also paid the arrears of pay and allowances as ordered by the High Court. The applicant kept on making representation for restoration of his seniority with effect from the date he was appointed ignoring the period during which he was kept out of service. On consideration of the question by the competent authority, the applicant was informed by an order dated 11.4.1984 that his seniority would be determined on the basis of his initial ~~spell~~ of service from 10.3.72 ^{spell} to 7.8.72 and subsequent service ~~spell~~ of service from 6.7.1978 being treated as continuous service, treating the period from 8.9.72 to 5.7.78 as dies-non, and that his seniority would be determined accordingly, that for the purpose of settlement dues, the service would

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during the period prior to the termination of his services would be carried forward. But, even after that the applicant went on ~~making~~ representation ^{he} and ultimately, in the year 1990, ~~he~~ also made a representation. It was thereafter finding no response that the applicant has filed this application praying that the respondents may be directed to treat the period during which he was kept out of service as duty for the purpose of qualifying service for pension. In between the applicant had filed another WP before Hon'ble High Court of AP seeking seniority and promotion which was also eventually dismissed after transferring the same to this Tribunal on the commencement of the Administrative Tribunals Act.

2. The respondents in their reply statement has contended that as the applicant challenged the termination of his services only in the year 1978 and ~~that~~ the High Court of AP has directed that payment of arrears of pay and allowances would be restricted for a period from the date of filing of the writ petition before High Court, the competent authority had decided to treat his services from the date of entry to the date of termination and from date of re-instatement i.e. from 6.7.78 onwards as qualifying service for pension and other benefits.

3. We have carefully gone through the pleadings and the documents in this case, as also the file in TA 182/86, the earlier case filed by the applicant.

4. In accordance with the provisions of Rule 2044 Sub-Rule 3 corresponding to the present Rule 1344 of the latest Indian Railway Establishment Code Vol.II, when an order

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ef dismissal or removal from service is set aside by the court on merit, the period between the removal from service and re-instatement is to be treated as 'duty' for all purposes including ~~for~~ pay and allowances. ~~But~~ But the High Court before which the question was agitated, has, within its powers ~~to~~ modulate the relief to be granted in individual cases, taking into account the various aspects, such as the conduct of the person ^{and} ~~had condoned~~ the delay in filing the application in the High Court. The High Court while allowing the WP 3760/78, challenging the termination of the services of the applicant, felt by reason of the inordinate delay in filing the WP, the applicant would not be entitled to any backwages for the period prior to the date of filing the application. Though the High Court did not say anything about counting of the service for regularisation, since the High Court has ^{ordered} ~~said~~ that the applicant would be entitled to pay and allowances only for a period from the date of filing of the application on account of the delay, the High Court felt that the applicant would be entitled to any relief only from the date on which he had filed the WP 3760/78. It is on that basis that the competent authority has taken ~~a~~ decision that the period between the date of removal to date of filing the WP 3760/78 before the High Court would be treated as dies non. This decision of the competent authority having been communicated to the applicant as early as in the year 1984 and as it has not been challenged until the date of filing this petition, we are of the considered view that the matter has become ~~stale~~ ^{stale}. Even otherwise, we do not find any illegality in the decision taken by the competent authority not to count the period between the date of removal to the date of filing the WP 3760/78 for any purpose. Hence, we are satisfied that even on merits the applicant does not have any case. In the result, finding no merit

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the application is dismissed leaving the parties to bear their own costs.

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(A.B. GORIHI)
Member(A)

AV Haridasan

(A.V. HARIDASAN)
Member(J)

Dated: The 21st Sept., 1994

Dictated in the open court

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Amulya, 2094
Deputy Registrar (Judl.)

Copy to:-

1. Chairman, Railway Board, Union of India, Rail Bhavan, New Delhi.
2. The Chief Personnel Officer, South Central Railway, Railnilayam, Secunderabad.
3. The Divisional Railway Manager, (Personnel), SC Railway, Guntakal Division, Guntakal, Anantapur District.
4. One copy to Sri. T.Lakshminarayana, advocate, CAT, Hyd.
5. One copy to Sri. V.Bhimanna, Addl. CGSC, CAT, Hyd.
6. One spare copy.
7. One copy to Library, CAT, Hyd.

Rsm/-

SMR/-
AV Haridasan