

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.NO. 685/95

DATE OF JUDGMENT: 19-6-95

BETWEEN:

P.Sundara Rao.

Applicant.

and

1. The Senior Superintendent of Post Offices,
Visakhapatnam Division, Visakhapatnam-1.
2. The Postmaster-General, Visakhapatnam Region,
Visakhapatnam.
3. The Chief Postmaster General, A.P.Circle,
Hyderabad.
4. The Union of India, rep. by the
Director General, Dept.of Posts,
Dak Bhavan, New Delhi-1.

..

Respondents.

COUNSEL FOR THE APPLICANT: SHRI R.V.V.S.Murty.

COUNSEL FOR THE RESPONDENTS: SHRI V.Whimanna,
Sr./Addl.CGSC

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN
HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

CONTD. . .

JUDGMENT

I as per Hon'ble Sri R.Rangarajan, Member (Administrative) I

Heard Sri T.V.V.S.Murthy, learned counsel for the applicant and Sri V.Bheemanna, learned Standing Counsel for the respondents.

2. The applicant herein who belongs to SC community had joined Postal Department as Postal Assistant on 18.12.1953 in Visakapatnam Postal Division. By 1970 he had put in 17 years of service.

3. It is stated for the applicant that he applied for leave on medical grounds for 3 months from 28.2.1970 to 5.6.1970 which was sanctioned. He had submitted an application for extension of leave from 6.6.1970 to 5.9.1970 and thereafter for one month from 6.9.70 to 5.10.1970. It is stated that the above said extension of leave was not sanctioned on medical grounds from 6.6.1970 to 5.10.1970 as it is alleged that the same was not received in the office of R-1.

4. R-1 issued a charge-sheet u/r 14 of CCS(CCA) Rules, 1965 for the alleged unauthorised absence from 6.6.1970. The applicant submitted a copy of medical certificate on 20.8.1970. It is further stated by the applicant that a copy of the medical certificate which was submitted by him on 20.8.1970 was received by R-1. It is further alleged by the applicant that he should have been normally permitted to join duty even if he is unauthorisedly absent and proceeded against under relevant CCS(CCA) Rules but he was not allowed join the duty. For the above said charge-sheet he was punished

(62)

a penalty of with/reduction of pay by three stages from Rs.181/- to Rs.165/- for a period of 2 years with effect from 28-4-1971 by proceedings No.B-311 dt. 28.4.1971.

5. It is stated for the applicant that inspite of the above punishment, he was issued with another charge-sheet U/r 14 of CCS(CCA) Rules vide Memo No.B-311 dt. 22.2.1971 on the allegation of continued unauthorised absence and after/ex parte enquiry the applicant was removed from service with effect from 21.2.1971 in terms of proceedings No.B-311 dt. 21.2.1971 (Annexure A-1).

6. The applicant submitted an appeal dt. 2.3.1974 to the Director of Postal Services and the same was rejected as time-barred vide proceedings dt. 22.3.1974 (Annexure A-2).

7. The applicant thereafter submitted a Revision Petition dt. 4.4.1974 to R-4. R-4 considered the Revision petition and re-employed him as T.S.Clerk in relaxation of normal rules of recruitment as conveyed in the SSP, Visakapatnam letter No.B-311 dt. 16.10.1974 (Annexure A3) vide letter of R-1 dt. 17.12.1974 (Annexure A-4). The applicant joined duty on 18.12.1974 and he was also confirmed with effect from 1.3.1985. He was further promoted as UDC in the office of DPS, A.P.North East Region, Visakapatnam. He was further promoted as Section Supervisor with effect from 23.10.1986. He retired from service with effect from 30.11.1991 on attaining the age of superannuation (Annex. A-5).

8. It is stated for the applicant that he was sanctioned a monthly pension of Rs.402/- with effect from 1.12.1991 by the Director of Accounts (Postal) by proceedings dt. 3.12.91 (Annexure A-6). After commutation he was granted revised pension of Rs.268/- p.m. vide proceedings dt. 6.1.1991 (Annexure A-7).

(L3)

9. The applicant states that while sanctioning pension, DCRG his service in the second spell of his employment i.e. from 18.12.1974 to 30.11.1991 i.e. for a period of about 17 years alone was taken into account as qualifying service for granting pensionary benefits and his services in the first spell from 18.12.1953 to 21.2.1972 and the period from 22.2.1972 to 17.12.1974 i.e. till his re-employment ~~xxxxxxxxxxxxxx~~ for a period of 21 years was excluded in payment of pension and other retirement benefits.

10. Aggrieved by the non-counting of the period of service for 21 years in the first spell he submitted a representation dt. 6.4.1993 (Annexure A-8) to R-4, requesting for condonation of break in service from the date of his removal i.e. from 22.2.1972 to till the date of his ~~xxxx~~ re-employment on 17.12.1974 (i.e. 2 years 9 months and 26 days) and for granting of pensionary and other retirement benefits based on his total service from 18.12.1953 to 30.11.1991 i.e. for 38 years. But, this representation was rejected by R-4 by letter No.51-23/94-SPB.II dt. 29.12.1994 as communicated by the PMG, Visakapatnam by letter No.ST/14-110/PSR dt. 15.2.1995 (Annex. A-9).

11. Hence, the applicant has filed this OA praying for also counting of his service in the first spell/duly condoning the break from 22.2.1972 to 17.12.1974 and to calculate his pension and final settlement dues on the basis of total qualifying service from the date of his joining in service i.e. from 18.12.1953.



(CC)

12. The learned counsel for the applicant relies on the Judgment of this Tribunal in OA 1521/93 decided on 31.3.1994 (Annexure A-10). It is further submitted by the learned counsel for the applicant that re-employment of the applicant by Reviewing Authority should be treated as major penalty in accordance with rule 11(v) of CCS(CCA) Rules by lowering the pay of the applicant in the category of Postal Assistant to the minimum of the scale and that his annual increments accrue thereafter treating the period of absence from the date of his removal to the date of re-employment as a fresh entrant as 'dies-non' and treat the first spell of service from 18.12.1953 to 21.2.1972 as qualifying service for pensionary benefits.

13. The learned standing counsel for the respondents opposed the same stating that this OA is not covered by the judgment of this Tribunal in OA 1521/93 as the applicant herein was re-employed on his mercy petition and hence cannot be on the same footing as that of the applicant in OA 1521/93.

14. The applicant in OA 1521/93 which was relied upon by the learned counsel for the applicant, was appointed as Khalasi in Railways on 20.3.1958. He was issued with a charge-sheet under rule 3(ii)(iii) of the Railway Service Conduct Rules, 1966 for the alleged misconduct on 25.8.1986. The disciplinary authority after conducting necessary enquiries removed him from service by proceedings dt. 28.3.1988. The applicant thereafter appealed against the orders of removal. On his appeal he was reinstated as a fresh entrant as Shunter fixing his pay in the minimum of the scale and forfeiting his previous service. Though the applicant therein had represented for condonation of break in service from the date of his removal and the date of reinstatement and for counting his first spell of servi

A

P.G.W

for calculating pensionary benefits, the same was rejected. Aggrieved by that he had filed OA and that OA was disposed of following the Judgment in OA 281/93 on the file of this Bench. The applicant in OA 281/93 was also similarly situated as that of applicant in OA 1521/93. In both the OAs it was held as follows:-

"The authorities have no powers to issue an order of appointment without following the procedure prescribed as per Recruitment Rules i.e. without considering the names of other eligible candidates for the said post. Hence, the order of re-appointment of the applicant as a fresh entrant was held as in disregard of rules. The order of fresh appointment in those cases was construed as a case of passing an order of major penalty in accordance with Rule 6(v) of Railway Servants (D&A) Rules, by lowering the pay of the applicant in the category of Fitter Gr.III to the minimum of the scale i.e. Rs.260-400 and that his annual increments accrue thereafter. The period from date of removal till reinstatement was treated as dies-non".

15. In this OA also the applicant herein is similarly placed as the applicants in the above quoted OAs of Railway Department. The applicants in the above mentioned OAs were also re-employed by the respondents therein on their appeal. The applicant herein was also re-employed by the Director General, Postal Department (R-4) on perusal of his Revision Petition. Hence, there can be no difference between the re-employment of the applicant in this OA and the applicant in the OAs referred to above. The applicant in this OA as well as in the cases referred to above were re-employed on the basis of their respective appeals either by the appellate authority or other higher authorities who were competent to re-employ them in service. Even if the appli
herein ha

A

66

been reinstated on the basis of mercy petition, there can be no difference in re-employment of the applicant in this case compared to the re-employment of the applicants in the cases cited above. Hence, the Judgment of this Tribunal in the OAs referred to above of the Ministry of Railways will equally hold good for the applicant in this OA also.

16. The applicant herein was removed from service and he was reinstated by R-4 in terms of proceedings dt.16.10.74 and 17.12.1994 (Annex.A-3 & A-4). In view of the judgment of this Tribunal in the cases cited above, the re-employment of the applicant in this OA has to be treated as a case of passing an order of major penalty in accordance with Rule-11(v) of CCS(CCA)Rules, 1965 by lowering the pay of the applicant in the category of Postal Assistant to the minimum of the pay scale and that his annual increments will accrue thereafter. The period of absence from 22.12.1972 the date of removal till 17.12.1974 the date of re-employment has to be treated as dies-non and the period of service rendered in the first spell from 18.12.1953 to 21.12.1972 has to be treated as qualifying service for the purpose of calculating pensionary benefits and to be paid to him.

17. In the result, the following direction is given:-

Passing of an order of re-employment of the applicant herein as Postal Assistant as a fresh entrant has to be held as in disregard of rules. It is to be construed as an order of major penalty in accordance with Rule 11(v) of CCS(CCA) Rules 1965 by lowering the pay of the applicant in the category of Postal Assistant to the minimum of the scale and that annual increments will accrue thereafter. The period from 22.12.1972 the date of removal till 17.12.1974 the date of re-employment should be treated as dies-non.

• 8 •

18. On the basis of the above, the qualifying service of the applicant has to be reckoned and the pension of the applicant due to him has to be fixed and has to be paid from 1.12.1991. The commutation of pension and other pensionary benefits have to be calculated by reckoning the qualifying service as above.

19. The OA is ordered accordingly at the admission stage itself. No costs. /

(R.Rangarajan)
Member (Admn.)

(V.Neeladri Rao)
Vice-Chairman

Dated 19th June, 1995.

Grh.

Deputy Registrar (J) CC

TÓ

1. The Senior Superintendent of Post Offices,
Visakhapatnam Division, Visakhapatnam.

2. The Postmaster General, Visakhapatnam Region,
Visakhapatnam. With OA
Copy

3. The Chief Postmaster General, A.P.Circle, Hyderabad.

4. The Director General, Dept.of Posts,
Dak Bhavan, Union of India New Delhi-1.

5. One copy to Mr.T.V.V.S.Murthy. Advocate, CAT.Hyd.

6. One copy to Mr.V.Bhimanna, Addl.CGSC.CAT.Hyd.

7. One copy to Library, CAT.Hyd.

8. One spare copy.

pvm

THPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

A N D

THE HON'BLE MR.R.RANGARAJAN: (M(ADMN)

DATED - 19/6/95 - 1995.

ORDER/JUDGMENT:

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

in
OA.No.

685/95

TA.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed. at the admission stage.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

