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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD & NCH:
AT HYDERABAD

O.A. No. 225 OF 1999.

DATE OF ORDER: 3-6-1999.

BETWEEN:

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....Applicant

and

1. The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
2. The Divisional Railway Manager,
Hyderabad Division, SC Railway,
Secunderabad.
3. Sr.Divisional Personnel Officer,
Hyderabad Division, South Central Railway,
Rail Nilayam, Secunderabad.

.....Respondents

COUNSEL FOR THE APPLICANT :: Mr.S.Lakshma Reddy

COUNSEL FOR THE RESPONDENTS:: Mr.V.Bhimanna

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN)

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THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

: ORDER :

ORAL ORDER (PER HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (J))

Heard Mr.S.Lakshma Reddy, learned Counsel for the
Applicant and Mr.V.Bhimanna, learned Standing Counsel
for the Respondents.

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2. The applicant herein was removed from service on the ground of unauthorised absence for a period of 94 days spread over between 1-1-1974 and 30-11-1974, by an Order dated: 17-4-1976. Against the said order, the applicant submitted an appeal. The Appellate Authority modified the order of removal and directed reinstatement of the applicant as fresh entrant on 6-7-1977. Accordingly, the applicant was reinstated and he retired from service on 30-9-1986 on attaining the age of superannuation.

3. While calculating his pensionary benefits, the respondents failed to take into consideration his earlier period of service. As the first spell of service is not taken into account, he was not paid any pension or pensionary benefits as the second spell was less than 10 years.

4. The applicant has relied upon the Order dated: 7-11-1997 passed in OA. No. 1480 of 1997 (RAMESH UTTAM Vs DRM, Sec'bad & OTHERS).

5. The applicant has filed this OA for a declaration that the action of the respondents in not granting the pensionary benefits to him by not treating the period of service from 19-10-1956 till the date of his removal i.e., 17-4-1976 towards qualifying service on his reinstatement by the Appellate Authority with effect from 6-7-1977 as totally illegal, without jurisdiction and violative of articles 14, 16 and 300A of the Constitution of India, and for a consequential direction to the

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respondents to grant the pensionary benefits to him by treating the period of service from the date of appointment i.e., 19-10-1956 to the date of removal i.e., from 17-4-1976 as qualifying service on his reinstatement by the Appellate Authority with effect from 6-7-1977 with all consequential benefits.

6. The applicant has filed this OA on 10-2-1999. Hence, he has filed a M.A.No.242 of 1999, praying for condoning the delay caused in filing the OA.

7. The respondents have filed a reply disputing the reasons stated by the applicant for condoning the delay.

8. The pension is a continuous process. In similar OAs which were filed belatedly, this Bench has taken a decision that the applicants therein are entitled for pension from the date of filing of the OA, if they succeed in the OA. If the Gratuity and Leave Encashment has already been paid, it is held in those Delay Condonation Petitions that those amounts shall not be paid as they are one time payments. The present MA for condoning the delay also has to be disposed of on those lines. While deciding the case, the above point will be kept in view. With the above observations, the MA is allowed as prayed for.

9. The applicant was removed from service by Order dated:17-4-1976. The Appellate Authority reinstated him as a fresh entrant with effect from 6-7-1977. Earlier

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the first spell of service of the applicant is from 19-10-1956 to 17-4-1976.

10. When the Appellate Authority set aside the Order of removal and ordered reinstatement, then the observations made by the Appellate Authority that the applicant was appointed as a fresh entrant is not proper. The first spell of service of the applicant from 19-10-1956 to 17-4-1976 cannot be ignored for considering the pension or pensionary benefits of the applicant. The respondent-authorities have taken into consideration only the period of service of the applicant from 6-7-1977 to 30-9-1986. They have not given any reason for ignoring the first spell of service of the applicant from 19-10-1956 to 17-4-1976.

11. In similar OAs, this Bench has observed that the respondent-authorities are to take into consideration the first spell of service also by treating the period from the date of removal till the date of reinstatement as dies-non. The respondent-authorities are fully aware of the decisions given in the earlier OAs. But strangely while issuing the order they have not taken note of those decisions and they have taken a queer stand stating that the applicant was appointed as a fresh entrant as per the orders of the Appellate Authority with effect from 6-7-1977.

12. Further the applicant has submitted his representation against the non-consideration of his first spell of service. From Annexure.III, it is disclosed that such a representation

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was forwarded to the Minister for Railways. The same was forwarded to the General Manager, South Central Railway, Secunderabad. The respondent-authorities have not taken pains to consider the representation of the applicant. The representation is dated:17-12-1997. By then this Tribunal had given directions in similar cases wherein, the Appellate Authority had set aside the order of removal of the delinquent employee and ordered reinstatement as a fresh entrant. The respondent-authorities have not taken note of those decisions and also have not at all considered the representation dated:17-12-1997.

13. In our humble view the first spell of the applicant from 19-10-1956 to 17-4-1976 is to be treated as qualifying service and his reinstatement on 6-7-1977 cannot be treated as a fresh entrant. The period from the date of removal i.e., from 17-4-1976 to 6-7-1977 shall be treated as dies-non. Further the payments like DCRG, Leave Encashment and Gratuity which are one time payments, the applicant is not entitled to the same, which may arise on account of considering his first spell of service from 19-10-1956 to 17-4-1976, as he had already received those payments.

14. In view of the above, the following directions are given taking due note of the delay in filing this OA:-

- i) The qualifying service of the applicant should be counted taking into account both the first and second spell of service. The period from the date of his removal till he was reinstated should be treated as dies-non;

- ii) The pension of the applicant should be recalculated accordingly. But he is entitled for the revised pension only from the date of filing this OA i.e., 10-2-1999;
- iii) The applicant is not entitled to any revision in gratuity or leave encashment amounts; and
- iv) The pension raised due to the revised pension as above should be paid to him within a period of 4 months from the date of receipt of a copy of this Order.

15. Before we part with this OA, we would like to state that the respondent-authorities have not taken due note of the law laid down by the Apex Court in similar cases. The authorities cannot plead ignorance of the law as number of cases had already been disposed of. Had they taken note of those instructions, probably the respondents themselves would have given leave to the applicant. Unnecessarily, they have forced the applicant to come to this Tribunal. We would like the respondent-authorities to avoid such recurrence in future.

16. The OA and the MA are ordered accordingly. No costs.


 (B.S.JAI PARAMESHWAR)
 MEMBER (JUDG)
 31/6/99
 DATED: this the 3rd day of June, 1999
 Dictated to steno in the Open Court


 (R.RANGARAJAN)
 MEMBER (ADMN)

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