

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 07.08.2003

OA No.360/2003 with MA No.318/03

Madan Singh s/o Shri Nanak Ram retired Fitter Gr.I
(Milrite) R/o CWM (LM) NWF, Ajmer r/o P.No.90B, Gali No.2,
Panchwati Colony, Near Railway Station, Adarsh Nagar,
Ajmer.

.. Applicant

Versus

1. The Chairman, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, North West Railway, Headquarters Office, Jaipur.
3. The Chief Works Manager, Ajmer, North-West Railway, Ajmer.

.. Respondents

Mr. P.V.Calla - counsel for the applicant

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.F.EHANDAFI, MEMBER (ADMINISTRATIVE)

O R D E R (ORAL)

The applicant was appointed as Fitter on 29.8.1957 under the Control of the Chief Works Manager, Ajmer (respondent No.3). He submitted his resignation on 10.3.1977 on account of ill health and his resignation was accepted on 11.3.1977. Thereafter, after a lapse of about 4 years, the applicant submitted an application dated 29.5.1981 for re-appointment whereby stating the circumstances under which he has submitted his resignation and specifically praying that his case may be considered for re-appointment. Considering his case sympathetically, the respondents issued letter dated 17th August, 1981

62

thereby giving fresh appointment to the applicant as temporary Fitter. Copy of this letter has been placed on record as Ann.A4. Perusal of this appointment letter makes it clear that the applicant was appointed afresh and he was not entitled to the benefit of his past services.

After securing re-appointment, the applicant for the first time, made representation to the Rail Minister vide his representation dated 31.12.82 (Ann.A5) that other person, who has resigned from service like the applicant, has been re-appointed by granting all benefits including benefit of seniority, pay fixation, grade etc. whereas the same has not been granted to him and thus requested that justice may be done to him. Thereafter, the applicant continued to make repeated representations to the Railway Ministry, as can be seen from Ann.A6 dated 15.12.1993, but nothing was heard in the matter. The applicant has also placed on record a letter dated 16.5.1998 (Ann.A7) which states that his case for condonation of break in service will be considered only one or two years earlier to the date of his retirement. The applicant retired from service on superannuation on 31.12.2000. Vide letter dated 31.1.2002 (Ann.A1), the applicant was informed that the matter regarding condonation of break in service was taken up with the Railway Board and the Railway Board has shown its inability to condon the break in service and copy of this letter was sent to the application for information. It is this letter which is under challenge in this OA. The applicant has prayed the following reliefs:-

"It is, therefore, prayed that the Hon'ble Tribunal may kindly call for and examine the entire records relating to this case and by an appropriate order or direction the impugned

68

letter dated 31.1.2002 (Annexure A/1) may kindly be declared illegal and by an appropriate order or direction the services rendered by the applicant from 29.8.1957 to 10.3.1977 may kindly be ordered to be treated as qualifying service and the period i.e. from 11.3.1977 to 17.8.1981 may kindly be ordered to be treated as the period spent on duty or the same may be regularised as per the Rules. The respondents may be directed to count the total service of the applicant as qualifying service which comes out about 38 years and after calculating 39 years of qualifying service pension may kindly be ordered to be recalculated and full pension be paid to the applicant with all consequential benefits."

2. We have heard the learned counsel for the applicant at admission stage.

2.1 The learned counsel for the applicant could not satisfy us under what rule the services rendered by him w.e.f. 29.8.1957 to 10.3.1977 proceeded with break in service of about 4 years can be counted as qualifying service for the purpose of pensionary benefits. From the facts stated above, it is evident that the applicant though engaged as Fitter on 29.8.1957 submitted his resignation on 10.3.1977 which was accepted on 11.3.1977. As per Rule 41 of the Railway Services (Pension) Rules, 1993, resignation by a railway servant from service or post shall lead to forfeiture of his past services unless it is allowed to be withdrawn in the public interest by the appointing authority or his resignation is submitted with a purpose to take up, with proper permission, another

appointment under the Government where service qualifies for pension. From what has been stated above, the case of the applicant is not covered under either of the aforesaid conditions as stipulated in Rule 41. It is not the case of the applicant that he has withdrawn his resignation and his request was accepted by the appointing authority. ~~or it~~ ^{also not} is a case of the applicant that resignation was submitted by him with a purpose to take up, with proper permission, another appointment under the Govt. where the service qualifies for pension. Thus, under Rule 41 of the Railway Services (Pension) Rules, the services rendered by the applicant w.e.f. 29.8.1957 to 10.3.1977 cannot be counted as qualifying service for the purpose of pension and the services so rendered after acceptance of resignation shall lead to forfeiture of his past services.

2.2 Similarly, the learned counsel for the applicant could not satisfy this Tribunal as to under what law or instructions of the authority, period w.e.f. 11.3.1977 ^{he was} till ~~he was~~ ^{he was} re-engaged vide order dated 17.8.1981 can be treated as period spent on duty, when in fact he was out of job during this period and thus treated as qualifying service for the purpose of pension. The word qualifying service has been defined under sub-rule (22) of Rule 3 of Railway Services (Pension) Rules to mean service rendered while on duty or otherwise which shall be taken into account for the purpose of pension and gratuity admissible under the rules.

2.3 As per Rule 20 of the Railway Services (Pension) Rules, the qualifying service of a railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity provided that

officiating or temporary service is followed without interruption, by the substantive appointment in the same or another service or post.

2.4 According to Rule 21, which stipulates the condition, subject to which the condition the service qualifies for pensionary benefits, It has been stated that the service of a railway servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government. It is further stipulated that officiating or temporary service followed without interruption by substantive appointment or continuous service rendered under that Government in an officiating or temporary capacity shall qualify for the purpose of pension. The applicant has not fulfilled either of these conditions. During the period 11.3.1977 when his resignation was accepted till 17.9.1981 when he was re-appointed as Fitter, he was not in the services of the Railways. As such his duties and pay were not regulated by the Government, or under condition determined by the Government so as to qualify for the purpose of pensionary benefits in terms of Rule 21.

2.5 That apart, the applicant while submitting his application dated 29.5.1981 has stated as under:-

" I am fully cured now and I pray for considering my case for reappointment so that I may be saved from passing through the road of starvation."

From reading of the portion quoted above, it is clear that he has requested that his request for re-appointment may be considered so that he may be saved from starvation. On the basis of this application, the applicant was given fresh appointment vide letter dated 17.8.81 (Ann.A4). This letter specifically mentioned that

42

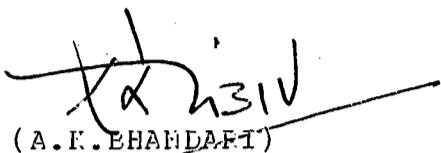
he has been re-appointed as temporary Fitter on fresh basis and he will not be entitled to the benefit of past services. When he has applied for re-appointment and his request for re-appointment was considered and it was also specifically made clear to the applicant that he shall not be entitled for the benefit of past service, it does not lie in the ^{mouth} mind of the applicant at this stage to contend and plead that his past services ^{should} ~~shall~~ be counted for the purpose of pensionary benefits especially when under law he is not entitled for counting the services rendered by him w.e.f. 29.8.1957 to 10.3.77 on account of forfeiture of his service on acceptance of his resignation. However, according to rule, the applicant is also not entitled for condonation of break in service w.e.f. 11.3.77 to 17.8.81 and to treat the same as period spent on duty as prayed for by him.

2.6 The contention of the learned counsel for the applicant that one Shri R.N.Gupta who was also re-appointed after resignation was granted benefit of seniority, pay fixation, grade etc. cannot be accepted as the applicant has not shown as to how his case is similar to that of Shri R.N.Gupta. Even otherwise also, if a person has been granted any relief contrary to law that cannot become a cause of action for the other similarly situated person to grant the similar relief. It is judicially well settled law that illegality cannot be perpetuated on the ground of discrimination. We find support of our view from the judgement of the Hon'ble Supreme Court in the case of State of Bihar and ors. Vs. Kameshwar Prasad Singh and Ors., (2000 (3) SCC 94).

3. For the foregoing reasons, we see no infirmity in

: 7 :

the impugned order dated 25.1.2002 whereby he was informed that his request for condonation of break in service has been rejected by the Railway Board. Accordingly, the present OA is dismissed at the admission stage with no order as to costs.



(A.K.BHANDARI)

Member (Administrative)



(M.L.CHAUHAN)

Member (Judicial)