

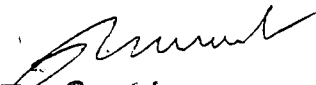
NOTES OF THE REGISTRY

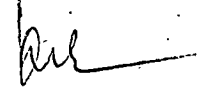
ORDERS OF THE TRIBUNAL

15-3-07

Mr. C. B. Sharma Counsel for appellants
Mr. Tej Prakash Sharma Counsel for
respondents

Heard. The
CA has been disposed of by a
separate order.


(J.P. Shukla)


(Kuldeep Singh)

Administrative Member Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 15th day of March, 2007

ORIGINAL APPLICATION NO.355/2005

With

MISC.APPLICATION NO.253/2005

CORAM :

HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR.J.P.SHUKLA, ADMINISITRATIVE MEMBER

Roop Nath
s/o Shri Nemi Nath,
r/o Village & Post Jahanbad,
Tehsil Hindon,
District Karauli.

By Advocate : Shri C.B.Sharma

... Applicant

Versus

1. Union of India through
General Manager,
West Central Railway,
West Central Zone,
Jabalpur.
2. Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.
3. Assistant Divisional Engineer,
West Central Railway,
Bharatpur.
4. Sr.Section Engineer (P-Way),
West Central Railway,
Bharatpur.

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By Advocate : Shri T.P.Sharma

... Respondents

ORDER (ORAL)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, thereby praying for the following relief :

- "i) That the entire record relating to the case be called for and after perusing the same the respondents may be directed to allow the applicant to hold the post of Gangman by quashing order dated 18.7.2003 (Ann.A/1) with all consequential benefits.
- ii) That the respondents be further directed to extend retrial benefits on completion of qualifying service and treating as voluntary retired with all consequential benefits."

2. Briefly stated, the facts of the case are that the applicant was initially joined the respondent Railway in the year 1972 as Gangman. Thereafter he was granted temporary status and his services were regularized w.e.f. 21.6.1984. He was working continuously with the entire satisfaction of the respondent department, but in the year 2003 one Shri Dalip, Head Clerk, and Shri Maharaj Singh, Jamadar, apprised him that his retirement papers are to be got prepared and obtained his thumb impression on blank papers. Thereafter, these papers were utilized by them for submitting resignation by the applicant. Thereafter, respondent No.4 pursue the matter with respondent No.3, who passed the order, dated 18.7.2003, for acceptance of the said resignation w.e.f. 20.7.2003. The applicant was not allowed to work thereafter and whenever he made request, he was informed that he has been retired from service and the retirement benefits will be made available to him shortly. It is also submitted

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by the applicant that the order dated 18.7.2003, by which his so-called resignation was accepted, has not been made available to him. He was under impression that his due benefits will be made available but in the year 2004 he came to know that due to the conspiracy of co-workers his resignation has been accepted. Thereafter, neither the applicant was allowed retrial benefits nor was taken back on duty. Being aggrieved, the applicant continuously pursued the matter with the respondents and also approached to the District Collector, Bharatpur, vide application dated 19.2.2005, regarding aforesaid conspiracy against him. The District Collector forwarded the matter to respondent No.3, but no action has yet been taken. Hence this OA.

3. The applicant has moved this OA on the ground that the applicant was serving the respondent Railway since 1972 and he never submitted any resignation. He is an illiterate person and in fact his co-workers mischievously taken his thumb impression on blank papers to prepare his retirement papers but utilized the same for resignation and acceptance of such resignation by the respondents without going into the full facts is not at all justified. Besides, respondent No.3 is not competent to accept the so-called resignation as the appointing authority of the applicant is Divisional Railway Manager. Hence, acceptance of resignation by respondent No.3 is void ab-initio.

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4. The respondents have contested the claim of the applicant. In the reply, the respondents have submitted that the applicant had submitted the said resignation willingly and without any force or threatening and the resignation has been accepted by the competent authority and after accepting the resignation, the question of allowing the applicant to take back on duty does not arise. Further, the applicant has challenged the order dated 18.7.2003 after a lapse of two years, therefore, the OA is barred by limitation as prescribed under Section-21 of the Administrative Tribunals Act, 1985. It is also pleaded that repeated representations do not add limitation. The respondents have also contended that as the qualifying service of the applicant is only 19 years, he is not entitled for any retrial benefit.

5. The applicant has also filed rejoinder reiterating the facts mentioned in the OA. It is also averred in the rejoinder that the applicant being an illiterate person has no knowledge of rules/regulations. The applicant is serving respondent Railway since 1972. His services were regularized in the year 1984. Thus, he has rendered about 25 years of qualifying service and the person who had rendered about 25 years of qualifying service cannot submit his resignation. The respondents themselves by conspiracy gave the shape of blank papers into resignation, though it was the moral duty of the respondent(s), accepting the resignation, to inform the applicant about the

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consequences of submitting such a resignation as the authority accepting the resignation was well aware of the services rendered by the applicant. On the question of delay, the applicant has submitted in the rejoinder that he is continuously pursuing the matter with the respondents for taking him back on duty or to grant pensionary benefits, which is a recurring cause of action. However, he has also moved an MA for condonation of delay in filing the present OA, which is pending consideration before this Tribunal.

6. We have heard the learned counsel for the parties and perused the material placed on record.

7. As regards delay is concerned, the applicant has moved MA 253/2005 praying for condonation of delay in filing the present OA. In view of the averments made in the MA, the MA is allowed and the delay in filing the present OA is condoned. MA 253/2005 stands disposed of accordingly.

8. Without going into the controversy whether the applicant had himself tendered the so called resignation or it was submitted and accepted by way of conspiracy, we proceed to decide the question whether, at this stage, the applicant is entitled for pensionary benefits or not.

9. During the arguments, on a query by the Tribunal as regards entitlement of the applicant for pensionary benefits, learned counsel for the

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applicant referred to the provisions of Appendix-6 of "Master Circular on Qualifying Service for Pensionary Purposes", relevant portion of which reads as under :

"20. Counting of the period of service of Casual Labour for pensionary benefits

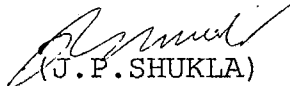
Half of the period of service of a casual labor (other than casual labour employed on Projects) after attainment of temporary status on completion of 120 days continuous service if it is followed by absorption in service as regular railway employee, counts for pensionary benefits. With effect from 1.1.1981, the benefit has also been extended to Project Casual labour."


10. During the course of arguments as also in the pleadings, the respondents have admitted that the applicant has rendered only 19 years of qualifying service and as such he is not entitled for pensionary benefits, whereas on perusal of the provisions contained in Railway Services (Pension) Rules, 1993 (Appendix-6), as reproduced above, we find that the applicant was appointed in the respondent Railway in the year 1972 and was regularized on the post of Gangman w.e.f. 21.6.1984 and retired on acceptance of the so-called resignation w.e.f. 20.7.2003. As such, we find that the respondents have not calculated half of the temporary service rendered by the applicant between 1972 to 21.6.1984, which should have been as per extant rules, and which comes out about six years,. As such, the qualifying service of the applicant comes out $19 + 6 = 25$ years. According to us, an employee who has rendered about 25 years of qualifying service cannot be denied pensionary

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benefits irrespective of the fact whether he himself tendered resignation or the resignation was submitted and accepted due to conspiracy.

11. In view of the foregoing, we are of the firm view that the applicant is entitled for all pensionary benefits and accordingly the present OA is allowed and the respondents are directed to grant all pensionary benefits to the applicant within a period of three months from the date of receipt of a copy of this order. No order as to costs.


(J.P. SHUKLA)
MEMBER (A)


(KULDIP SINGH)
VICE CHAIRMAN

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