

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 1548/2014
M.A. No. 1325/2014

New Delhi, this the 30th day of September, 2016

HON'BLE MR. P.K. BASU, MEMBER (A)

Jagdish Rai, (Retired employee)
Aged 61 years,
Son of Shri Ram Chander,
R/o Village & Post – Kharkari Sohan,
Tehsil – Tosham,
Distt. Bhiwani, Haryana. .. Applicant

(By Advocate : Shri U. Srivastava with Shri Gyaneshwar)

Versus

1. Union of India,
Through the General Manager,
Northern Railways Headquarters Office,
Baroda House, New Delhi-110001.

2. The Divisional Railway Manager,
DRM Office, Northern Railways,
New Delhi. .. Respondents

(By Advocate : Shri Satpal Singh)

ORDER (ORAL)

Heard both the learned counsels and also perused the file pertaining to this case maintained in the Ministry of Railways.

2. In this file, there is a letter dated 07.02.1997, in which the history of the case of the applicant has been summarised. This

letter has been addressed by DRM (Commercial), Northern Railway, NDLS to SPO(GR)/N.Rly., Baroda House, New Delhi regarding representation of the applicant, Shri Jagdish Rai, for reinstatement. The contents of this letter are quoted below:

“CONFIDENTIAL

DRM OFFICE
NEW DELHI

No.Vig/___/85/Comml./SPE
Dated: 7th February, 1997

SPO (Gr.)/N.Rly.
Baroda House, New Delhi.

Sub: Reinstatement of Shri Jagdish Rai S/o Shri Ram Chander,
BC/BNWC.

Ref:- Your Pink D.O. No.145-E.C/61926/DLI/RB/SSB dated
13.12.96.

Parawise comments on the representation of Shri Jagdish Rai S/o Shri Ram Chand, Ex-BC/BNWC are given below:

PARA-1 That the applicant was appointed in Rly. on 23.7.75 in Delhi Divn. as Class IV employee. On 22.07.80 he was posted at Bhiwani City Rly. Station as Officiating Booking Clerk against the existing vacancy on local arrangements. He did not pass any training for the post the Booking Clerk from Zonal Training School, Chandausi. While working as Booking Clerk/Bhiwani City Railway Station he misappropriated as sum of Rs.3344.50 paise out of station earnings for his personal use without any authority. This amount was taken by him out of the Govt. money on different dates.

PARA-2 Shri Jagdish Rai deposited some of the amount with Rly. when the matter came to light.

PARA-3 A regular case No.RC54/84-CHG against Shri Jagdish Rai was registered by CBI/Chandigarh. He was prosecuted by CBI/Chandigarh in the court of Special Judicial Magistrate, Ambala City under Section 409 I.P.C. for misappropriation of Govt. money.

PARA-4 The contention of the employee made in this para is wrong. The Hon'ble Court decided the case on 18.10.1993. Shri Jagdish Rai admitted the charge in the court. He pleaded that he used the said Govt. money for the treatment of his children with the understanding that he could retain the Govt.

money with him and requested to release him on probation, he gave in writing to court for deduction of the amount outstanding against him @Rs.200/-p.m. from his salary. The Hon'ble Court took pity on the family of Shri Jagdish Rai and released him on probation on furnishing of a bond valid for two years in the sum of Rs.10,000/- to appear and receive sentence when called upon to do so, and, not to commit a breach of peace and be of good behaviour to the Government and all the citizens of India during this period of two years. He was also directed to pay a sum of Rs.700/- to the public exchequer towards prosecution charges. Shri Jagdish Rai public exchequer towards prosecution charges. Shri Jagdish Rai did not approach this office along with court's order, copy of bond for Rs.10,000/- and proof of deposit of Rs.700/- with the Govt. etc. Only present application has been received from him alongwith the copy of Court's order only. When this case against him was noticed, he was reverted to Class IV post and posted as Box Porter at Bathinda, but he did not join his duty and had been absenting himself unauthorisedly. This proves that he is not in need of any service and is making false allegations against Rly. for not hearing to his request for duty inspite of approaching with all papers.

PARA-5 The applicant is himself responsible for the consequences of his misdeeds.

PARA-6 The case of Shri Jagdish Rai will be examined on merits. On submission of complete documents by him, decision will be taken such as deem fit.

2. Shri Jagdish Rai belongs to scheduled caste.

Sd/
For DRM (COMML.)/NR/NDLS".

3. From the above, it would be clear that the applicant was appointed in the Railways on 23.07.1975 in Delhi Division as a Class IV employee. On 22.07.1980, he was asked to officiate as Booking Clerk at Bhiwani City Railway Station. While working as Booking Clerk at Bhiwani City Railway Station, a case was registered against him by the CBI for misappropriation of Rs.3344.50 paise. The learned Special Judicial Magistrate

pronounced his order on 18.10.1993. The relevant portion of the order is as follows:

“4. This court very firmly believes that any attempt to send the accused to jail would be absolutely counter productive and would add further to the miseries of the family, which is already living in terrible distress. It shall amount to direct punishment to the young innocent four faces standing in the court at this hour. Reformation is the ultimate aim of the law and the ends of justice shall meet if the court gives the accused a fair chance to improve himself and not be a cause for the misery of others.

5. The accused is released on probation on his furnishing a bond valid for two years in the sum of Rs.10,000/- to appear and receive sentence when called upon to do so, and, not to commit a breach of peace and be of good behaviour to the Government and all the citizens of India during this period of two years.”

4. When this case against the applicant was noticed, the authorities reverted him to Class IV post and posted him as Box Porter at Bhatinda. According to this letter, the applicant did not join at Bhatinda and absented himself unauthorisedly. The Railways came to the conclusion that this proves that he is not in need of service and is making false allegations against the Railways for not hearing to his request for duty inspite of approaching with all papers and that the applicant himself is responsible for the consequences of his misdeeds. It was decided that the case of the applicant will be examined on merits on submission of complete documents by him. It is further stated that the applicant belongs to Scheduled Caste.

5. From the above, it is clear that the respondents – Railways acknowledged that the applicant was in service of the Railways between 23.07.1975 to at least 18.10.1993, the date on which the conviction order was given. Further, that the Railways took a decision to revert him to Class IV post.

6. Learned counsel for the respondents, first of all, raised the ground of limitation stating that the cause of action arose in 1997, when he was posted as Catering Khalasi and, therefore, the O.A. should be dismissed as being non-maintainable due to limitation.

7. In para 4.4 of the reply, the respondents have stated that only on humanitarian ground, keeping in view the miserable condition of the applicant's family, he was appointed afresh as Catering Khalasi vide order dated 13.11.1997. It is the contention of the learned counsel for the respondents that since he was appointed on 13.11.1997 as a fresh entrant as Catering Khalasi, his services for the period 13.11.1997 till the date of his retirement, i.e. 31.03.2013, would be treated as the period counted for working out his retirement benefits. Therefore, it is stated by the learned counsel for the respondents that the prayer of the applicant for counting the period between 23.07.1975 to 12.11.1997 for the purpose of retirement benefits cannot be acceded to.

8. The applicant retired on 31.03.2013. This O.A. has been filed on 30.04.2014. It can be reasonably accepted that the applicant was expecting that the service of the applicant between 23.07.1975 to 18.10.1993 would be counted. However, it is only after his retirement that he came to know that he is being harmed by the decision of the respondents. Further, he belongs to weaker section of the society, i.e. Scheduled Caste. In view of this, the delay, if at all any, is condoned.

9. As stated above, the Railways' correspondence proves that the applicant was an employee of Railways between 23.07.1975 to at least 18.10.1993, i.e. the date of conviction order. It is also evident that the Railways' authorities offered him a lower post of Class IV, which means that the Railways had no objection to his continuing in service perhaps in view of lenient view taken by the learned Chief Judicial Magistrate. The applicant did not join as Booking Clerk. Thereafter, the Railways took a decision on humanitarian ground to appoint him as a Catering Khalasi w.e.f. 13.11.1997. The order dated 13.11.1997 has not been produced by either side. The respondents have not made it clear that after offering him the Class IV post, in view of the judgment of the Chief Judicial Magistrate, what happened between this period, i.e. from 1993 to 1997.

10. In view of this, it is not possible to determine, at this stage, what happened between the period of 18.10.1993 and 13.11.1997. Keeping in view that the applicant is a low paid staff of the Railways and also that he belongs to a weaker section of the society, i.e. Scheduled Caste, the only way resolve this issue, once for all, is to give a direction to the respondents that the period between 23.07.1975 to 18.10.1993 and 13.11.1997 till 31.03.2013 should be counted for the purpose of qualifying service for pension and retirement benefits. The period between 19.10.1993 to 12.11.1997 be treated as 'Not on duty'. The O.A. is disposed of accordingly. Time frame of 90 days is fixed for the respondents for implementation of this order from receipt of a certified copy of this order. No order as to costs.

(P.K. Basu)
Member (A)

/Jyoti/