

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

ORIGINAL APPLICATION NO.472/2017

DATED THE 14TH OF DECEMBER, 2018

CORAM: HON'BLE SHRI M C VERMA

Shri Jagdish S/o Vasubhai Hirjibhai Zala,
Aged : 59 years,
Occupation:Retired,
Residing at C/o. No.B-96,
Kothi Compound,
Rajkot – 360001.

... Applicant

By Advocate Ms K L Kalwani

V/s

1 Union of India,
Owning & Representing Western Railway,
Through General Manager,
Western Railway,
Churchgate,
Mumbai – 400 020.

2 Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot – 360 001. ... Respondents

By Advocate Shri Anand L Sharma

ORAL ORDER

Per Shri M C Verma, Member(J)

1 This OA has been preferred by the petitioner challenging the impugned order No.E/EL/Z J/72 dated 08.06.2017 issued by O/o.DRM, Rajkot treating the period of removal to reinstatement from 21.02.1995 to 18.08.2003 as non qualifying service for the purpose of pensionary benefits.

2 The brief facts of the case is as under:-

2.1 The applicant joined Railway Service as casual labour on 24.12.1979 on VOP and was regularized in service on and from 01.01.1984 and retired as Khalasi from service on attaining age of superannuation on 30.06.2016. That the applicant was charge sheeted for unauthorized absence for a period of three months and the Disciplinary authority vide order dated 21.02.1995 removed the applicant from service.

2.2 This is the third round of litigation in CAT, Ahmedabad. Earlier the applicant had filed OA 576/1998 challenging the order of Disciplinary Authority against removal of applicant from service after charge sheeting him for unauthorized absence. The Hon'ble Tribunal vide order 04.04.2003 directed as under:-

“We also remit the matter back to the disciplinary authority to reconsider the question of imposition of penalty on the applicant and after taking into account all the factors of this case, to impose an adequate and appropriate penalty on the applicant except that of removal/dismissal from service or compulsory retirement. This exercise be carried out within three months from the date of the receipt of a copy of this order. With this direction, the OA stands disposed of.”

2.3 The authority accordingly reconsidered the matter and thereafter passed order dated 04.08.2003 reducing the applicant's pay to one stage lower in the same time scale of pay for a period of three years with future effect. Thereafter, vide order dated 26.08.2004 the Disciplinary Authority directed that **“the period from removal to the date of reinstatement is treated as ‘dies non’ for all the purposes.”** This order of Disciplinary Authority was challenged by the applicant before this Tribunal vide OA

374/2004. Vide order dated 27.07.2005 the Hon'ble Tribunal passed the following directions:-

"12 We adopt the reasoning in the said OA and decide this OA by quashing that part of order which treat the intervening period as dies non and direct the respondents to pass appropriate order in terms of rule 1344 of IREM. This exercise should be completed within three months of the receipt of the order and the amount payable, if any should be paid within three months thereafter. Failing this, interest at the rate of 9% will be payable beyond this six month period. The OA is disposed off accordingly. No order as to costs."

2.4 The respondents challenged the order dated 27.07.2005 of the Hon'ble Tribunal in OA 374/2004 before the Hon'ble High Court of Gujarat in SCA No.2976/2006. The Hon'ble High Court vide order dated 23.04.2008 passed the following order:-

"8 The petition is accordingly partly allowed. While confirming that part of the order of the Tribunal by which the Disciplinary Authority's order dated 07.08.2004 treating the intervening period as "dies non" is set aside, we set aside the order of the Tribunal directing the authorities to pass appropriate order in terms of Rule 1344 of the Indian Railways Establishment Manual. We, however, direct that the intervening period shall be treated as leave without pay but the respondent shall be treated as in continuous service for all other purposes including for the purpose of leave, increments and retiral benefits.

9 Rule is made absolute in the above terms with no order as to costs."

2.5 In obedience of the order of Hon'ble High Court of Gujarat, Respondent No.2 passed order dated 29.01.2009 treating the intervening period as leave without pay and treated it as in continuous service for all other purposes including for the purpose of leave, increment and retiral benefits and also issued order dated 14.10.2010 granting financial upgradation under MACP scheme to the applicant treating his service as continuous.

2.6 The petitioner retired from service on 30.06.2016 on attaining the age of superannuation and his retirement dues including pension has been fixed on basis of 19 years qualifying service, without taking into account the period from 21.02.1995 to 18.08.2003 (8 years). Therefore the applicant submitted representations dated 31.08.2016, 19.12.2016 and 02.03.2017 to Respondent No.2 to grant him all retirement benefits, fixing his pay and pension and to pay him leave encashment benefit etc. by considering the period in question as qualifying service. The Respondent No.2 vide impugned order dated 08.06.2017 denied his request to treat the intervening period as continuous service and qualifying service for pension and other purposes which has been challenged by the applicant in this OA. The applicant has stated that despite the judgments of Hon'ble Tribunal and Hon'ble High Court of Gujarat in OA No.374/2004 and SCA No.2976/2006, the intervening period from 21.02.1995 to 18.08.2003 is required to be treated as continuous service for all purposes except the wages for the period which is to be treated regularized as "leave without pay". In compliance of the order of Hon'ble High Court of Gujarat dated 23.04.2008, Respondent No.2 issued order dated 29.01.2009, the period is treated as continuous for the purpose of leave, increment and retiral benefits.

3 The respondents filed detailed reply dated 03.04.2018 denying the claims of the applicant and in the pleading have stated that the OA is devoid of merit and OA be dismissed.

4 Applicant has also filed a rejoinder dated 13.06.2018 reiterating the stand in the OA.

5 Heard Ms K L Kalwani, learned counsel for applicant and Shri A L Sharma, learned counsel for respondents and perused the pleadings.

5.1 The matter is at the final hearing stage. On 26.10.2018 attention of the learned counsel was drawn to order passed by Hon'ble High Court and at that staged the learned counsel for respondents took adjournment and submitted that order under challenge in this OA is under review by the authorities and an outcome is expected in ten days.

6 The applicant also filed an affidavit on 28.11.2018 enclosing a copy of order dated 12.11.2018 passed by Respondent No.2 modifying the order dated 29.01.2009 which reads as under:-

"In partial modification of this office memo. No. even dated 29.01.2009, Hon'ble High Court's order dated 23.04.2008 in SCA No.2976/2006 filed by you has been reviewed and competent authority has approved the intervening period from 21.02.1995 to 19.08.2003 is treated as leave without pay with continuous service for all other purposes including leave, increments and retiral benefits.

Necessary memorandum to this effect is being issued separately."

7 Learned counsel for applicant drew my attention to the fact that the respondents have not taken any steps to issue PPO and the retiral dues. She requested that some direction to the respondent be given to complete the exercise of issuing PPO and releasing the retiral benefits within a stipulated time and also given direction for interest on arrears due to delayed payment.

8 Learned counsel for respondents submitted that the entire exercise will be completed within a week and payments of the arrears, if any, will be made immediately thereafter.

9 Having considered the submissions in the entirety of the matter, I think that it would be appropriate to dispose off this OA with direction to the respondents to carry out the exercise regarding the effect of the modified order dated 12.11.2018 on the pension and retirement dues of the applicant. This exercise may be done expeditiously within two months from the date of receipt of a copy of this order.

10 The OA is disposed off with above directions. There shall be no orders as to costs.

(M C VERMA)
MEMBER(J)

abp