

**Central Administrative Tribunal
Principal Bench**

OA No.3004/2013

New Delhi, this the 23rd day of January, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Vivian Reeves aged about 64 years
Son of late Shri Hareeves,
Retd. Jeep Driver, SSE/C&W Jhansi,
North Central Railway, Jhansi Division,

Resident of C/o Smt Sandra Paul,
C-9, GTB Hospital Complex,
Shahdara Delhi -95. ... Applicant

(By Advocate: Mr. H. P. Chakravorty)

Vs.

1. Union of India through
The General Manager,
North Central Railway, HQ office,
Allahabad.
2. The Divisional Railway Manager,
North Central Railway, Jhansi U.P.

...Respondents

(By Advocates: Mr. V. S. R. Krishna)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant was appointed as a Gangman in the Central Railway on 07.10.1972. He was removed from service on disciplinary grounds on 10.10.1975. Aggrieved

by the order of dismissal, the applicant filed OS No. 183/1981 before Civil Court at Jhansi. That, in turn, was transferred to Allahabad Bench of this Tribunal and registered as TA No. 734/1986. The OA was allowed through order dated 23.10.1987 directing that applicant shall be reinstated into service in the same scale of pay which he was drawing at the time of his removal and that he will not get any salary etc. from the date of removal till the date of reinstatement. However the manner in which the period was regularised was left to be considered by the Concerned Authority.

2. The applicant was reinstated to the service on 11.04.1988 and he retired from service on 28.02.2010 on attaining the age of superannuation. He filed OA No. 1792/2012 pleading that the period between 1975 and 1988 was not taken into account in the context of determining his pension. The OA was disposed of on 31.07.2012 directing the respondents to pass speaking order. Accordingly, an order was passed on 04.10.2012 informing the applicant that the period between 1975 to 1988 can be treated only as *dies-non*, since there was no leave to his credit for the period of his absence. The same is challenged in this OA.

3. The applicant contends that though the Tribunal directed that he shall not be entitled to be paid any arrears etc., there was no basis for treating the said period as *dies-non*. He contends that the benefit of such a long service cannot be denied at least for the purpose of reckoning pension and increments.

4. Respondents filed counter affidavit opposing the OA. It is stated that it was almost on compassionate basis, that the Tribunal reinstated the applicant into service, duly indicating that he shall not be entitled for anything for the period preceding his date of reinstatement. It is also stated that period during which the applicant was out of service was dealt with in accordance with the relevant rules and left with no alternative, it was treated as *Dies-non*.

5. We heard Mr. H. P. Chakravorty, learned counsel for the applicant and Mr. V. S. R. Krishna, learned counsel for the respondents in detail.

6. The applicant was removed from service on disciplinary grounds and the Tribunal granted relief almost on compassionate basis. None of the findings in

the Departmental Inquiry was set aside. In para 5 of the order it was observed as under:-

"However at the fag end the case of the plaintiff was thrown at our mercy with the contention that the punishment awarded was excessive and unreasonable. It was also stated that the plaintiff if reinstated will not claim any salary from the date of his removal upto the date of reinstatement and he was willing to join the post which he was holding at the time of his removal and draw pay in the same scale which he was drawing at the time of his removal. It was also stated that the period between the order of dismissal and reinstatement may be regularized according to rules. There is nothing to suggest that the plaintiff had a bad record in the past. He had put in about 9 years of service on the date of occurrence. It was a case of assault and it does not appear that it was made without any provocation or any rhyme or reason. The punishment should be commensurate with gravity of misconduct. If the punishment is grossly disproportionate to the charge, the court can itself reduce punishment."

The relief was granted in the following terms:-

"The plaintiff shall be reinstated and after reinstatement he will draw salary in the scale which he was drawing at the time of his removal. He will not get any salary etc. from the date of removal till the date of reinstatement. The aforesaid period will be regularized by the authority concerned according to rules."

7. Sub para (5) of Para 1343 of the (Fundamental Rule 54A) of the Railway Manual provides the manner in which, the period of this nature must be treated. In the impugned order that was extracted and on finding that the applicant did not have any leave to his credit, that

too covering a period of 13 years it was treated as dies-non. The relevant portion reads as under:-

"As per sub para 5 of para 1343 (FR 54A), which says that " In a case falling under sub rule (4), the period of absence from duty including the period of suspension preceding the dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specific purpose, provide that if the railway servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the railway servant."

8. Learned counsel for the applicant is not able to point out, as to whether, the applicant has a leave covering the period between 10.10.1975 and 11.04.1988. Further his contention that the applicant was entitled to be extended the benefit of increments for that period is equally untenable. The doubt in this regard was put at rest by the Tribunal itself while it ordered for reinstatement. We do not find any merit in the OA. Accordingly, the OA is dismissed. There shall be no order as to costs.

**(Mohd. Jamshed) (Justice L. Narasimha Reddy)
Member(A) Chairman**

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