

Versus

1. Union of India through the General Manager, East Central Railway,
Hazipur, Bihar
 2. The Divisional Railway Manager, East Central Railway, Dhanbad, Jharkhand
 3. The Senior Divisional Personnel Officer, East Central Railway,
Dhanbad, Jharkhand
- Respondents

**CORAM : HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE B.B. MANGALMURTI**

For the Petitioner : Mr. Sunil Singh, Advocate
For the Respondents : Mr. V.K. Sinha, A.S.C. (Rly.)

15/31.07.2017 Heard counsel for the parties.

2. Petitioner approached the learned Central Administrative Tribunal, Circuit Bench, Ranchi in O.A. No.051/00034/2014 after his retirement on 31st March, 2013 seeking counting of his service w.e.f. 8th December, 1978 instead of 15th January, 1980. On 8th December, 1978, the applicant/petitioner herein was appointed as Store Khalasi but admittedly had remained in absence w.e.f. 1st October, 1979. The respondents terminated him from service w.e.f. the forenoon of 1st January, 1980 as according to the rules extra ordinary leave could not be granted for a period in excess of three months. However, according to the respondents, on his application made, the applicant was re-appointed w.e.f. 15th January, 1980 vide letter dated 15th February, 1980.

3. The learned Tribunal after taking note of the relevant material facts, dismissed the original application as being devoid of merits. The plea of the applicant that the order of termination was modified to the stoppage of two increments vide order dated 28th August, 1982 was not accepted. The applicant had failed to produce any document in support of his contention that major penalty order was reduced to stoppage of two increments despite the onus lying upon him to prove his case. Since the employment of the petitioner started afresh from 15th January, 1980, the computation of his post retirement benefits from that date have been upheld by the learned Tribunal.

4. Learned counsel for the applicant/petitioner has made strenuous efforts to impress that the imposition of minor penalty withholding of increment for two years with non-cumulative effect vide order dated 28th August, 1982 was in fact a modification of the original order of termination. In support thereof, statements

made at Para 6 of the counter-affidavit of the respondents have been relied. Respondents at Para 6 and 7 of the counter-affidavit have stated that applicant was again absent from 17th February, 1980 to 14th May, 1981 covered by medical certificate and was put back to duty vide letter dated 30th May, 1981. He was again transferred on the same pay and grade and posted as Chowkidar vide office order dated 22nd December, 1981. As a measure of Discipline and Appeal Rules, the applicant was awarded punishment of withholding of increment for two years vide order dated 12th August, 1982. The respondents also have in reply to the I.A. No.4009 of 2016 enclosed the details of computation of his absence of 815 days without leave for the period 17th February, 1980 to 16th July, 1981, 27th October, 1981 to 17th November, 1981 and 18th November, 1981 to 29th August, 1982. According to the respondents, the order of withholding of two increments is in relation to this absence and has got no co-relation with the original order of termination.

5. Learned counsel for the petitioner submits that specific averments in the writ petition in relation to the second period of absence and the averments made at Para 6 of the counter-affidavit do not refute the case of the applicant that there was only one departmental proceeding which led to the termination of the petitioner and was modified to minor punishment of withholding of two increments by the order dated 28th August, 1982. If that be so, benefit of continuity in service from the original date of appointment i.e. 8th December, 1978 should logically be extended to the writ-petitioner in matters of computation of his post retirement benefits.

6. Counsel for the respondents has strongly defended the case and reiterated the stand taken before the learned Tribunal also.

7. We have considered the submission of counsel for the parties and gone through the relevant materials on record. We are not impressed by the arguments sought to be made by the learned counsel for the writ-petitioner.

8. The order of withholding of two increments with non-cumulative effect dated 28th August, 1982 has been produced for our perusal. It does not reflect in any manner that any major punishment of removal or termination from service inflicted upon the applicant earlier was reduced to a minor punishment of withholding of two years increment with non-cumulative effect. Writ-petitioner has not been able to show any other document by which the instant order can be connected with the original order of termination from service. In absence of any

other document to substantiate the plea taken by the petitioner such an inference of fact cannot be safely deduced only from assertion made by the petitioner. Reliance may be placed upon the judgment rendered by the Hon'ble Supreme Court in the case of *Bharat Singh & Others Versus State of Haryana & Others* reported in *(1988) 4 SCC 534* at Para 13.

9. The learned Tribunal was also rightly not convinced with the plea taken by the applicant on those counts.

10. Having considered the case of the parties in the light of the relevant material pleadings and documents on record, we do not find any such error of fact or in law in the impugned order which deserves interference under Article 226 of the Constitution of India.

11. Accordingly, the writ petition is dismissed.

12. I.A. No.4009 of 2016 stand closed.

(Aparesh Kumar Singh, J.)

(B.B. Mangalmurti, J.)