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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 17.08.2018

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W.P.(C) 8623/2018

UNION OF INDIA & ANR. PETITIONERS

Through : Mr.Ashok Singh, Advocate.

versus

ISHWAR DASS RESPONDENT

Through : None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. By the present petition, the petitioners have sought quashing of the order dated 17.02.2015, passed in OA No.4286 of 2013 as also the order dated 23.01.2018, passed in Review Application No.259/2016, whereby the Central Administrative Tribunal, Principal Bench, New Delhi, has allowed the Original Application (OA) filed by the respondent with a direction to the petitioners to re-determine the qualifying service of the respondent by counting 50% of his casual service and 100% of his substitute service as a store Khallasi and pay him the arrears with interest at the rate of 9% per annum within a period of two months.

2. The brief facts of the case as noted by the Tribunal are that the Respondent (Applicant before the Tribunal) having been appointed as a casual labour in Railway Electrification, Tilak Bridge, New Delhi on 28.05.1976, worked there till 09.08.1981 in the same capacity, whereafter, he was deployed in the Horticulture Department of the Northern Railways where he worked for a further period of 128 days upto 16.12.1981. On 26.12.1981, the respondent was absorbed as a substitute Store Khallasi in the Diesel Shed, Tuglakabad after undergoing the regular selection process and was thereafter promoted as a Clerk on 01.01.1995, from which post he had superannuated on 30.04.2013.

3. While the respondent was still in service as a Clerk, a circular dated 28.02.2010 was issued by the Railway Board providing for the entire service of employees as a 'substitute' to be counted for determining the qualifying service for pensionary benefits. Upon his superannuation on 30.04.2013, a Pension Payment Order sanctioning pension to the respondent was issued, according to which his qualifying service as a store Khallasi was counted w.e.f. 30.04.1987 and not from 26.12.1981, the date from which the respondent claimed to be working as a substitute Diesel Khallasi. Aggrieved by the non-inclusion of the period from 28.05.1976 to 16.12.1981 & 26.12.1981 to 30.04.1987 as his qualifying service, the respondent made representations to the petitioner which remained unanswered, leading to the filing of the OA.

4. In the OA filed before the Tribunal, praying for a direction to the petitioner to include his full substitute Khallasi service starting from 26.12.1981 as also 50% of the period of service rendered by him as a casual labour from 28.05.1976 to 16.12.1981, as qualifying service for the pension, the respondent not only stated that he had been appointed as a substitute Khallasi w.e.f. 25.12.1981, but also annexed a copy of his appointment letter dated 07.12.1981 as Annexure A-5. At this stage, it may be noted that in their counter affidavit filed before the Tribunal, the petitioners did not dispute the genuineness of the appointment letter filed by the respondents and merely stated that the respondent had remained an unscreened Diesel cleaner till 1987.

5. Upon considering the rival contentions of the parties, the Tribunal allowed the OA vide impugned order dated 17.02.2015. The petitioners thereafter preferred a review application before the Tribunal wherein, for the first time, they contended that the letter dated 07.12.1981, based on which the respondent had claimed that he had been appointed as a substitute Khallasi, was unavailable in their office and on this ground, sought review of the Tribunal's order allowing the OA. The said review petition was however rejected by the Tribunal vide order dated 23.01.2018 by holding that there was no error apparent on the face of the record.

6. The present writ petition has been filed impugning both the above orders passed by the Tribunal. Besides reiterating the same pleas as taken before the Tribunal, Mr. Ashok Singh, learned counsel for the petitioners urges that the petitioners were fully justified in counting the service of the respondent w.e.f. 30.04.1987, as there was

no record of the respondent showing that he had been appointed as a substitute Khallasi w.e.f. 26.12.1981, as claimed by him. He submits that even the service book of the respondent only refers to him as a store Khallasi and there was nothing to show his appointment as a substitute Khallasi at any stage.

7. Having heard the learned counsel and on perusing the impugned orders as also the record, we find no infirmity in the orders passed by the Tribunal. The record shows that the respondent had not only filed a copy of his service book, but also enclosed with his OA, a copy of the appointment letter dated 07.10.1981 issued by the Divisional Office of the Northern Railway, New Delhi/ Petitioner No. 2 clearly showing that he had been appointed as a substitute Diesel Khallasi vide order dated 07.12.1991, which averment had not been denied by the petitioners in their reply before the Tribunal. In the absence of any denial by the petitioners to the appointment letter annexed by the respondents with the Original Application showing his appointment as a substitute Khallasi, in our view the Tribunal was justified in accepting the claim of the respondent that he had been appointed as a substitute Khallasi w.e.f. 26.12.1981, vide letter dated 07.12.1991 prior where to, he was a casual labour from 28.05.1976. As a result, the Tribunal's order directing the petitioner to include not only the respondent's entire substitute service from 26.12.1981 to 30.04.1987, as also 50 % of his casual service from 28.05.1976 to 16.12.1981, in accordance with the Railway Board's Circular dated 25.02.2010, cannot be faulted.

8. For the aforesaid reasons we find no reason to interfere with the impugned orders passed by the Tribunal. The writ petition is dismissed in limine, as being meritless.

(REKHA PALLI)
JUDGE

(HIMA KOHLI)
JUDGE

AUGUST 17, 2018
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