



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: July 24, 2023

+ W.P.(C) 13273/2019

KAMLESH

..... Petitioner

Through: Ms. Richa Kapoor, Mr. Amresh Bind, Mr. Deepak Singh and Mr. Kunal Anand, Advs. with petitioner in person

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vineet Dhanda, CGSC with Mr. Shubham Prasad and Ms. Shruti Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this petition is to an order dated August 07, 2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in the Original Application being O.A. 1600/2018 ('OA', for short), whereby the Tribunal has rejected the OA filed by the petitioner by holding the following in paragraph 5 of the impugned order:-

"5. Having heard learned counsel for the parties and carefully perused the pleadings on record, we find that



the applicant has submitted his VRS application on 1.10.2016 and thereafter without waiting for its acceptance proceeded on leave. It is general practice that once an employee has given notice for VRS, he has to wait for its acceptance by the employer and cannot abscond from his duties. If at all, it was his intention to proceed on leave, he could have applied for the leave of the kind due to him. Having failed to do so, he cannot take it for granted that his VRS application was accepted and he is deemed to have been retired voluntarily. Through the impugned annexure A/1 order, the respondents have even disputed his qualifying service so as to enable him to apply for voluntary retirement, which according to them comes to 18 years 4 months and 14 days and as per Railway Servants (Pension) Rules, 1993, a railway employee is entitled to retire voluntarily after he completes 20 years of service. As the applicant has not completed 20 years of service, he was not eligible for voluntary retirement and the respondents have rightly rejected his claim for grant of VRS. It is also brought on record by the respondents that after the order of the Allahabad Bench of this Tribunal, the applicant was directed to be taken on duty but the applicant has not reported for duty. Hence, there is no substance in this application and the same is accordingly dismissed, being devoid of merit. There shall be no order as to costs."

2. The case of the petitioner is that, he was appointed in the then Central Railway (now North Central Railway) on the post of Jeep Driver which is a Group C post on October 23, 1980. He was promoted to the post of Vehicle Driver, Grade II on December 22, 2003. Subsequently, he was posted as Gangman on January 14, 2004 at Agra Cantt.
3. He filed an O.A. 1014/2004 before the Tribunal against his



reversion to the post of Group D from Group C. The Tribunal granted interim relief vide its order dated April 28, 2004 and directed the respondents not to give effect to the order of reversion. It was his case that, despite multiple requests, he was not taken on duty. Finally, he withdrew O.A. 1014/2004. Pursuant thereto, the respondent No.4 issued a charge sheet dated October 19, 2004 for unauthorised absence (of the petitioner) from May 03, 2004 to October 03, 2004. It appears that the respondents have directed the petitioner to submit medical documents issued by Railway Hospital. The petitioner filed O.A. 1129/2006 before the Allahabad Bench of the Tribunal which was disposed of on September 01, 2008 directing the respondents to decide the representation of the petitioner by a reasoned and speaking order.

4. On October 23, 2008, the petitioner was directed to report for his duty in Unit No. 49. It was his case that, in compliance of the directions in letter dated October 23, 2008, he submitted his joining on November 07, 2008 before Permanent Way Inspector but he was not permitted to join the duty. The petitioner filed an O.A. 1425/2008 before the Allahabad Bench of the Tribunal in respect of his joining.

5. The O.A. was disposed of on February 06, 2009 with a direction to the respondent to consider the grievance of the petitioner and pass a reasoned and speaking order. Thereafter, the respondent No.2 passed an order dated June 11, 2009 holding that the petitioner neither reported for duty nor submitted medical certificate and as SF-Form No.5, has already been issued to him, he was not considered for reinstatement and to receive the salary for the period of absence.

6. The petitioner filed O.A. 168/2009, before the Allahabad



Bench of the Tribunal against order dated June 11, 2009, as well as against the charge sheet dated October 19, 2004. The said O.A. was disposed of by the Tribunal vide order dated July 20, 2009, wherein, the Tribunal directed the respondents to expedite the disciplinary proceedings and complete the same within six months. Pursuant thereto, the Enquiry Officer submitted his report dated January 03, 2010, wherein, it was found that the petitioner was unauthorisedly absent from duty during May 03, 2004 to October 03, 2004 and the charge sheet dated October 19, 2004, was justified. The petitioner submitted his representation / explanation against the Enquiry Report.

7. Thereafter, the respondent No.4 issued an order dated September 30, 2010 for the removal of the petitioner from the service. The petitioner preferred an appeal against the order, which was dismissed by respondent No.3. The revision petition thereto was also dismissed. That apart, the petitioner filed O.A. 439/2012, before the Allahabad Bench of the Tribunal challenging the order of removal; appellate order and revisional order with a further prayer of reinstatement and other consequential benefits.

8. The Tribunal allowed the O.A. vide order dated July 27, 2016 observing that the petitioner has been serving in the department since 1980 and he had unblemished track record. In view of the same, the orders dated September 30, 2010, September 07, 2011 and December 28, 2011 were quashed and set aside. In the said order the Tribunal directed the reinstatement of the petitioner but did not grant the petitioner, the back wages. However, the Tribunal held, the period for which he was out of service, would count for other service benefits.



The said order of the Tribunal became final. The respondent No.4 issued order dated September 19, 2016 in compliance with the order passed by the Allahabad Bench of the Tribunal dated July 27, 2016, taking the petitioner into service and deputed him at Dholpur on a pay scale of ₹5200-20200. The petitioner joined the service of the respondents on September 19, 2016. According to the petitioner, a letter dated September 29, 2016 was sent to respondent No.4, informing that the petitioner has joined his duty on September 19, 2016 itself.

9. It is the case of the petitioner that, on October 10, 2016, he submitted his request for voluntary retirement from the service and the petitioner has not received the benefits like Provident Fund (PF), Pension and Gratuity. He made a representation dated January 14, 2017, requesting the respondents not to harass him further and to release his retiral benefits. On March 21, 2017, the respondents rejected the claim of the petitioner for retiral benefits on the ground that, he has not completed 20 years of qualifying service. In other words, it is the case of the respondents that the petitioner had only completed 18 years 4 months and 14 days in service.

10. In the meantime, the petitioner preferred a Writ Appeal being W.A. No.36158/2017 before the High Court of Allahabad challenging the order dated July 27, 2016, on the limited ground of not awarding the back wages to the petitioner and for setting aside the charge sheet dated October 19, 2004. The said Writ Appeal was dismissed as withdrawn by the High Court vide its Order dated August 29, 2017 with liberty to the petitioner to file a fresh writ petition as the same was



not in proper format.

11. It is the case of the petitioner that the respondent No.4 addressed another letter dated October 13, 2017 to the respondent No.2 appraising that the total service put in by the petitioner is 30 years and 9 months and total qualifying service period of the petitioner as per order dated July 27, 2016 comes to 24 years 5 months and 2 days. The respondent No.4 further annexed a chart dated October 10, 2017 with the letter dated October 13, 2017 showing the total qualifying service of the petitioner as 24 years 5 months and 2 days.

12. At this stage, the petitioner addressed another letter dated October 24, 2017 to respondent No.2 requesting them to release his retirement benefits. The petitioner on receiving no response, filed O.A. No. 1600/2018 before the Tribunal, impugning the orders dated March 21, 2017, October 13, 2017 and April 21, 2017. The respondents filed their reply to the O.A. on March 14, 2019 contending the facts pleaded as false and frivolous with an intention to mislead the Tribunal.

13. It was the case of the respondents that the petitioner had never joined the services after the order of re-instatement and in the absence of joining duty; the petitioner had not fulfilled 20 years of qualifying service necessary for him to submit an application for voluntary retirement. Suffice to state, in the rejoinder, the petitioner had disputed the aforesaid position which we have already noted above. The Tribunal dismissed the O.A. for the reasons already reproduced above.

14. The submission of Ms. Richa Kapoor, the learned counsel for the petitioner is primarily that the respondents are wrong that the petitioner has not completed his requisite qualifying service period of



20 years.

15. According to her, in compliance of order dated July 27, 2016 passed in O.A. 439/2012, an order No. 134/2016 dated September 19, 2016 was issued by the respondents and the petitioner joined duty on September 19, 2016 itself. A letter dated September 29, 2016 was addressed to the respondent No.4 acknowledging that the petitioner has joined duty/service on September 19, 2016 and as has been working in the office since then.

16. According to her, after being deputed, the petitioner was met with inhumane treatment by respondent No.4 and was made to do all the menial work not falling to his purview including cleaning, washing clothes etc. because of which the petitioner applied for voluntary retirement from the service. She stated that the petitioner has the eligibility period of more than 20 years, which is a pre-requisite for seeking voluntary retirement, hence denial of the voluntary retirement by the respondents is contrary to the intent of the orders passed by the Tribunal. She also stated that the petitioner has been battling long with the respondents for obtaining the due retiral benefits.

17. She contested the stand of the respondents that the petitioner has not completed minimum 20 years and after submitting VRS the petitioner did not join the duty are totally wrong and factually incorrect. Reference is made by her to the letter dated October 29, 2016 computing the qualifying service period for VRS of the petitioner as 24 years 5 months and 2 days and also another letter dated October 10, 2017, which has been erroneously ignored by the Tribunal.

18. In fact, she relied upon letter dated September 28, 2021



confirming that the petitioner has qualifying services of 25 years 11 months and 1 day. It has already been accepted by respondent No.3 that though the petitioner is not entitled to any back wages but the period for which he was out of service, would count for other service benefits. According to Ms. Kapoor, the actual qualifying service is of 25 years, even otherwise, the tenure of service as casual worker from October 23, 1980 to January 11, 1986 has also to be counted for the purpose of pensionary benefits as held by the Supreme Court in *Union of India & Ors. v. Rakesh Kumar & Ors.*, (2017) 13 SCC 388, therefore, 50% of his service till he is regularised on a regular/temporary post need to be counted for the purpose of calculation of pension and as such petitioner qualifies more than required limit of 20 years.

19. She stated that the Tribunal has clearly erred in not looking into the aforesaid aspect resulting into the impugned order. She has also relied upon the judgment of the Supreme Court in *Indian Bank and Anr. v. Mahaveer Khariwal* in *Civil Appeal No. 2760/2000*, wherein, it was held that, when rejection of an application for voluntary retirement is held bad in law, all other subsequent proceedings of departmental inquiry will be null and void and shall be *non-est*.

20. On the other hand, learned counsel for the respondents would contend that the petitioner had applied for voluntary retirement vide letter dated October 01, 2016 and had referred to Rule 67 of the Railway Service (Pension) Rules, 1993, which contemplate 20 years of qualifying service for becoming entitled to the pensionary benefits.



21. According to the counsel, the petitioner was absenting from duty w.e.f. May 03, 2004 to September 29, 2010, therefore, the disciplinary proceedings were initiated by the respondents against the petitioner and the Enquiry Officer has proved the charges against him. In any case, he submitted that, even after judgment of the Allahabad Bench of the Tribunal dated July 27, 2016, setting aside the order of removal and directing the reinstatement and calling upon the petitioner to join at Dholpur, the petitioner failed to join his duty at Dholpur. Rather the petitioner submitted his request for voluntary retirement even though he did not had the qualifying service for the same.

22. He justified the order of the Tribunal which considered all the aspects of case before rejecting the same, on the ground that the petitioner did not complete the qualifying service of 20 years. He stated that the order of the Tribunal should not be interfered with and the petition be dismissed.

23. In support of his submission, he has relied upon the judgment of the Supreme Court in the case of *State of Punjab v. Dr. P.L. Singla., Civil Appeal No. 4969/2008*, wherein it is held that, when an employee who is unauthorisedly absent, does not report back to duty and does not offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect.



24. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence. Where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorised absence (unless the rules require otherwise). Where the punishment awarded for the unauthorised absence, does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the unauthorised absence remains unaccounted for, it will result in break in service, thereby affecting the seniority, pension, pay etc., of the employee. Any consequential order directing how the period of absence should be accounted, is an accounting and administrative procedure, which does not affect or supersede the order imposing punishment.

25. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the Tribunal was justified in rejecting the OA filed by the petitioner herein, wherein he has challenged the orders dated March 21, 2017, October 13, 2017 and April 21, 2017, whereby the request of the petitioner seeking voluntary retirement has been rejected on the ground that he has put in only 18 years 4 months and 14 days of service, which is less than 20 years of qualifying service. The Tribunal rejected the OA primarily on two grounds, (i) after submitting his request for voluntary retirement on October 1, 2016, the petitioner without waiting for the acceptance of



his request for voluntary retirement proceeded on leave, which was not called for, and (ii) the petitioner did not have the qualifying service of 20 years as according to the respondents, the total service is of 18 years 4 months and 14 days.

26. The submission of Ms. Kapoor is primarily that the petitioner does have 20 years of qualifying service. She has heavily relied upon respondent's own document at Annexure A-1(A) issued by the Office of the Assistant Divisional Engineer on October 13, 2017 wherein according to her, it is the case of the respondents themselves that the petitioner has a qualifying service of 24 years 5 months and 2 days.

27. We may state here that it is the case of the petitioner that he joined the respondent on October 23, 1980 as a Jeep Driver which was a Group 'C' post. As noted from Annexure P-2 at page 39 of the paperbook, the petitioner was asked to appear in the screening test for the post of Group 'D'. The petitioner preferred an OA No. 621/1996 before the Chandigarh Bench of the Tribunal. The OA was allowed vide order dated August 19, 1997 and the respondents were directed to regularise the services of the petitioner in Group 'C' after screening him in Group 'D' and further protect his pay and allowances till his promotion.

28. It is his case that, he was promoted as Vehicle Driver Grade-II and was given regular scale of ₹4,000-6000/- vide order dated December 22, 2003. Thereafter, he was asked to work on the post of Gangman in a lower-scale vide order dated January 7/14, 2004. Aggrieved by the said order, the petitioner filed OA 1014/2004 before the Principal Bench of the Tribunal against his reversion to Group 'D'



from Group 'C' and an interim order was passed in his favour. Finally, the petitioner withdrew the OA.

29. It is thereafter a chargesheet was issued against the petitioner for unauthorised absence between the periods May 3, 2004 to October 3, 2004, which led to his removal from service. He challenged the order of removal and also the order of appellate and revisional authorities. The order of removal was set aside and the petitioner was reinstated in service in the year 2016.

30. The reply filed by the respondents before the Tribunal reads the following:

“

4.1 That the contents of para No.4.1 of the OA are not admitted as stated. It is submitted that he was given offer of appointment as temporally Khallasi in scale Rs.750-940 (RP) vide letter no.DUL/RE/UMB/E-96 (JHS) dated 16.10.1995 issued by Sr. DPO Ambala.

4.2 That the contents of para No.4.2 of the OA are not admitted as stated. It is submitted that he was working as vehicle driver grade II on ad-hoc basis in Railway electrification on. Deputation basis. His lien was being maintained in JHS division Engg. Department. He was sent back, by RE Organization to his lien holder division & released to his original post as Khallasi in scale Rs.2550-3200 (RPS) w.e.f. 22.12.2003 and directed to report to DRM(P) JHS for further posting vide letter No.34/2003-04 dated 22.12.2003 issued by AFM/RE/Danapur. Applicant was posted as gangman in scale Rs.2610-3540 (RSRP) under ADEN-DHO, vide DRM(P) JHS's letter no.P/posting RE/group D/PW dated 14.01.2004.



4.7 That the contents of para No.4.7 of the OA are not admitted as stated. It is submitted that the employee worked as a gang man in unit no.49 under SSE/P.way/South/Agra, from 20.01.2004 to 02.05.2004 and also was paid due wages.

4.17-4.19 That para No.4.17 to 4.19 of the OA are not admitted as stated. It is submitted that as per the extent rules 20 years qualifying service as well as 90 days prior notice is compulsory to accept VRS, the applicant neither completed 20 years service nor he has given prior, notice, for voluntary retirement, therefore, his application was not accepted.

4.22 That the contents of para No.4.22 of the OA are not admitted as stated. It is submitted that it is clearly mentioned in the order passed by Hon'ble Court on date 27.07.2016 that after reinstatement of applicant, the period for which he was out of service would count for other service benefit. The applicant did not join his duty as trackman at his duty place in track dipot under SSEP.way/NG/Dholpur as he was directed, by ADEN office. Therefore, he was not treated as reinstated, and the employee does not fulfill the condition of 20 years qualifying service.”

31. The reply depicts that the petitioner was appointed as a temporary Khallasi only on October 16, 1995. In other words, they have not admitted that the petitioner has joined the respondents in the year 1980. Be that as it may, what is important in the case is the letter dated October 13, 2017 issued by the Office of the Assistant Divisional Engineer, wherein at Page 108 of the paperbook, it is represented that as on October 1, 2016, the total qualifying service of the petitioner is 24 years 5 months and 2 days and the same is on the basis that the



permanent date of appointment of the petitioner is January 1, 1986.

32. We find that even the short reply affidavit filed by the respondents is bereft of any relevant particulars. It is represented in the short affidavit that the petitioner has been absenting himself from duties from May 3, 2004 to September 29, 2010. A reference to the chargesheet has been made but without details. From the record, it transpires that the chargesheet issued to the petitioner was for absence from May 3, 2004 to October 3, 2004, a total of 154 days and not till September 29, 2010.

33. In any case, the proceedings and the penalty imposed pursuant to the chargesheet issued to the petitioner for unauthorised absence for 154 days has been set aside and the petitioner has been reinstated and it was also directed that the period of absence shall be counted for other service benefits. So in that sense, the unauthorised period of absence of 154 days shall be counted for the purpose of service/retirement benefits.

34. Suffice to state, counter-affidavit of the respondents does not bring out the facts in a proper perspective, inasmuch as, the same does not refer to the letter of the Assistant Divisional Engineer, Dholpur of which a reference has been made wherein the total period of service of the petitioner as on October 1, 2016, has been mentioned as 24 days 5 months and 2 days. The Tribunal did not deal with the factual aspects of the case at all. We find that, to determine whether the petitioner has the qualifying service, the period of service put in by the petitioner is required to be looked into and decided.

35. In the facts of this case, we have no other alternative but to set



aside the order of the Tribunal dated August 7, 2019 and remand the matter back to the Tribunal by reviving the **OA No. 1600/2018** on the Board of the Tribunal with a further direction that the Tribunal shall hear the parties afresh and decide the OA.

36. For rendering a decision, the Tribunal shall ensure that an additional affidavit is filed by the respondents giving the service particulars of the petitioner along with the relevant documents. The Tribunal shall also call upon the respondents to produce the service book of the petitioner. The OA shall be decided by the Tribunal within a period of six months as an outer limit from the date of hearing which we fix as August 22, 2023, when the parties shall appear before the Tribunal.

37. The petition is disposed of. No costs.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

JULY 24, 2023/ds/jg