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**IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 13.02.2024*

+ **W.P.(C) 3769/2017, CM APPL. 7608/2020 (Addl. doc.) & CM APPL. 4041/2021 (E-hearing)**

**UNION OF INDIA & ANR**

..... Petitioners

Through: Ms. Arunima Dwivedi, CGSC with  
Ms. Pinky Pawar and Mr. Aakash  
Pathak, Advocates for UOI.

versus

**JAGDISH RAI**

..... Respondent

Through: Mr. U. Srivastava, Mr. K. K. Prasad,  
Mr. Gaurav Sarawat and Mr. Saurabh,  
Advocates.

**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 30.09.2016 passed by the learned Central Administrative Tribunal in O. A. No. 1548/2014.

2. Vide the impugned order, the learned Tribunal has partly allowed the original application preferred by the respondent by directing the petitioner to treat the period between 23.07.1975 to 18.10.1993 as also the period between 13.11.1997 to 31.03.2013 as qualifying service for the purposes of calculating pension and other retiral benefits of the respondent. Simultaneously, the learned Tribunal has directed that the period between 19.10.1993 and



12.11.1997 would be treated as 'Not on Duty'.

3. It is the common case of the parties that on 23.07.1975, the respondent was appointed in the Delhi Division of the Railways as a Group D employee and was thereafter posted as a Booking Clerk, at Bhiwani City Railway Station w.e.f. 22.07.1980. It is the petitioner's case that on 18.10.1993, the respondent was found guilty of using government revenue/station collections for personal use and was thereafter tried by the learned Judicial Magistrate, Ambala City, who after finding his guilty of the charge levelled against him, released him on probation subject to his furnishing a bail bond for a period of two years and paying a sum of Rs. 700/- to the public exchequer towards prosecution charges.

4. It is the petitioner's further case that after the respondent was released on probation vide the order passed by the learned Judicial Magistrate, Ambala City, on 18.10.1993, he was upon his repeated representations re-engaged as a fresh entrant on 13.11.1997 from which post he superannuated on 31.03.2013. Consequently, retiral benefits of the respondent were released in his favour by taking into account his service only for the period between 13.11.1997 to 31.03.2013. It is in these circumstances that the respondent approached the learned Tribunal seeking a direction to the petitioners to take into account his entire service between 23.07.1975 to 31.03.2013.

5. The learned Tribunal has partly allowed the O.A. preferred by the respondent by directing the petitioner to also take into account the respondent service between 23.07.1975 to 18.10.1993. Being



aggrieved, the petitioners have approached this Court by way of the present petition.

6. In support of the petition, Ms. Arunima Dwivedi, learned counsel for the petitioner submits that the impugned order is liable to be set aside as the learned Tribunal has failed to appreciate that the respondent was engaged as a fresh entrant on 13.11.1997 and that too only on humanitarian grounds and, therefore, his past service could not be taken into account for the purpose of computing his retiral benefits. She submits that in fact she has instructions to state that even a departmental inquiry was initiated against the respondent, but no documents are available on record in respect of this departmental inquiry, which was initiated against the respondent. She further submits that the learned Tribunal has also failed to appreciate that taking into account that the petitioner's grievance was in respect of his service prior to 1993, the O.A. filed in 2014 was clearly barred by limitation and was, therefore, liable to be dismissed on this ground alone. She, therefore, prays that the impugned order be set aside.

7. On the other hand, Mr. U. Srivastava, learned counsel for the respondent supports the impugned order and submits that when the petitioner was despite repeated opportunities unable to produce any termination order, the learned Tribunal was justified in directing that the entire period except for the period between 19.10.1993 to 12.11.1997 for which there was no record be treated as qualifying period for computation of his retiral benefits. He, therefore, prays that the writ petition be dismissed.

8. Having considered the rival submissions of the parties, we may



begin by noting the relevant extracts of the impugned order which read as under:-

“8. The applicant retired on 31.03.2013. This O. A. has been filed on 30.04.2014. It can be reasonably accepted that the applicant was expecting that the service of the applicant between 23.07.1975 to 18.10.1993 would be counted. However, it is only after his retirement that he came to know that he is being harmed by the decision of the respondents. Further, he belongs to weaker section of the society, i.e. Scheduled Caste. In view of this, the delay, if at all any is condoned.

9. As stated above, the Railways' correspondence proves that the applicant was an employee of Railways between 23.07.1975 to at least 18.10.1993, i.e. the date of conviction order. It is also evident that the Railways' authorities offered him a lower post of Class IV, which means that the Railways had no objection to his continuing in service perhaps in view of lenient view taken by the learned Chief Judicial Magistrate. The applicant did not join as Booking Clerk. Thereafter, the Railways took a decision on humanitarian ground to appoint him as a Catering Khalasi w.e.f. 13.11.1997. the order dated 13.11.1997 has not been produced by either side. The respondents have not made it clear that the after offering him the Class IV post, in view of the judgment of the Chief Judicial Magistrate, what happened between this period, i.e., from 1993 to 1997.

10. In view of this, it is not possible to determine, at this stage, what happened between the period of 18.10.1993 and 13.11.1997. Keeping in view that the applicant is a low paid staff of the Railways and also that he belongs to a weaker section of the society, i.e. Scheduled Caste, the only way resolve this issue, once for all, is to give a. direction to the respondents that the period between 23.07.1975 to 18.10.1993 and 13.11.1997 till 31.03.2013 should be counted for the purpose of qualifying service for pension and retirement benefits. The period between 19.10.1993 to 12.11.1997 be treated as 'Not on duty'. The O.A; is disposed of accordingly. Time frame of 90 days is fixed for the respondents for implementation of this order from receipt of a certified copy of this order. No order as to costs.”



9. A bare perusal of the aforesaid extracts of the impugned order show that the learned Tribunal was conscious of the fact that it was the petitioners' case that the respondent was reinstated as a fresh entrant on 13.11.1997, but rejected this plea as no document was produced by the petitioner to show that the respondent had ever been terminated from service. The learned Tribunal was, therefore, of the view that there was no reason to ignore the respondent's service between 23.07.1975 to 18.10.1993 for which he had admittedly rendered service.

10. Before us, learned counsel for the petitioner has, after vehemently arguing the matter at length, conceded that there are no document available on record to show that a departmental inquiry was held against the respondent or that he was ever terminated from service.

11. In the light of aforesaid, once it is an admitted position that the respondent was appointed Group D employee on 23.07.1975 and stood superannuated only on 31.03.2013, we have no option but to accept the respondent's stand that he was never terminated from service. We have also considered the petitioners' plea that the O.A. preferred by the respondent was barred by limitation but are unable to agree. As noted by the learned Tribunal, the respondent superannuated from service on 31.03.2013 and filed the original application in 2014 itself. In our view, the respondent's cause of action to seek a direction to the petitioners to take into consideration his service between 23.07.1975 to 18.10.1993, towards his pensionary benefits, arose only after his superannuation.



12. For the aforesaid reasons, we find no infirmity with the impugned order.

13. The writ petition being meritless is, accordingly, dismissed along with pending applications.

14. As prayed for, the petitioners are granted 8 weeks' time to implement the impugned order.

**(REKHA PALLI)**  
**JUDGE**

**(RAJNISH BHATNAGAR)**  
**JUDGE**

**FEBRUARY 13, 2024**

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