

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Acting Chief Justice SUJOY PAUL

&

The Hon'ble Justice PARTHA SARATHI SEN

WP.CT 73 OF 2013

SRI PHOOL CHAND PRASAD

-Vs-

UNION OF INDIA & ORS.

For the Petitioner: Mr. Partha Sarathi Bhattacharya, Sr. Adv.,
Mr. Raju Bhattacharya, Adv.,
Mr. Golam Karim Chowdhury, Adv.

For the Union of India: Mr. Sukumar Bhattacharyya, Adv.,
Ms. Puja Sonkar, Adv.,
Ms. S. Bhattacharya, Adv.

Hearing concluded on: 08.01.2026
Judgment on: 14.01.2026

PARTHA SARATHI SEN, J. : –

1. In this writ petition filed under Article 226/227 of the Constitution of India, the judgment and order dated 30.03.2012 as passed by the Central Administrative Tribunal, Kolkata Bench (hereinafter referred to as the 'said Tribunal' in short) in O.A. 1256 of 2008 is assailed.
2. For effective adjudication of the instant writ petition some relevant facts are required to be dealt with which are as under:

- (i) The writ petitioner was appointed on 08.09.1986 as an unapproved Bunglow Peon by the Eastern Railway Authority with effect from 08.09.1986 (FN) against existing vacancy.
- (ii) During the continuance of such service the writ petitioner was served with two numbers of charge-sheets in the month of January, 1990 and another charge-sheet on 21.09.1990 which contained the charge of unauthorised absence from duty.
- (iii) The legality, validity and correctness of the said two charge-sheets was challenged by the writ petitioner before the said Tribunal by filing O.A. 358 of 1991 which was disposed of on 21.07.1997 whereby and whereunder the charge-sheet of January, 1990 and another charge-sheet dated 21.09.1990 were quashed and set aside along with the enquiry undertaken by the respondents. However, the said Tribunal granted liberty to the respondents authorities to proceed as per law against the writ petitioner finding that the charges labelled against the writ petitioner were serious. Further liberty was given to the writ petitioner in the event he desires to join, his case would be considered by the respondents authorities in accordance with law.
- (iv) Pursuant to such leave, the writ petitioner was however permitted to join in his duty which would be evident from the memo dated 15.12.1997 (Page no. 30 of the paper-book).
- (v) Soon thereafter the writ petitioner submitted a representation with the respondents authorities requesting to disburse service benefit and

other consequential benefit with a prayer to regularise his past service.

- (vi) Since such representation was not considered favourably the writ petitioner preferred second original application being O.A. 422 of 2001 which was disposed of by the said Tribunal by its judgment and order dated 09.01.2008 wherein the said Tribunal held thus:

“8..... The applicant also was not able to produce any material to prove that he remained absent unauthorisedly for a long period due to no fault on his part and had it been done, he could have approached this Tribunal during the said period for getting relief. It is admitted fact that this clearly indicates that the applicant had absented himself on his own way and volition. Therefore, we are of the considered view that the respondents have justified in not granting back wages. However, the applicant's counsel submits that the alleged said period may be reckoned for the purpose of pension. We are of view that the absented period. I shall be considered for reckoning of pensionary benefits, if any as per rules and the pensionary benefit may be calculated taking into account the periods as well on the date of his retirement. This benefit shall not be extended for any other purpose except pensionary benefit. It is made clear that this will be available by the applicant if he is otherwise eligible as per Pension Rules. In the conspectus of facts and circumstances of the case, we do not intend to interfere in the impugned order. However, considering the given direction by this Tribunal and findings that the absented period will be counted for the purpose of pensionary benefits to the Applicant as the time of his retirement. If he is so entitled as per pension Rule. The O.A. is disposed of. No costs.”

[Emphasis Supplied]

- (vii) The said judgment and order dated 09.01.2008 was challenged by the writ petitioner before this Hon'ble High Court by filing WP.CT 171 of

2008 which was disposed of by a coordinate Bench of this Court by holding the following :

“..... We are told that there has been a subsequent development as the Railway authority has not extended the pensionary benefit in terms of the order of the learned Tribunal. This issue may be brought before the learned Tribunal with an appropriate proceeding. Thus, the application is disposed of with the aforesaid observation.”

- (viii) The subsequent development as noticed by a coordinate Bench of this Court vide its judgment dated 11.08.2008 is on account of passing a speaking order dated 04.07.2008 by the respondents authorities pursuant to the order passed by the said Tribunal vide its judgment and order dated 09.01.2008. By the said speaking order the respondents authorities held thus :

“..... His absence for the period w.e.f 31.07.88 to 22.01.90 has been treated as unauthorized one as per extant rules and he is not entitled to any pay allowance during the said period of unauthorized absence.

In terms of the order passed by the Hon'ble CAT/CAL in its order dt. 09.01.08, it is apprised that he is not entitled to pensionary benefit for his aforesaid unauthorised absence period in term of Rule 14(x), 21(i) and 3(22) of Railway Services (Pension) Rules, 1993.”

3. At the time of hearing, Mr. Bhattacharya, learned Senior Advocate on behalf of the writ petitioner submits before this Court that the subject matter of the writ petition being O.A. 1256 of 2008 is basically the speaking order dated 04.07.2008 as passed by the respondents authorities more specifically, the respondent no. 4 of the said original application. It is argued by Mr. Bhattacharya that though from the relief clauses of the said original

application, it would not reveal that the writ petitioner has actually challenged the finding of the respondent no. 4 authority of the said original application as well as of this writ petition, however, from the materials as placed before the said Tribunal it would reveal that the writ petitioner/original applicant was practically aggrieved on account of non granting pensionary benefit for the alleged unauthorised absence period i.e. from 31.07.1988 to 22.01.1990.

4. It is submitted by Mr. Bhattacharya that on careful perusal of Rules 3(22), 14(x) and 21(i) of Railway Service (Pension) Rules, 1993 (hereinafter referred to as the 'said Rules'), it would be crystal clear that the respondent no. 4 authority most mechanically applied the aforementioned provisions of the said Rules and thus, wrongly disentitled the writ petitioner to the pensionary benefit for his unauthorised absence despite the fact that the said Tribunal while disposing O.A. 422 of 2021 categorically indicated that the pensionary benefit as available to the writ petitioner may be given for the alleged period of absence if the Rule permits.
5. It is further argued by Mr. Bhattacharya that the said Tribunal while passing the impugned order has miserably failed to visualise the true meaning and implication of the provisions of the aforementioned Rules and thus, the decision making process of the original application was vitiated for non-consideration of available materials on record and, therefore, interference in the judicial review is necessary.
6. Drawing attention to page no. 111A and 113A of the paper-book being copies of two office orders dated 02.01.1998 and 16.05.2000 it is further

argued by Mr. Bhattacharya that from the said two office orders it would reveal that subsequent to passing of the judgment and order dated 21.07.1997 as passed by the said Tribunal in O.A. 358 of 1991 the respondents authorities never proceeded against the writ petitioner/original applicant on account of alleged unauthorised absence for the period from 31.07.1988 to 22.01.1990 and on the contrary, the writ petitioner/original applicant was found suitable for the post of Peon by the screening committee of the respondent authorities and thus, the respondent authorities posted the writ petitioner as 'Peon' from 'substitute Peon'.

7. It is thus submitted by Mr. Bhattacharya that the action of the respondents authorities pursuant to the office orders dated 02.01.1998 and 16.05.2008 clearly indicate that the alleged unauthorised absence of the writ petitioner was condoned by the respondents authorities and thus, there cannot be any predicament to give pensionary benefit for the aforementioned period considering the same as qualifying service within the meaning of Rule 3(22) of the said Rules.

8. It is further submitted by Mr. Bhattacharya that though in the relief clauses of the O.A. 1256 of 2008 no prayer was made for quashing of the order dated 04.07.2008 but for all practical purpose it may be presumed that in WP.CT 1256 of 2008 the writ petitioner had impugned the order dated 04.07.2008 whereby and whereunder the respondent no. 4 authority found that the writ petitioner is not entitled to the pensionary benefit for the period of his alleged unauthorised absence as mentioned in the foregoing paragraphs. It

is thus submitted that it is a fit case for granting the reliefs as prayed for by the writ petitioner.

9. Mr. Sukumar Bhattacharyya, learned Counsel appearing on behalf of the respondent authorities however contended that in the absence of any infirmity and/or glaring illegality and/or perversity there is hardly any scope to interfere with the order impugned.

10. We have meticulously gone through the entire materials as placed before us. We have given our due consideration over the submissions made by the learned Advocates for the writ petitioner/original applicant and the respondent authorities.

11. On careful scrutiny of the judgment dated 21.07.1997 as passed in O.A. 358 of 1991 by the said Tribunal it appears to us that by the said judgment, the said Tribunal quashed the two charge-sheets as submitted against the writ petitioner/original applicant and liberty was given to the writ petitioner to join in his service with a further liberty to the respondent authorities to initiate the appropriate proceeding if the said authorities desire so. Undisputedly the respondent authorities had chosen not to initiate any further proceeding against the writ petitioner/original applicant and the writ petitioner/original applicant was permitted to join.

12. Materials have been placed before us that after joining the writ petitioner made a representation to the respondent authorities for regularising his aforementioned period of absence and in absence of any positive outcome of such representation, the writ petitioner in the second round of litigation

approached the said Tribunal by filing O.A. 422 of 2001 with a prayer for treating him as on duty since the date of his appointment continuously along with other consequential reliefs.

13. While disposing O.A. 422 of 2001 the said Tribunal by passing order dated 09.01.2008 however declined to condone the unauthorised absence of the writ petitioner for the aforementioned period and at the same breath the said Tribunal held that the writ petitioner/original applicant is not entitled to get any back wages. By the self-same judgment the Tribunal directed the respondent authorities to consider the scope of grant of pensionary benefit for the said period of unauthorised absence if the writ petitioner/original applicant is found to be eligible as per prevailing Pension Rules. Such judgment and order dated 09.01.2008 was however not disturbed by a coordinate Bench of this Court *vide* its order dated 11.08.2008 as passed in WP.CT 171 of 2008.

14. It is pertinent to mention herein that by issuing a speaking order dated 04.07.2008 the respondent no. 4 authority found that the writ petitioner is not entitled to the pensionary benefit for the unauthorised absence in terms of Rules 14(x), 21(i) and 3(22) of the said Rules.

15. For effective adjudication of the instant writ petition the aforementioned Rules are required to be looked into. Rule 3(22) of the said Rules is as under:

“(22) "qualifying service" means service rendered while on duty or otherwise which shall be taken into account for the purpose and gratuities admissible under these rules.”

16. Rule 3(26) reads as under:

“(26) "Substitutes" means a person engaged against a regular, permanent, or temporary post by reason of absence

on leave or otherwise of a permanent or temporary railway servant and such substitute shall not be deemed to be a railway servant unless he is absorbed in the regular railway service.”

17. Rule 6 of the said Rules is as under:

“6. Regulation of claims to pension or family pension.-(1) *Any claim to pension or family pension shall be regulated by the provision of these rules in force at the time when a railway servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be.*

(2) The day on which a railway servant retires or is retired or is discharged or is allowed to resign from service or dies as the case may be, shall be treated as his last working day.”

18. Rule 14 of the said Rules is as under:

“14. Periods which shall not be treated as service for pensionary benefits.--*Periods of employment in any of the following capacities shall not constitute service for pensionary benefits, namely,--*

(i)

(ii)

(iii)

(iv)

(v)

(vi)

(vii)

(viii)

(ix)

(x) period of unauthorised absence in continuation of authorised joining time or in continuation of authorised leave of absence treated as overstay;

(xi)

(xii)

(xiii)

(xiv)”

19. Rule 21 of the said Rules is as under:

“21. Conditions subject to which service qualifies.-

(1) The service of a railway servant shall not qualify unless his duties and pay are regulated by the Government; or under conditions determined by the Government.

Explanation. --Save as otherwise provided in these rules for the purpose of sub-rule (1) the expression "service" means service under the Government and paid by that Government from the Consolidated Fund of India or a Local Fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government.

(2) The case of a railway servant belonging to a State Government who is permanently transferred to a service or post under the Railways, the continuous service rendered under the State Government in an officiating or temporary capacity if any, followed without interruption by substantive appointment or the continuous service rendered under that Government in an officiating capacity as the case may be, shall qualify:

Provided that nothing contained in this sub-rule shall apply to any such railway servant who is appointed otherwise than by deputation to a service or post to which these rules apply."

20. On conjoint perusal of the aforementioned provisions of the said Rules if we look to the factual aspects as involved in the instant writ petition, we find no infirmity in the office order dated 04.07.2008 as passed by the respondent no. 4 authority thereby declining the writ petitioner to grant pensionary benefit for the period from 31.07.1988 to 22.01.1990 on account of his unauthorised absence.

21. At this juncture, if we once again look to the copy of the original application being O.A. 420 of 2001, it appears to us that in the said original application the writ petitioner/original applicant for the reason best known to him has not challenged the said office order dated 04.07.2008 and on the

contrary, he has practically prayed for a direction upon the respondent authorities to treat the entire period of his service as continuous treating him exonerated from all the charges with a further prayer for issuance of appropriate direction upon the respondent authorities to release his salaries, allowances and other consequential benefits.

22. As discussed in the foregoing paragraphs, the said Tribunal in the earlier round of litigations, more specifically in O.A. 422 of 2001 declined to condone the unauthorised absence of the writ petitioner/original applicant even after considering the fact that in O.A. 358 of 1991 the charges against the writ petitioner were quashed.

23. We have also noticed earlier that the judgment and order dated 09.01.2008 as passed in O.A. 422 of 2001 has obtained finality in view of the fact that the coordinate Bench of this Court by its order dated 11.08.2008 as passed in WP.CT 171 of 2008 did not interfere with the finding of the said Tribunal as taken in O.A. 422 of 2001. In view of the discussion made hereinabove, this Court is thus constraint to hold that the relief as sought for by the writ petitioner/original applicant in O.A. 1256 of 2008 is barred under the principles of *res judicata* in view of the provisions of Section 11 (Explanation VIII) of the Code of Civil Procedure.

24. We have already noticed that in O.A. 1256 of 2008 the subject matter of challenge was not the office order dated 04.07.2008 whereby and whereunder the respondent no. 4 authority declined to grant pensionary benefit to the writ

petitioner for the period from 31.07.1988 to 22.01.1990 and thus, the said office order dated 04.07.2008 has also reached finality.

25. This Court thus, finds that the instant writ petition is devoid of any merit and is hereby dismissed.

26. Interim order if there be any, stands hereby vacated.

27. With the disposal of the instant writ petition, all pending interlocutory applications are also disposed of.

28. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(SUJOY PAUL, A.C.J.)

(PARTHA SARATHI SEN, J.)