
(2011) 02 AHC CK 0364

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23874 of 2008

Union of India (UOI)

APPELLANT

Vs

CAT and Others

RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20(2), 21(1)

Citation : (2011) 3 ADJ 633

Hon'ble Judges : Sunil Ambwani, J; Jayashree Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Shri Tarun Verma assisted by Shri Sharad Ranjan Nigam for the Petitioners. Shri S.S. Sharma appears for the Respondents.

2. The Union of India through General Manager, Northern Railway, New Delhi; Chief Administrative Officer (Construction), Northern Railway, Delhi have challenged the directions of the Central Administrative Tribunal, Allahabad dated 16th January, 2008 in Original Application No. 363 of 2003 to pay all the terminal benefits to the widow of late Shri Roshan Lal as may be admissible to her on the death of her husband in service and family pension w.e.f. 4.8.1998, within three months, failing which they shall also be liable to pay interest at the rate of 9%. The Tribunal has also directed the Chief Administrative Officer (Construction) Northern Railway, Delhi to consider the request of Shri Man Singh son of late Shri Roshan Lal for compassionate appointment, within the same period.

3. Late Roshan Lal was inducted as Casual Khalasi in Construction Unit of Allahabad Division of Northern Railway under the Deputy Chief Engineer (Construction) on 19.6.1969. He was brought on the scale rate and remained so upto 14.9.1976, when he was transferred to Bridge Construction unit under the Bridge Inspector on 15.9.1976 and participated in the screening test in April, 1977 in terms of Railway Boards letter dated 2.1.1977 for the purpose of forming

construction reserve. He was declared successful vide letter dated 28.9.1978. His name could not be included as panel alongwith three or four more similarly situate persons on account of pendency of Court cases against them. After finalization of Court cases, they were treated as regular w.e.f. 1.1.1981. Since the other persons on the same panel dated 28.8.1978 were treated regular from different dates in 1977-1978, on the representations made by the union, the name of Shri Roshan Lal and four others were inserted at appropriate place in the panel vide letter dated 16.5.1979. The lien of late Roshan Lal was fixed on the post of Chowkidar in Allahabad Division vide letter dated 16.8.1984. He died on 4.8.1998, after which his widow Smt. Rajkali and his son Shri Man Singh made a claim for terminal benefits and compassionate appointment. They approached the Central Administrative Tribunal after they did not receive any response to their representations dated 15.1.1999, 7.8.1999, 8.5.2000 and 20.4.2002.

4. The Respondents-Petitioners in their reply filed in the Tribunal stated that after qualifying in the screening test Shri Roshan Lal; was sent for medical examination. The doctor did not find him fit on which he abandoned the service after 17.12.2008, and his whereabouts was not known thereafter. The Respondents alleged that the original application is barred by time and that the applicants are not entitled to get any relief.

5. The Tribunal found that Shri Roshan Lal and four others were assigned seniority in the panel of 244 casual labours in screening against 40% construction reserve. Shri Roshan Lal was placed at serial No. 88-A below Shri Ram Nath Singh and others. Shri Roshan Lal had left the job in December, 1981. His name did not have figure in all the papers produced before the Tribunal beginning from 1984-1997. The presumption of continuity of late Roshan Lal even after 17.12.1981 was re-confirmed by the documents produced before the Tribunal. The railways could not have refuted the evidence by saying that the record has been weeded out. The Tribunal did not believe the objections taken by the Petitioners that Shri Roshan Lal had abandoned the service after 17.12.1981, and that the entire records in connection with his employment has been weeded out. The objection to the delay in filing the application was also rejected on the ground that late Roshan Lal died in 1998. The applicants started giving representations for payment of terminal benefits and compassionate appointment to which the Respondents did not reply. The original application, therefore, could not be treated as barred by limitation.

6. Shri Tarun Verma submits that the burden of proving, that late Roshan Lal had not abandoned the employment and was working upto 1998, was upon the claimants. They did not produce any documents relating to the service of late Roshan Lal. The insertion of the name of Shri Roshan Lal in the list of construction reserve in May 1984, and the letter dated 16.5.1997 by the Chief Administrative Officer (Construction) directing that the name shall stand in the panel including the name of Shri Roshan Lal at serial No. 3 out of six employees

could not be included in the list due to pendency of the Court cases, did not establish his continuity in service. Shri Roshan Lal was declared unfit in the medical test conducted by the Railway Medical Examiner on 26.11.1981. He thereafter absented himself and did not report back for duty. The letter dated 26.11.1982 (Annexure No. SA-3) does not bear his name. The select list fixing the lien of the employees including Shri Roshan Lal son of Shri Ram Sajiwan at serial No. 41 dated 27.11.1982 prepared by Senior Supply Engineer (Construction)-I Northern Railway, Allahabad, were issued in usual manner and could have been prepared even in the absence of late Shri Roshan Lal. There is no document available with the applicants with regard to the service and the performance of duties by Shri Roshan Lal, after he was declared unfit by the Railway Medical Examiner.

7. Shri Tarun Verma submits that a railway employee receives several benefits in connection with his employment. The provident fund account is maintained, the quarters are allotted according to parity and their trade, and that free passes are issued to the railways' employment for travelling in trains. He submits that after a clear assertion was made by the Petitioner that Shri Roshan Lal had abandoned the service and never reported for duties, it was for the claimants to have produced some material to satisfy the Tribunal that Shri Roshan Lal had died in harness. There was a long gap of 17 years between the date when late Roshan Lal was declared medical unfit and the date of his death. The applicants thereafter waited for ten years before they filed the original application for claiming family pension and compassionate appointment. The Petitioners are not required to maintain records, including muster rolls of workers of construction sites for 27 long years. He submits that filing of representation does not extend the period of limitation in filing original application in the Tribunal.

8. Shri Verma submits, that Section 21(1)(b) of the Administrative Tribunals Act, 1985, provides that where an appeal or representation such as is mentioned in Clause (b) of Sub-section (2) of Section 20 has been made, and a period of six months has expired thereafter without such final order having been made within one year from the date of expiry of the said period of six months. Sub-section (3) provides for condonation of delay beyond six months under Sub-section (2) for sufficient cause. Even if the railways could not produce, as found by the Tribunal, any relevant records including notice and muster rolls of Shri Roshan Lal to prove that he had abandoned the employment, the original application was grossly barred by law. He submits that the Tribunal erred in law in interfering in such an old matter and relying upon the probabilities on which it concluded that late Roshan Lal was employment upto the year 1998.

9. Shri S.S. Sharma appearing for the Respondents-claimants submits that the burden of proving that late Roshan Lal had abandoned the service after his name was included in the panel in 1981, of the 40% construction reserve was upon the Petitioner. The abandonment of employment cannot be assumed by the Courts. If a person abandoned the employment, a notice is required to be given to him and

that if he fails to report for duties within the reasonable time, the disciplinary proceedings are required to be drawn and the services terminated in accordance with the law. The absence of employee by itself does not amount to abandonment of service. There must be total and complete giving up of the duties so as to indicate intention not to resume the same. The abandonment or relinquishment is always a question of intention and normally such an intention cannot be attributed to an employee without adequate evidence in that behalf. It is a question of fact to be determined in the light of surrounding circumstances of each case. The temporary absence is not ordinarily sufficient to constitute abandonment of office. Shri Sharma submits that it was obligatory upon the Petitioners to have produced muster rolls; the notice given to the deceased and the order terminating his service to establish abandonment of service by late Shri Roshan Lal. The claimant-Respondent No. 1 is an illiterate widow. She only knows that her husband was railway employee, when he died in 1998. She does not have any document relating to his service in her possession nor any such document can be assumed to be available with her. He submits that the Tribunal has considered all the circumstances and recorded findings of fact that Roshan Lal was in service upto the year 1998 when he died and that since the railways did not respond to the representations made by her and her son (Respondent No. 2) the High Court should not interfere in the matter.

10. The Tribunal was required to consider the circumstances as they existed in the year 1981 with regard to abandonment of the service by late Shri Roshan Lal. There are six documents on record filed by Railways namely, (i) the notice dated 30.9.1981, by which Roshan Lal amongst seven, was put on the panel of Chowkidars in grade Rs. 200-250 against 50% construction reserve and was directed to be medically examined before actually putting up on the job and formal letter of appointment is issued. Seven persons selected to be included in the 40% construction reserve were also required to produce character certificate issued by a Gazetted Officer; school leaving certificate showing proof of age; SC certificate from the Magistrate; (ii) a notice to six employees dated 15.12.1981, which does not include the name of late Roshan Lal directing PWI (C) CAR and IOW (C) III/ALD that the posting orders of above named employees from item Nos. 1 to 6 have been made by replacing chaukidars, who are working on daily wages/scale rates; (iii) medical certificate dated 26.11.1981 signed by Railway Medical Examiner on 19.12.1991 by which late Roshan Lal was declared to be unfit by Railway Medical Board Examiner; (iv) the letter of the Assistant Engineer (Construction)-I dated 19.1.1982 to the SEN (C) II/ALD regarding medical of Shri Roshan Lal son of Shri Ram Sajiwan, Chowkidar; the Assistant Engineer informed that Shri Roshan Lal was directed for medical test to the Medical Superintendent/Allahabad, who had declared him unfit in Class C-1. The certificate was enclosed with the letter for information and further disposal; (v) letter of the Chief Engineer/(Construction) dated 16.11.1982 fixing the lien of the staff appointed under 40% construction reserve. This letter does not bear the name of Shri Roshan Lal; (vi) a proforma (list of employees) fixing their lien under 40%

construction reserve dated 27.11.1982 signed by Senior Civil Engineer (Construction)-I, Northern Railway, Allahabad and in which the name of Shri Roshan Lal is included at serial No. 41 with a remark by hand in the column of date of appointment that he is declared medically unfit.

11. The seventh document dated 16.5.1997 produced by the claimant is assignment of seniority position signed by Chief Administrative Officer (Construction). This document includes the name of Shri Roshan Lal at serial No. 3 and from this document the claimants have sought to prove that late Shri Roshan Lal was in employment upto 1997.

12. The name of late Shri Roshan Lal continued in the records even after he was declared medically unfit. The inclusion of the name in the list of employees for maintaining lien after a period of 16 years, when he was declared medically unfit, could not be a matter of error in the records.

13. We are of the opinion that when the employer took a stand that after late Shri Roshan Lal was found unfit in the medical examination he never reported back for duties, it was for it to have proved, and established that he was not in employment upto the date of his death in 1998.

14. In *G.T. Lad and Ors. v. Chemical and Fibres of India Ltd.* 1979 SCC (L&S) 76, it was held by the Supreme Court in paras 5a & 6 as follows:

5a. Re Question No. 1: In the Act we do not find any definition of the expression "abandonment of service". In the absence of any clue as to the meaning of the said expression, we have to depend on meaning assigned to it in the dictionary of English language. In the unabridged edition of the Random House Dictionary, the word "abandon" has been explained as meaning to leave completely and finally; forsake utterly, to relinquish, renounce, to give up all concern in something". According to the Dictionary of English Law by Earl Jowitt (1959 edition) "abandonment" means "relinquishment of an interest or claim". According to Black's Law Dictionary "abandonment" when used in relation to an office means "voluntary relinquishment". It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual or imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the Acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute as "abandonment of office".

6. From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In *The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another*, , it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn

and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.

15. On the basis of the documents on record the Tribunal rightly held that late Roshan Lal continued to serve after 1981 and died in harness in 1998. The question of fact whether Roshan Lal had abandoned the employment was not proved by the Railways. The applicant No. 1 is illiterate widow. She and her son claiming employment could not have had any access to the material to establish that the deceased had not abandoned the employment in 1981, and was a railway employee on the date of his death. The reliance placed on the lists of employees dated 15.9.1984; 28.11.1992 and 16.5.1997 including the name of late Shri Roshan Lal fixing his lien and assigning seniority position was sufficient to prove that his name was included in the seniority list.

16. The claimants filed their first representation for family pension and compassionate appointment on 15.1.1999 and repeated it on 7.9.1999 and 20.4.2002. They thereafter filed the Original Application in the year 2003. The Application, thus was not barred by limitation.

17. The claimants were required to wait for a period of six months from the date of their representation and thereafter file the application within a period of one year.

18. The writ petition is dismissed.