

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.3/1999

New Delhi, this the 1st day of February 2002

Hon'ble Mr. S.A.T. RIZVI, Member (A)

Shri A.P. Narang,
S/o Late Shri Parma Nand Narang,
Librarian,
IRCON International Ltd.,
Palika Bhavan,
Sector-13, R.K. Puram,
New Delhi- 110066.

.... Applicant

(By Advocate : Shri B.S. Mainee)

V E R S U S

Union of India
Through:

1. The Secretary,
Ministry of Railways,
(Railway Board)
Rail Bhavan, Raisina Road,
New Delhi.

2. The General Manager
Northern Railway,
Baroda House, New Delhi.

3. The Chief Administration Officer (Constn.)
Northern Railway, Kashmere Gate,
New Delhi.

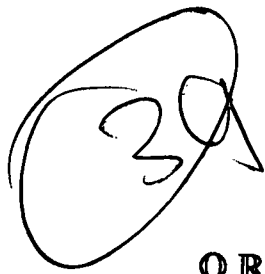
4. The Director
R.D.S.O.,
Lucknow.

5. The Managing Director
IRCON International Ltd.,
Palika Bhavan,
Sector-13, R.K. Puram,
New Delhi-110066.

.... Respondents

2 (By Advocate : Shri R.L. Dhawan)

(3)



ORDER (ORAL)

Heard learned counsel for either side at length and perused the material placed on record.

Denial of pro-rata pension has led to the filing of the present OA.

2. Facts of this case insofar the same are relevant for the purpose of adjudication in the present OA briefly stated are the followings.

3. Initially appointed (Annexure A-1) as a Lower Division Clerk (LDC) in the RDSO w.e.f. 25.7.1970, the applicant was transferred to the Metropolitan Transport Project (MTP), Railways, New Delhi by the RDSO's letter dated 21.7.1972 (Annexure A-2) before completing the period of two years of probation. By a subsequent letter dated 1.6.1976 (Annexure A-3), the applicant was relieved from the aforesaid MTP for reporting in the office of the Chief Engineer (Construction), Kashmere Gate, Delhi on the same date. In that set-up, the applicant was placed at the bottom of the seniority list. Thereafter he was sent on deputation to the Indian Railway Construction Company Ltd. (IRCON International Ltd.) a public sector undertaking under Govt. of India from 17.10.1979. He was absorbed permanently in IRCON w.e.f. 17.10.1982. A notice dated 30.4.1986 (Annexure A-4) issued by the Northern Railway stated that on his permanent absorption in IRCON as above in the public interest, the applicant was deemed to have resigned from the Northern Railway w.e.f. 16.10.1982. A similar treatment was meted out to several ^{other} staff members of Northern Railway who had been on deputation to IRCON. Aggrieved by such orders, the applicant together with several others came up before this Tribunal by filing separate OAs. The applicant had filed OA No.1060 of 1986. The aforesaid OAs were decided by the Tribunal on 20.11.1992 (Annexure A-5). It was held that "the lien of the applicants in the parent department cannot be

treated as terminated from a date prior to the date the railway authorities issued their approval to the acceptance of resignation or retirement of the applicants." Tribunal further directed that the applicants would be entitled to all consequential retiral benefits. The SLPs filed against the aforesaid order were dismissed by the Hon'ble Supreme Court on 29.1.1996. Following this the respondents issued circular instructions on 29.1.1996 (Annexure A-7) in pursuance of the order passed by the Tribunal on 20.11.1992. The applicant had hoped that he would benefit from the aforesaid instructions automatically as he was one of the applicants before the Tribunal in the aforementioned case. That did not happen and, therefore, he filed a representation before the respondents on 14.7.1997 (Annexure A-8), which had to be followed up by another representation dated 24.12.1997 (Annexure A-9) for the grant of pro-rata pension. Finally, in the absence of any response from the respondents, the applicant has filed the present OA with an application for condonation of delay.

4. The learned counsel appearing on behalf of the respondents has raised the issue of limitation by relying on the provisions of Section 21 of the AT Act, 1985 and the judgment rendered by the Supreme Court in P.K. Ramachandran vs. State of Kerala (JT 1997 (8) SC 189). He has also raised the issue concerning the passing of typing test by the applicant before his confirmation by contending that since the applicant had failed to pass the typing test, he was not entitled to receive pensionary payments in accordance with Rule 101 (1) given in the Manual of Railway Pension Rules, 1950 (Corrected upto 1st September 1969) which reads as under:-

"101 (1) The Retirement benefits under these rules for a permanent Railway servant comprise of two elements, namely - xxxxxxxx

The benefits are admissible to all permanent Railway servants except those who are removed or dismissed from service or resign from it before completion of 30 years' qualifying service."

α (Emphasis supplied)

Rule 101 (2) similarly provides the benefits accruing to temporary Railway servants in the following terms:-

“(a) if he quits service on account of superannuation, xxxx, a terminal gratuity”

Thus according to the learned counsel, the applicant who remained a temporary servant due to his failure to pass the typing test was eligible for terminal gratuity only and not for other benefits. In the circumstances, the applicant was not entitled, according to him, for pro-rata pension.

5. Insofar as the typing test is concerned, the learned counsel appearing on behalf of the applicant has placed before me two documents respectively dated 26.7.1974 and 2.9.1974 which have been taken on record. The first (aforesaid) document indicates that the applicant was permitted to appear in the monthly typewriting test held on 29.7.1974. The other document is the statement of increments granted during the month of September 1974. The same shows that the applicant was granted increment on 25.7.1972. The same documents also indicate that the applicants had passed the typewriting test at the rate of 30 w.p.m. w.e.f.22.8.1974. In the rejoinder filed by the applicant, it has been categorically stated that the applicant had qualified in the typewriting test. The aforesaid statement considered along with aforesaid documents produced in the Court clearly established that the applicant had cleared the typewriting test and had also earned increments. In the circumstances, the applicant deserved to be confirmed and in any case he cannot be faulted in the matter.

6. I have considered the aforesaid submissions and concluded without hesitation that on clearing the typing test, the applicant should have been confirmed way back in 1974, and if that had been done by the respondents, the applicant would have become entitled to receive pensionary benefits as a permanent Railway servant in accordance with the aforementioned Rule 101 (1). The respondents' failure to

confirm the applicant cannot lead to a denial of the aforesaid right insofar as the applicant is concerned. I hold accordingly. Having reached the aforesaid conclusion as above, I consider it unnecessary to refer to the law laid down by the Supreme Court in P.K. Jain Vs. UOI (ATC 1994 (28) 70) and later by this Tribunal in T.S. Aggarwal Vs. UOI (SLJ 1998 (2) 183), relied upon by the learned counsel for the applicant.

7. Insofar as the question of limitation is concerned, the applicant was granted relief by the Tribunal on 20.11.1992 (Annexure A-5) but the Tribunal's order could not be implemented as the matter was taken by the respondents before the Supreme Court. The matter was decided by the Supreme Court on 29.1.1996 when the Court chose to dismiss the SLPs filed on behalf of the respondents. Since the matter decided had policy implications, the respondents took time to issue detailed circular instructions and the same were issued ultimately on 4.11.1996 (Annexure A-7). The aforesaid circular instructions, inter alia, provides as under:-

"..... It has now been decided that in cases where the judgment has been implemented provisionally may now be treated as final. In other cases in which the CAT's common judgment dated 20.11.1992 has not been implemented may be implemented immediately and concerned employees paid their revised dues accordingly."


8. A perusal of the aforesaid circular instructions shows that the applicant's case did not fall in the category of provisionally implemented cases. In view of this, in terms of the aforesaid circular instructions, the order passed by this Tribunal in the applicant's OA on 20.11.1992 was required to be implemented by the concerned General Manager without loss of time and the amount found due to the applicant was to be paid to him accordingly. The applicant, having been aware of the aforesaid circular instructions, naturally awaited the

implementation of this Tribunal's order dated 20.11.1992 and the payment of the amount due to him. When that did not happen and the respondents failed to adhere to their own instructions, the applicant preferred a representation on 14.7.1997 (Annexure A-8). In the absence of a response from the respondents, the aforesaid representation was followed by a reminder representation dated 24.12.1997 (Annexure A-9). When nothing happened even after the aforesaid reminder representation had been filed, the applicant has filed the present OA on 23.12.1998. The applicant is seeking grant of retiral benefits. Such benefits are in the nature of compensatory payments for ~~past~~ ^{in the past} services rendered. Pensionary benefits, therefore, occupy a ~~special~~ ^{special} status, and the payment of such benefits cannot ordinarily be denied except on specific grounds prescribed in the relevant Pension Rules. The applicant does not suffer from any disability in this respect insofar as the relevant Pension Rules are concerned. He has been reasonably alert in the matter and has fought his way through right up to the Supreme Court. The disappointing feature of the present case is that despite the painstaking efforts made by the applicant and notwithstanding the commitment made by the respondents themselves to pay off the applicant's retiral dues without loss of time, it is the respondents who have failed the applicant. The respondents have not adhered to their own instructions dated 4.11.1996. Having retired from service, the applicant became a man without financial and other resources and accordingly waited for the respondents themselves to act in the matter for some time. A retired person generally speaking cannot act differently from the way the present applicant has acted. He has allowed sufficient time to the respondents to act in the matter and to pay his retiral dues. Sections 20 and 21 of the AT Act, 1985 deal with the question of limitation. These sections are linked to each other. What has to be seen is ~~that~~ ^{whether} the applicant had availed of all the remedies available to him under the relevant Service Rules as to the redressal of grievances. In the present situation, what has been denied to the applicant is the payment

(7)

of retiral dues in the light of the judgment of this Tribunal. It has to be seen, therefore, whether a remedy is available to the applicant against the aforesaid denial in the relevant Service Rules. The learned counsel appearing on behalf of the respondents has not shown to me any such Service Rule, that being so, and no order at all having been passed by the respondents in the case of the applicant, the provisions of the aforesaid sections cannot be directly ^{applied} to the situation obtaining in the instant case. All the same, the provisions made in Section 20 (2) (b) read with Section 21 (1) (b) could possibly be pressed into service for defining the period of limitation. For this purpose, the first representation filed by the applicant on 14.7.1997 can be considered and a period of 18 months counted therefrom. If that is done, the present OA is clearly within time. I am inclined to look at the aspect of limitation as above and accordingly held that the present OA is not time barred.

9. In the background of the above discussion, the OA is allowed. The respondents are directed to grant pro-rata pension to the applicant from the date of technical resignation/ retirement (30.4.1986) along with such other terminal benefits as might be payable to him together with interest calculated at the rate of 10 per cent per annum from the date when the aforesaid benefits became due to the applicant upto the date of actual payment. The aforesaid directions shall be carried out by the respondents within a maximum period of three months from the date of receipt of a copy of this order. No costs.


(S.A.T. RIZVI)
Member (A)

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