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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-961/98

New Delhi this the 18th day of December, 1998.

Hon'ble Shri S.P. Biswas, Member(A)

Shri Harnam Singh,
S/o Shri Mool Singh.
R/o Care A-16/2, Chandra Vihar,
I.P. Extension, Delhi-92. Applicant

(through Sh. Shesh Datt Sharma, advocate)

versus

1. Union of India through
Secretary,
Ministry of Railways,
Govt. of India,
New Delhi.
2. General Manager,
Northern Railways,
Baroda House,
New Delhi.
3. Divl. Railway Manager,
Northern Railways,
Ambala Cantt.
4. Chief Yard Master,
Northern Railway,
Khana Alampura,
Saharanpur. Respondents

(through Sh. R.P. Aggarwal, advocate)

ORDER(ORAL)

Applicant herein is aggrieved by the alleged inaction on the part of the respondents in not offering him the retiral benefits.

2. The brief description of the background facts are necessary to understand the legal issues involved. The applicant had joined the services of the respondents as Canteen Manager in the Subsidised (Recognised) Non-Statutory Canteens at Khana Alampura

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Saharanpur on 14.12.1954. Following the judgements of the Apex Court in the case of M.M.R. Khan & Ors. Vs. U.O.I. (1990 Suppl. SCC 191), the respondents Railways issued a communication dated 18.5.90 by which the Ministry of Railway's decided that the employees of the subsidised (recognised) non-statutory canteens should be treated as Railway servants with effect from 1.4.90. Para-3 of the said communication at page 19 of the paperbook provides the details. Thus, the employees of the canteens were to be offered the benefits as otherwise available to regular railway employees on and from 1.4.90. It was also mentioned therein that they also be subject to same service conditions regarding retirement, promotion etc. as applicable to other railway servants of comparable status.

3. The applicant is before us seeking relief in terms of issuance of directions to the respondents to grant him all the retiral benefits and pension alongwith interest @ of 24% from 1.4.91 i.e. the date of his retirement, as presumed by him.

4. The respondents have opposed the claims of the applicant on two grounds. Firstly, it has been submitted that the application is barred by limitation. Secondly, it has been submitted that the applicant was never a railway servant and as such he is not entitled to any benefit otherwise available to regular railway retired officials.

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5. Two issues are very crucial for determination of reliefs prayed for. They are:-

- (i) Whether the applicant is a railway employee or not? and
- (ii) What is applicant's real cause of action?

6. We sought assistance of the learned counsel for the applicant to indicate/bring out any communication, whatsoever, that would support the applicant's claim of being a railway servant. It is seen that the applicant appears to have proceeded on sanctioned leave for 15 days from 9.5.89 to 23.5.89. Who sanctioned the leave and the details as regards the nature of leave are not known. Nor the papers thereof are available on records. The applicant thereafter left for USA for the reported sickness of his wife and applied for extension of leave for three months which he claims to have been sanctioned, but the same appears to have been refused by the order dated 24.6.89 issued by the Chief Yard Master (CYM for short) Khana Alampura Northern Railway. The said communication is apparently issued by the CYM in his capacity as canteen officer and not in the capacity of a supervisory railway official. This is because on 24.6.89, the applicant did not become a railway servant. It is evident that the applicant was in USA when the Ministry of Railways letter was issued on 18.5.90. Even on 1.4.91 i.e. the date he presumes to have retired, he was away from India. This is

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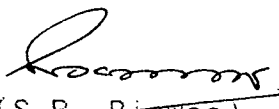
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established from the fact that after 24.6.89, he appeared before the scene only on 31.5.91. The applicant would presume that he retired on 1.4.91. That would be his 65 1/2 years of age. Under what rule he claims that has not been mentioned.

7. Respondents have taken the plea of limitation since this O.A. has been filed in 1998 in respect of relief for pensionary benefits as well as treating the period of absence for 3 months or from 24.6.89 to 1.4.91 as leave without pay. We find that it would be necessary to first determine the period of absence before retiral benefits could be worked out. The applicant would argue that claim for pensionary benefits are not to be hit by limitation as this is a continuing cause of action. Even if we concede that plea, we do not know under what rule the applicant is seeking retirement at the age of 65 1/2. So far as applicant's claim for relief in terms of regularisation of this period of absence as above is concerned, the case ^{is} hopelessly barred by limitation. In the absence of reliable documents, this Tribunal cannot ^{adjudicate} ~~enter~~ into disputed ^{memo} ~~and~~ and enter into a finding ^{based} based on questionable documents.

8. For the reasons aforementioned, the application is dismissed. No costs.


(S.P. Biswas)
Member (A)

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