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Central Administrative Tribunal, Principal Bench

O.A.No.1040/96

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 2nd day of April, 1997

Shri C.K.Jha
s/o Late Shri Sitaram Jha
r/o E-20/F, MIG Flats
Mayapuri
New Delhi - 110 064.

... Applicant

(By Shri Feroz Ahmad with Shri Pratap Sahani, Advocates)

Vs.

1. Union of India
Through the Chairman
Railway Board
Railway Bhawan
Raj Marg
New Delhi - 110 001.

2. The Chief Mining Advisor
Railway Board
Dhanbad.

... Respondents

(By Shri Rajeev Sharma, Advocate)

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The applicant joined the Railways as Loading Supervisor and worked in that capacity upto 31.12.1963. On 1.1.1964, he was selected/promoted as Junior Sampling Supervisor and served there upto 27.6.1975 when he went on deputation to Bharat Coking Coal Ltd. (BCCL), a Public Sector Undertaking as Quality Control Officer. He states that his lien was maintained for two years and he was permanently absorbed in BCCL w.e.f. 28.6.1977 on a non-pensionary post on the expiry of his lien period. He thus had nearly 14 years of service in the railways which entitles him to grant of pro-rata pension. His grievance is that though two other officials, Shri P.K.Benerjee and Shri S.N.Srivastava had lesser service in the railways than him and also went to Public Sector Undertakings they were granted pro-rata pension but the same benefit was denied to him. This, he alleges, is discriminatory on the part of the respondents. His various representations were rejected from 1981 onwards. He states

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that he is aggrieved by an order dated 14.11.1991 denying him retirement benefits and inaction of the respondents on various representations, the last one being dated 2.5.1994. However, he has not annexed a copy of the impugned order. The only mention that one finds of the same is in the copy of the letter at Annexure A14 dated 4.10.1994 to the Chief Mining Advisory, Railway Board Dhanbad from the office of Deputy Director Establishment(R)I, Railway Board. A miscellaneous application was also filed on behalf of the applicant for condonation of delay stating that he had made representations after 12.1.1989, whereafter he met a road accident in which his wife was seriously injured, followed by various transfers in his job. He prays that though he has a recurring cause of action, if there is any delay the same may be condoned keeping in view the circumstances.

2. The respondents in reply deny the allegations of discrimination. They state that the applicant is not entitled to the benefit of pro-rata pension as he has not been declared permanent and under the Railway Pension Rules only the permanent employees are entitled to the benefit of pension.

3. I have heard the learned counsel on both sides. The learned counsel for the applicant submits that inasmuch as it is a question of payment of pension, there can be no limitation since it constitutes a recurring cause of action even though the relief to be granted could be moulded in terms of the timeframe in which the applicant has approached the Tribunal. Keeping in view the Hon'ble Supreme Court ^{order} ~~case~~ in M.R.Gupta Vs. Union of India & Others, 1995(5) Scale SC 29, I agree with the learned counsel that there is a recurring cause of action, since his claim is of non-payment of monthly pension. Nevertheless, the delay would affect the extent of

relief to be granted. ~~to~~. The preliminary objection of limitation raised by the respondents is thus rejected as the question of pension itself is a recurring cause of action.

4. There is, however, another aspect of the case wherein latches are fatal to the case of the applicant and this **concerns** the conferment of permanent status. The applicant was not made permanent by the respondents because in 1974 only 50% of the staff working in his cadre was ordered to be made permanent. At that time, he was, in seniority, just below the cut off mark. Orders however were issued in 1984 to make the remaining 50% staff also permanent but the applicant could not get the benefit of that order since, by that time, he had already gone over to the BCCL and his lien with the railways had also been terminated. S/Shri Benerjee, Srivastava however got the benefit of 1984 orders and were made permanent. The learned counsel for the applicant also argued that the applicant was regarded by the respondents as a permanent servant because his lien was maintained for two years even after his going over BCCL. He argued that such lien could only be maintained in the case of a permanent Government servant which means that for all purposes the respondents were treating persons like the applicant permanent employees. Further more, the learned counsel argues that in 1989 orders were issued by the railways that any person who has put in two years continuous service as a temporary employee would be deemed to be permanent employee. In the spirit of that order also the applicant was entitled to the benefit of pro-rata pension. The learned counsel also relied on the judgment of this Tribunal in Har Binder Lal Vs. Controller & Auditor General of India & Others, 1988(5) SLR CAT(Hyderabad) 315, in which it was held that fixing a date ~~fortuitously~~ *having* no nexus with the object sought to be achieved cannot deprive others

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placed in similar circumstances. The denial of pro-rata retirement benefits in that case to those who joined Public Sector Undertakings prior to the cut off date of 8.11.1968 was held to be discriminatory and hit by Articles 14 and 16. The learned counsel also relied on another case, Ajay Kumar Mukherjee Vs. Union of India & Others, 1986(4) CAT 233 wherein it was held that even service rendered as apprentice prior to regular service was to be taken into account for purposes of grant of pension. The learned counsel also cited the Supreme Court Judgment in AIR 1984 SC 1064, Sudhir Chandra Sarkar Vs. Tata Iron and Steel Company Ltd. and Others and drew my attention particularly to the following observation:

"If gratuity is a retiral benefit and can be earned as a matter of right in fulfilling the conditions subject to which it is earned, any rule conferring absolute discretion not testable on reason, justice or fair play must be treated as utterly arbitrary and unreasonable and discarded."

5. I have carefully considered the above arguments. The respondents state that vide Annexure R1, and R2, the decision regarding the pension case of applicant was decided and conveyed to the applicant in the following terms:

"Since the applicant was not a permanent staff in the Railways, he is not entitled to pension or gratuity on his leaving the Railway service for his appointment in the BCCL."

6. Section 101 to 103 Manual of Railway Pension Rules 1950 allowed retirement benefits, under these rules to a permanent railway servant, comprising the following two elements namely:

- (i) (a) ordinary gratuity/pension and
- (b) death-cum-retirement gratuity and
- (ii) Family pension.

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7. There was also a circular, by the respondents, No.F(P)67PN-1/8 dated 21.9.1967 in which it is stated that a permanent railway employee on absorption in a public sector undertakings will be eligible for pro-rata pension and DCRG based on the length of his qualifying service under Government till the date of absorption. There is no allegation that any person junior to the applicant had been made permanent in 1974 and it is also admitted position that in 1984 when the remaining 50% persons were confirmed the applicant had left the service of the Government. The applicant did not seek appropriate relief for his being made permanent at the relevant time either in 1974 or in 1984. Nor does he questions the vires, on ground of discrimination, of the pension rules quoted above, which allowed pension only to permanent government servants, who were absorbed in the Public Sector Undertakings. That in 1989, certain instructions were issued making all those with 2 years continuous service as permanent is of no help to the applicant, as by that time, he had long left the service of the railways.

8. The case law cited by the applicant is in my view of no assistance to him. In Har Binder Lal (Supra) it was a case of discrimination not between permanent or non-permanent staff but of certain cut of date fixed for those who had come on their own **volition** to the public sector undertakings. This is not the issue in the present case. Similarly in A.K.Mukherjee(Supra) which was decided on 25.11.1986 the question was whether contract service followed by regular service would count under Rule 407(iii) and 404(i); this again was a different matter. Similarly, in S.C.Sarkar(Supra), the issue was that when a gratuity is a retiral benefit and can be earned as a matter of right by fulfilling the conditions subject to which it is earned, any rule conferring absolute

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discretion on the employee must be treated as arbitrary. In the present case the grant of gratuity and pension was subject to the status of the worker i.e. whether he was permanent or non-permanent. There is no ground taken that other similarly placed who were not permanent were being benefited. Hence the ratio of S.C.Sarkar does not apply in the present case.

9. The learned counsel for the applicant has also argued that maintainence of the lien for two years indicated that the status of the applicant was that of a permanent employee. The respondents in their reply state that the applicant initially went on deputation to BCCL where he got absorbed with effect from 28.6.1977. The right of the deputationist, to revert is a different right than the right of person absorbed elsewhere on a regular basis to come back to the original employment.

10. In the light of the above discussion, I find that the applicant having failed to establish his case for permanent status at the appropriate time, is now barred by limitation to reopen that issue. Having not been declared by permanent he is not entitled under the Rules to the benefit of pro-rata pension. The OA is therefore dismissed. No costs.


(R.K. AHUJA)
MEMBER(A)

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