

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00045/2021

Date of Order: This, the 15th Day of February, 2021

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)



Rupak Kumar
Son of Shri Pandey Baleshwar Prasad
Aged about 48 years
By occupation service holder
Working as Law Officer in Lumding Division
Of N.F. Railway
Residing at Railway Quarter Number P/212 B
Officers Colony, Lumding, Hojai, Pin – 782447.

... Applicant

- Versus -

1. The Chairman
Railway Board, Ministry of Railway
Rail Bhawan, New Delhi – 110001.
2. The Secretary
Railway Board, Ministry of Railway
Rail Bhawan, New Delhi – 110001.
3. The Director
Finance (Establishment), Railway Board
Ministry of Railway, Rail Bhawan
New Delhi – 110001.
4. The General Manager
Northeast Frontier Railway (NFR)
Maligaon, Guwahati – 11, Assam.

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5. The Principal Chief Personnel Officer
N.F. Railway, Maligaon
Guwahati – 11, Assam.

...Respondents.

For the Applicant : In person

For the Respondents : Ms. U. Das, railway counsel

ORDER (ORAL)

NEKKHOMANG NEIHSIAL, MEMBER (A):-



This O.A. has been filed by the applicant asking
for the following reliefs:-

“8.(A) To issue mandamus upon the respondents to count the period of law practice of applicant at Bar as advocate prior to 1.1.2004 as service to the post of law assistant for the purpose of extending the benefit of the old pension scheme (i.e. railway services pension rule 1993) after joining to the posts of law assistant (30.11.2005) under direct recruitment quota similar to the benefits of old pension scheme being extended to other similarly situated railway servants including law assistants (direct quota) from the sources other than Bar experience joining service/post during 1.1.2004 to 28.10.2009.

8.(B) To issue mandamus upon the respondents to count the period of law practice of applicant at Bar as service to post of law assistant after joining on the post of law assistant (30.11.2005) under direct recruitment quota from open market for the purpose of extending the benefit of the old pension scheme (i.e. railway services pension rule 1993) in terms of the ratio

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of case decided by honourable supreme court in

- (i) Government nct of Delhi and others versus all India young lawyers Association (29.1.2009)
 - (ii) P. Ramakrishna Raju versus union of India and others (3 March 2014)
 - (iii) honourable Delhi High court order judgement in Shankar Raju versus union of India and others (23 January 2019).
- (C) To issue direction (s)/order (s) to the respondents to count the services of the applicant on the post of law assistant to five years back from actual date of joining (30.11.2005) in terms of the recruitment rule para 131 of Indian railway establishment manual (vol.1) which stands occupied with rule 45 of the railway services pension rules 1993 read with rule 217 and 219 of the Indian railway establishment code volume 1 for giving the benefit of the old pension scheme.
- (D) To quash and set aside the order(s) passed by GM/P/Nfr vide its dated of action 28.11.20, 31, 12.20 and 13.1.21 on CPGRAM portal(Annexure A12, A13, and A14 respectively herein rejecting illegally thereby without considering railway rules and hon'ble supreme court judgments specifically raised by applicant in the representation dated 4.8.20 addressed to PCPO and secretary/railway board for extending the benefit of old pension scheme against repeated complaint by applicant on CPGRAM portal vide registration dated 9.11.20, 5.12.20 and 1.1.21 respectively.
- (F) To quash and set aside the orders/instruction(s) issued by the respondents of their agents or their instrumentalities or authorities imposing new pension scheme against your applicant in contravention of the recruitment rules para 131 irem(1) which stands occupied with the provision of the old pension scheme.



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- (F) To quash and set aside the policy/order/direction/instruction/clarification of the respondents adopting mutis mutandis the office memorandum dated 26.7.2005, 28.10.2009, 17.2.2020 (RBE 28/2020) and 11.6.2020 forthwith respectively whereby government service rendered before 1.1.2004 is combined with the new post/service in railway on joining between 1.1.2004 and 28.10.2009 after resigning the earlier post/service in a proper way in terms of rule 26(2) of civil services pension rules 1972 for extending the benefit of the old pension system, on the other hand not extending the beneficial provision regarding addition of a period up to 5 years service towards qualifying service of law assistant directly recruited from sources of practicing advocate in terms of rule 45 of railway services pension rule 1993 being occupied in the recruitment rule assigning the reason that applicant was practicing as advocate and not working in government service prior to 1.1.2004.

Or alternatively, this honourable court may be pleased to read into recruitment rule in para 131 of Indian railway establishment manual volume 1 which stands occupied with rule 45 of railway services pension rules 1993, rule 217 and 219 of Indian railway establishment code volume 1 for extending the benefit of the old pension scheme in favour of applicant,

- (G) Any other relief or reliefs including the cost of the proceedings in favour of the applicant."

2. During the consideration of the application at the admission stage, Shri Rupak Kumar, applicant who appeared in person, was asked what actually he is asking for. He submitted that since he had the



experience of having served as Law Assistant for a period of 5 years, this period should be counted by the respondents for antedating his date of appointment for the purpose of covering under the Old Pension Rule as per CCS (CCA) Rules, 1972, his actual date of appointment being 30.11.2005. He drew our attention to the appointment letter No. E/254/99 Pt. VI (T) Loose dated 30.11.2005. It is however, clearly indicated that his date of appointment was 30.11.2005 and he will be governed by New Pension Scheme (as at para 7). He further drew the attention of the court to the Railway Board's letter No. E(NG)II/99/RR-I/43 dated 10.11.2000, Annexure-A10, page 55 to the O.A. apropos Educational Qualifications etc. for Direct Recruitment which reads as under:-

“Educational:- A University Degree in Law with 3 years standing as a pleader at Bar. Serving employees who are Law Graduates may also be allowed to apply for these posts provided they have served for at least 5 years in any Branch of the Railway Administration.”

4. When he was asked to elaborate as to how the basic educational qualification and experience

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required for the recruitment can be the basis for antedating his date of appointment for the purpose of granting him the benefits of Old Pension Scheme, he was not in a position to satisfy the court. Since there is no such a provision for adding the mandatory qualification/period of experience for recruitment in the service of an employee, and that too for antedating date of appointment, we find no merit in the O.A. and accordingly, same is hereby dismissed in the admission stage.



5. No order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

PB

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