

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 174 of 1986
T.A. No.

DATE OF DECISION 20.8.1986.

Shri Arun Kumar Datta Petitioner

In person Advocate for the Petitioner(s)

Versus

Chief Personnel Officer, Eastern Respondent
Railway, Calcutta and others

Shri Dalip Singh Advocate for the Respondent(s)

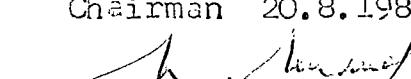
CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether to be circulated to other Benches? Yes


(K. Madhava Reddy)
Chairman 20.8.1986.


(Kaushal Kumar)
Member. 20.8.1986.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. No. 174 of 1986. DATE OF DECISION: 20.8.1986.

Shri Arun Kumar Datta Petitioner
In person.

Versus

1. Chief Personnel Officer,
Eastern Railway, Calcutta.
2. General Manager,
Eastern Railway, Calcutta.
3. Chairman, Railway Board,
New Delhi. Respondents.

Shri Dalip Singh Advocate for the
Respondents.

CORAM:

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

(Judgment of the Bench delivered by the
Hon'ble Member, Mr. Kaushal Kumar.)

JUDGMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, whereby the applicant questions the decision communicated to him by the Personnel Branch of the Eastern Railway vide their letter No. E.795/Eng. Line/Pt. IV, dated 16th January, 1984 denying him retirement benefits. He also seeks terminal benefits as due to him on 29.3.1976 with 15% Compound Interest upto the date of release of payment, full payment of Provident Fund amount with admissible Compound Interest and compensation for mental agony and undue tension due to harassment caused to him by the respondents.

2. The material facts of the case are as follows: -
The applicant joined service in the Eastern

..../2.

Arun Kumar Datta

Railway as Apprentice Assistant Inspector of Works on 25.2.1958. On completion of training, he was given charge of the post of Assistant Inspector of Works on 11.4.60 and was confirmed against a permanent vacancy with effect from 26.7.62. The applicant, on being selected by the UPSC, joined the Border Roads Development Board as Assistant Executive Engineer(Civil) on 30.11.66 and served the Border Roads Development Board till 28.3.74. During the period of his service in the Border Roads Development Board, the petitioner's lien was retained in the Eastern Railway. While working in the Border Roads Development Board, he applied for the post of Divisional Engineer in the Hindustan Steelworks Construction Limited(A Government of India Undertaking) through proper channel. His application was, however, not routed through his parent office viz., Eastern Railway. On being selected in the Hindustan Steelworks Construction Limited, he submitted his resignation to the Eastern Railway on 15.2.74. His resignation was accepted from the post of A.I.O.W., Eastern Railway, with effect from 15.3.74, vide letter of the same date issued by the office of Chief Personnel Officer, Eastern Railway. He was relieved from the Border Roads Development Board on 28.3.74 and joined the Hindustan Steelworks Construction Limited on 29.3.1974. On 4th April, 1974, the applicant represented to the Chief Personnel Officer, Eastern Railway for retention of his lien in the parent office " for a period of two years extendable by one more year on extremity case or till absorption in the public sector whichever is earlier". In the said application, the applicant also indicated that since HSCL was not willing to



contribute leave salary and pension contribution, this eventually would have to be paid by him. He also clarified that the resignation tendered by him on 15.2.74 was a technical formality and not a resignation in the actual sense as this was to take up an appointment in the public sector and submission of his resignation was due to insistence by the Director General Border Roads. The Chief Personnel Officer, Eastern Railway, vide letter No.E-795/Eng.Line/Pt.V, dated the 29th April, 1974 informed the petitioner through his office that since he had resigned from his post of AIOW, Eastern Railway, the question of retention of his lien further on that Railway, as requested by him, did not arise. The petitioner again applied on 17.6.74 for withdrawal of his resignation, but his request for withdrawal of his resignation was also turned down vide reply dated 19.7.1974. The petitioner was informed vide letter dated 31.7.1976 by the Chief Personnel Officer, Eastern Railway, that he was not eligible for any pensionary benefits from the railway. As regards payment of his P.F. contribution, he was informed that the matter had been referred to CAO(PF), Calcutta for necessary action. This was followed by another letter dated 28th January, 1978 wherein it was reiterated by the Chief Personnel Officer that as already explained the petitioner was not eligible for any pensionary benefits from the Railway. As regards P.F. contribution, it was intimated in the said letter that there was no record available to show whether any P.F. account number was allotted in his favour or whether any P.F. deduction was made from his salary. However, if the petitioner was in possession of any record regarding such P.F. account number having been allotted to him, the same might be furnished. The petitioner was

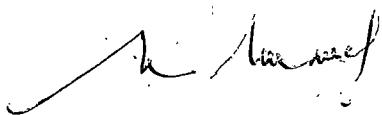
A. S. Bandyopadhyay

also informed by the Hindustan Steelworks Construction Limited vide their letter dated 23.6.78 that he having resigned from the Eastern Railway on his own volition and his application for employment in HSCL having not been routed through Eastern Railway, his case for permanent absorption could not be taken up. Subsequently, the petitioner resigned from the Hindustan Steelworks Construction Limited on 17.1.83 and his resignation was accepted with effect from 3.3.1983.

3. The short point for determination in this case is whether in the circumstances of the case, the petitioner is entitled to any retirement benefits as are available to permanent Railway servants on their permanent absorption in the public sector undertakings as regulated by the Railway Board's circular letter No.E(NG)II 72 AP/12, dated 2nd August, 1972. Para 3 thereof, inter-alia, states as under:-

" It has now been decided that a permanent railway servant, who has been appointed in a public sector undertaking, on the basis of his application shall on his permanent absorption in such public sector undertakings, be entitled to the same retirement benefits in respect of his past service under the Railways as are admissible to a permanent railway servant on deputation to the public sector undertaking on his permanent absorption therein. Thus, permanent pensionable railway servants, who have been or are appointed in public sector undertakings on the basis of their applications in response to press advertisements, circulation of vacancies, etc., and who are absorbed hereafter on a permanent basis in the undertaking(s) in which they have been so appointed, will also be governed by the orders in respect of payment of retirement benefits issued by the Board in their letters No.F(P) 67 PN1/18 dated 18th February, 1970 and dated 10th September, 1971. In the cases of Railway servants governed by SRPF(Contributory) Rules, the retirement benefits will be regulated by Board's letters Nos.F(E)11170 PF.1/2 dated 11th February 1970 and 30th April 1971. "

4. In the present case, whereas the petitioner had been confirmed in his parent office, he was neither absorbed in the public sector undertaking viz, Hindustan



Steelworks Construction Limited, which he had joined, nor any Service Contributions were paid to the parent office either by the employee himself or the public sector undertaking. We have to look into the circumstances as to why these conditions had not been fulfilled in this case. The petitioner had joined the public sector undertaking after his application had been sent through proper channel. It was for the Border Roads Development Board to ensure that the application was routed through the parent office of the petitioner viz, Eastern Railway or they were kept informed. The petitioner having marked his application through proper channel, he cannot be held responsible if the parent office was not apprised regarding the same. As regards the petitioner's resignation from his parent office, with effect from 15.3.74, before he joined the Hindustan Steelworks Construction Limited, this appears to have been submitted by the petitioner under some misconception. This matter has already been gone into by the Railway Board on a reference having been made by the office of the General Manager, Eastern Railway, to the Secretary, Railway Board vide letter No.E.795/Eng/Line/PtIV, dated 16.6.1981. In fact, the General Manager, Eastern Railway, recommended that the applicant " may be allowed the retirement benefit upto the period his resignation on this Railway was accepted" treating his resignation as "Technical formality". The concluding para of the reference dated 16.6.1981 made to the Railway Board is extracted below:-

"5. Under the circumstances, it is felt that Sri Dutta should not be penalised for no fault of his own and his case may be dealt with in terms of Board's letter No.E(N6)1172 AP/12 dt. 2.8.72; in other words he may be allowed the retirement benefit upto the period his resignation on this Railway was accepted by the Administration treating his resignation as "Technical formality".

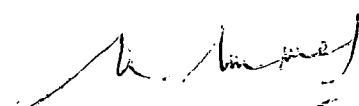
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5. The Railway Board, vide their reply dated 3.8.1983 communicated the decision of the Ministry of Railways that Shri Dutta's resignation may be treated as void and his lien retained on Eastern Railway for a period of 2 years from the date of joining Hindustan Steelworks Construction Limited. The concluding two paragraphs of the Railway Board's letter dated 3.8.83 are reproduced below:-

"2. Your Railways action in accepting Shri A.K.Dutta, resignation from Railway Services was not in order as the rules and orders quoted by Shri Dutta in his resignation letter were not applicable to him. The acceptance of resignation was also violative of Rule 2009 (FR-14-A) P-II as it left him without any lien. In view of these facts, the Ministry of Railways have decided that Shri Dutta's resignation may be treated as void and his lien retained on Eastern Railway for a period of 2 years from the date of joining Hindustan Steelworks Construction Limited. The service contribution for the period should be paid either by Hindustan Steelworks Construction Ltd. or by the Officer concerned.

"3. The question of extending retirement benefits to Shri Dutta for his Railway Service on his permanent absorption in the Hindustan Steel Works Construction Limited, may be decided in terms of this Ministry's letter No.E(N6) II-77-AP-12 dated 2.8.1972. "

6. The resignation of Shri Dutta having been treated as void by the Ministry of Railways, the case has to be considered as if he had not resigned and his lien on Eastern Railway had been retained for a period of two years subject to payment of Service Contribution. Since the petitioner had severed his connections with the Hindustan Steelworks Construction Limited, the question of his actual permanent absorption in that undertaking either on the date of his completing two years of service in that undertaking or any subsequent date would not arise now. The matter of terminal benefits has necessarily to be considered in retrospect assuming the operation of rules



and the Government policy on the subject as if there was no resignation. The Government's instructions on the subject which are applicable to Railway employees as well clearly provide for retention of lien of a permanent Government employee, who joins a public sector undertaking after his application has been forwarded through proper channel, in his parent office for a period of two years, on the expiry of which he has either to get himself absorbed in the public sector undertaking or revert to his parent office. The permanent absorption would undoubtedly depend not only on the public sector undertaking willing to absorb the deputationist Government servant, but also the Service Contribution having been remitted to the parent office for the period of deputation viz., two years either by the public sector undertaking or the employee himself. The petitioner had joined the Hindustan Steelworks Construction Limited as Divisional Engineer(Civil) on 29.3.1974 and had completed two years of service on 28.3.1976. He was promoted to the post of Zonal Engineer (Civil) in a higher grade on 4.5.1978. The performance of the petitioner in HSCL would appear to have been satisfactory and there is no reason as to why the HSCL would not have permanently absorbed him if his resignation from the Railway had not earlier been accepted and his Service Contributions were duly remitted to his parent office. In fact the HSCL had clarified the position in their letter dated 23.6.78 that the petitioner's case for permanent absorption could not be taken up since he had resigned on his own volition and his application for employment in HSCL was not routed through Eastern Railway.



7. Actual fulfilment of and strict compliance with the conditions prescribed in the Railway Board's circular letter dated 2.8.1972 cannot obviously be insisted upon in the circumstances of this case for his resignation was deemed to be a technical formality and the Ministry of Railways had treated it as void. Proceeding on the basis as if there was no resignation and the petitioner's lien was retained in the Eastern Railway for a period of two years followed by his permanent absorption in the HSCL, the retirement benefits admissible under the provisions of the circular dated 2.8.1972 have to be extended to the petitioner.

8. The learned counsel for the respondents Shri Dalip Singh was at pains to point out that the circular dated 2.8.1972 was by way of an exception to the general rule for the admissibility of retirement benefits and since the petitioner did not fulfil the conditions prescribed therein, he was not entitled to terminal benefits in terms of the said circular.

9. We are unable to agree with the plea of the learned counsel for the respondents since the petitioner submitted his resignation under a misconception, was not allowed to withdraw the same and his request for retention of lien was rejected. The said resignation has ultimately been held by the Railway Board as void and we have to proceed as if it was non est. Since the petitioner's lien was not in fact retained by the Eastern Railway, the question of his actual

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permanent absorption by the Hindustan Steelworks Construction Limited on a later date did not arise. However, in retrospect it is held that the petitioner was entitled to retention of his lien in the Eastern Railway for a period of two years and also permanent absorption in HSCL on expiry thereof, subject to payment of necessary service contributions.

10. As regards the Provident Fund Contribution, the plea of ignorance on the part of respondents whether the petitioner had subscribed to the Provident Fund or not is rather strange and cannot be sustained. Rule 1304-R-I of the Railways Provident Fund Rules lays down that:

"All railway servants except-

(i) those who are re-employed after final retirement from Government service; and
(ii) those whose services were pensionable even before 16th November, 1957, the date of introduction of Pension Scheme on the Railway-

shall subscribe to the fund, in accordance with these rules either from the 1st of the month following that in which they complete one year's continuous service, or from the date of confirmation, whichever is earlier. "

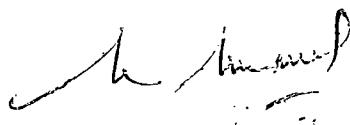
It is not disputed that the petitioner was confirmed in the Railway against a permanent vacancy with effect from 26th July, 1962 and he served in the Railway till 30th November, 1966 when he joined the Border Roads Development Board. There can be no doubt that at least for the period from 26.7.62 or August 1962 till November 1966, the petitioner would have been required to contribute a certain minimum amount to the Provident Fund as prescribed in the rules.

It is also strange that the petitioner himself does not have any record either of his Provident

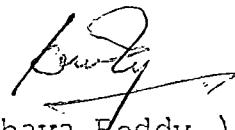
A. Hussain

Fund number or the monthly subscription of his Provident Fund. Nonetheless a duty is cast upon the Railways to look into the salary bills of the petitioner for the above mentioned period, work out the total amount actually contributed to the P.F. by the petitioner and pay the same to him after adjusting advances etc., if any, together with upto date interest till the date of actual payment as admissible under the rules.

11. The petition is accordingly allowed with the direction that the petitioner shall be granted terminal retirement benefits for the period of his service in the Railways, period of his deputation in the Border Roads Development Board and a period of two years of his service till 28.3.76 in the Hindustan Steelworks Construction Limited in terms of and as admissible under the Railway Board's circular letter No.E(NG) 1172 AP/12 dated 2nd August, 1972 after deducting therefrom the amount of service contributions payable by the petitioner for a period of two years from 29.3.74 to 28.3.76. The retirement benefits after necessary adjustment shall be settled within a period of four months from the date of the receipt of this order. It is further directed that the respondent Railway shall thoroughly examine all the relevant records and pay bills in respect of the petitioner for the period he served in the Eastern Railway before joining the Border Roads Development Board with a view to determining the amount in his Provident Fund Account and also releasing the same to him within a period of four months from the date of ^{receipt of} this order with upto date interest at the rates as prescribed for P.F. from



year to year till the date of actual payment of the amount. In the circumstances of the case, there shall be no order as to costs.


(K. Madhava Reddy)
Chairman
20.8.1986



(Kaushal Kumar)
Member
20.8.86