

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO.1620/1989

DATE OF DECISION : 5.3.92

SHRI MOHAL LAL GOEL & ORS.

...APPLICANTS

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

FOR THE APPLICANTS

...SHRI B.B. RAVAL

FOR THE RESPONDENTS

...SHRI O.N. MOOLRI

O.A. NO.1584/1990

SHRI J.N. MOODGAL & ORS.

...APPLICANTS

VS.

GENERAL MANAGER, NORTHERN RAILWAY...RESPONDENT

FOR THE APPLICANTS

...SHRI B.B. RAVAL

FOR THE RESPONDENTS

...SHRI P.S. MAHENDRU

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SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement?

2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicants in the OA 1620/89, Mohan Lal Goel, Om Prakash Sharma, Jagat Ram and Atma Ram Tiwari were all earlier employed in S.S.Light Railways w.e.f. 1.3.1947, 9.11.1939, May, 1945 and 1.8.1946 respectively. After joining SS. Light Railways in the ministerial side, the

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applicants continued to serve the same Railways. The
S.S.Light Railways, ^{like} other private Railways, were

closed down in August, 1970. The staff was taken over

in the Indian Railways. Applicant ^{Shri} Goel was appointed as

a Booking Clerk in Allahabad Division and was finally

absorbed as Goods Clerk and retired on attaining the

age of superannuation on 31.3.1987 after putting in 16 years

in the Northern Railway. Similarly applicant ^{Shri} Om Prakash

joined in 1971 and reached the age of superannuation on

31.8.1978 having put in about 7 years' service. ^{Shri} Jagat Ram

joined the Northern Railway on 7.11.1971 and reached the

age of superannuation in May, 1983 having put in about

20 years of service and Shri Atma Ram Tivari joined on

13.10.1971 and reached the age of superannuation on 31.10.8

having put in about 23 years of service. Thus all these

persons are retiree from the Indian Railways.

2. J.N. Moodgal is the applicant in OA 1584/90 who

was also an employee in S.S.Light Railways where he joined

as Guard in June, 1941 and continued to work there till

31.8.1970 when the Railway ^{was} closed down. In April, 1971,

the applicant was appointed afresh as Ticket Collector.

The applicant retired from service on 31.12.1977 as

TTE and since the service was only of six and a half years,

he was denied pensionary benefits.

3. In both the applications, the facts, therefore, are similar and relief claimed is the same, i.e., the respondents be directed to sanction the superannuation benefits of pension, first class passes, an increase in Dearness Allowance and the pension from time to time from the date of superannuation till the date of payment with 18% interest. However, in OA 1620/89, the relief is claimed in another manner that the direction be issued to the respondents that pension and other superannuation benefits of total service on the S.S. Light Railways coupled with the one rendered on the Northern Railway be given and the respondents be further directed to pay the applicants immediately the difference of pension and other benefits accruing thereby consequent to the grant of relief No.1.

4. The respondents contested these applications and stated that both the applications are barred by time as the applicants have already retired from service. OA 1584/90 has been filed in 1990 and OA 1620/89 has been filed in August, 1989. It is further stated that the employees of S.S. Light Railways at the time of their appointment were specifically told that it is their fresh appointment. The learned counsel for the applicants has filed the appointment letter (Annexure G of the papers in OA 1620/89), which clearly shows that the appointment on the Railways is purely temporary.

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The respondents also referred to the letter dt.17.12.1970 (Annexure R1) written by the Member staff, Railway Board to General Manager, Northern Railway, New Delhi regarding the absorbing of the staff of S.S.Light Railways and giving certain guidelines. The respondents also referred to the circular of the Railway Board dt.21.1.71 (Annexure R2) in which there is a reference to the circular dt.17.12.70 (Annexure R1).

It has been clarified in this circular that the Government of India has decided not take over these Light Railways. However, to mitigate hardship to the retrenched employees of the Light Railways, as far as possible, they have decided that all of them will be appointed as fresh entrants by offering them jobs in categories for which they are found suitable.

In this letter also, the further guidelines have been given. Besides this, in para 5(i), it has been clearly mentioned that, "There should be no indication that the men are being called up as ex-employees of the Light Railways or that any consideration is being shown to them on this account. The men are to be considered for appointment and not for absorption, the term absorption should be avoided. Further it is mentioned in para (ix) that their services on the Indian Railways will be pensionable and they shall be required to subscribe compulsorily to the said Railway Provident Fund (Non Contributory) under the rules applicable to other Railway servants on the date of their appointment. The respondents have also further

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relied on a Memo of the Railway Board dt.22.9.80 (Annexure R3) wherein it is mentioned that the employees of S.S. Light Railways who were reappointed on Indian Railways were to be treated as fresh entrants as temporary employees and as such their past service on the Light Railways is not to be taken into account for the purpose of pensionary and other benefits.

5. Thus according to the respondents, the applicants are not entitled to any relief.

6. We have heard the learned counsel for the parties at length and have gone through the record of the case. The learned counsel for the applicants has placed reliance on Rule 405(i) of the Manual of Railway Pension Rules, 1950.

This pension rule lays down how the service rendered under private Railway companies and quasi-Railway bodies are to be treated for the purpose of pension. However, the reference to this rule in connection with the applicants who were earlier employees of S.S.Light Railways and admittedly S.S.Light Railways was not taken over by the Indian Government, so any reliance on this rule is misconceived. The stand of the respondents is that S.S. Light Railway company was not taken

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over by the Indian Government and the employees serving under the said Railway were given fresh appointments only on compassionate grounds. The learned counsel for the applicants cannot now successfully assail the various circulars of the Railway Board (Annexures R2 and R3 to the counter) wherein at the time, the applicants were given appointment in the Indian Railways and also subsequently in the year 1980 were specifically told that their earlier services rendered under S.S.Light Railways shall not be counted for the purposes of service under the Indian Railways or for pensionary and other benefits. Any length of argument on this point or the reliance on the authorities placed by the learned counsel in *Welcome Hotel Vs. State of Andhra Pradesh*, AIR 1983 S.C. 1015, does not help the applicants because the respondents, since the applicants were appointed in Indian Railways, have taken clear and static stand that they are fresh appointees. The learned counsel for the applicants, however, wants to agitate the fresh appointment on the plea that the ex-employees of S.S.Light Railways were given age concession, strict medical examination was avoided and pay protection was provided, but this by itself will not confer any right on them to count their earlier service because the Railway as sovereign authority and in a social democratic set up as an exemplary employer gave these benefits only as a matter of concession and compassion, otherwise the applicants and other employees of S.S.Light

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Railways would have been financially hit hard and some of them might not have been able to provide necessities of life to themselves and their dependents. Thus on the position of law, the matter is clear that since S.S. Light Railway was not taken up by Indian Government and the applicants were never kept in dark and various appointment letters and letters sending them on training relied by the applicants themselves go to show that they were fresh appointees in the Indian Railways and their services in the Indian Railways shall commence from the date they joined the Indian Railways under the Manual of Railway Pension Rules, 1950. They cannot count any service which they have put in earlier with the private Railway and that could have been only possible on a notification or circular in this regard by the Ministry of Railways or Railway Board or a declaration by the Court of Law. There is no circular of the Railway Board and further the applicants did not agitate at the time of their appointment to the Indian Railways the grievance of the counting of their earlier service nor they agitated the matter after they joined Indian Railways in the year 1971, then they cannot after 20 years of gap say that they were entitled to count their earlier service to be under a private Railway without any legal authority.

7. The second contention by the learned counsel for the applicants is that some of the persons of S.S. Light Railways have

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been granted pension and in this connection, the case of one Ram Kumar Sharma has been referred to. The photostat copy of inland envelope has also been filed to substantiate this fact. The respondents were also directed to find out the authenticity of this letter. The respondents, however, in spite of several opportunities could not gather any information for want of details desired by them from the applicants.

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Be/Whatever may, the adverse inference cannot be drawn because no specific rule, notification, instruction or administrative order has been shown where a person can be granted pension under the Manual of Railway Pension Rules, 1950. It has been clearly held in a Full Bench decision of C.A.T. in the case of C. Seetharamaiah & Ors. Vs. The Accountant General, A.P. & Ors., Full Bench Judgements, CAT, Vol. 1, p-215 that equal pay for equal work where a pay scale has been provided means equal scale and not identical pay in that scale. Error committed by department in one case cannot become basis of granting similar benefit to others.

Here there was a claim of higher pay by the applicant on the analogy of two other staff members. Though in that case, the respondents admitted that the fixation of pay in their case has been done by mistake, but that ground was not taken/sufficient as for giving benefit to the applicants of that case relying on the judgement of State of Orissa Vs. Durga Charan Dass, AIR 1966 SC p-1547. In the present case, the applicant could not show, under what provision of law, if it is a fact, the said Ram Kumar Sharma has been granted pension. In this connection, it is also to be seen that the applicants after their appointment to the Indian Railways were under the scheme of pension introduced by Railways

since 1967. It cannot be said, therefore, that said
Ram Kumar Sharma has been given pension on the qualifying
service after counting the service he has rendered in the
private Railways. The question of discrimination only arises
when two persons similarly situated are not treated alike
according to some norms and guidelines or precedent. In this
case, the applicants have utterly failed to show that they
have been discriminated on this account. Merely because
some person or employee in the erstwhile S.S. Light Railways
has been granted pension, though the fact is not admitted
and emphatically denied by the respondents, would not by itself
make the case of the applicants discriminatory unless it is
shown that they are eligible for the same. The conduct of
the applicants, however, negatives any such approach. The
applicants have themselves joined the service under Indian
Railways knowing well that they are being given fresh
appointment. In the private Railways when they joined, there
was no scheme of pension. When they joined the Indian Railways,
they were told specifically that they have to contribute towards
Provident Fund and shall be governed by the pension
rules. Therefore, now they are estopped to assert that
their earlier non pensionable service be also counted as service
on Indian Railways.

8. It is not the case of the applicants that S.S. Light Railways
have been taken ^{over} by Indian Government. In fact, it is denied by

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the respondents and almost conceded by the applicants in their application itself.

9. The applicants cannot be allowed to agitate the matter now, long years after their retirement. The age of superannuation of all these applicants has also been given in the earlier part of the judgement. The applicants did not agitate the matter even after their retirement and only contended themselves when they heard that some of the persons have filed matters agitating this before the Court of law. That will not by itself be sufficient ground for the applicants to come so late and the application, therefore, is also barred by laches and limitation will come in their way as provided under Section 21 of the Administrative Tribunals Act, 1985.

10. After close of the arguments, the learned counsel for the applicants has filed certain documents. These documents are not relevant to establish the fact in issue in this case that the S.S. Light Railways were taken over by Indian Government in the year 1971. Some of these documents, however, go to show that the S.S. Light Railways closed down on 31.8.1970 and after that the applicants were out of employment and it was one year after that the applicants were given fresh appointment under Indian Railways. It is, therefore, not necessary to deal with each and every document, which is not relevant to the issue in the present case.

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11. The learned counsel for the applicants has also drawn certain inferences from these documents which have been filed.

The inferences are drawn only from proved facts and not from any document, which has been filed as the document itself as an evidence for its contents. Drawing inference is an

argument which is to be supported by some authority on that point. On this account also, a perusal of these documents

filed subsequently would not add any weight to award of pensionary benefits to the applicants on counting service

to be under S.S. Light Railways. Taking all these facts we hold that

into account, both the applications are devoid of merits and are, therefore, dismissed leaving the parties to bear their

own costs. *A copy of the judgment has been placed on the one file.*

(S.P. SHARMA)
MEMBER (J)

5/3/72

(D.K. CHAKRAVORTY)
MEMBER (A)