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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. 588/1990.

DATE OF DECISION: 8-2-1991.

Nathoo Ram

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Applicant.

v/s.

Union of India & Anr. Respondents.

CORAM: Hon'ble Mr. G. Sreedharan Nair, Vice-Chairman (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri B.B. Raval, counsel for the applicant.
Shri S.N. Sikka, counsel for the respondents.

(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGMENT

The applicant, in this application under Section 19 of the Administrative Tribunals Act, 1985, had joined the Shahdara Saharanpur Light Railways (S.S. Light Railways) on 15.3.1940 as a Clerk and he was working as a Section Incharge when the Company was closed on 30.9.1970. He was appointed as a Store Clerk in the grade of Rs.110-180 in the Motor Shop, New Delhi with effect from 7.5.1971 under the Northern Railway. On reaching the age of superannuation he retired with effect from 31.12.1976. Before his retirement as aforesaid, he applied on 13.4.1976 for counting his previous service in the S.S. Light Railways towards retirement benefits, but his request was rejected vide communication dated 6/76 (Annexure A-3). His request for filling up the requisite forms for grant of Family Pension was also rejected in July, 1976 (Annexure A-4). The applicant is aggrieved by the alleged denial of superannuation benefits after putting in a total service of more than 36 years - little over 30 years under the private railway company and little over 5½ years under the Northern Railway. He has prayed for a direction to the respondents to grant him all superannuation benefits like DCRG, pension, commutation of pension etc. with interest at 18 per cent from the date of superannuation till realisation. As an interim relief, he prayed for a direction to the respondents to

pay the minimum pension of Rs.375/- with immediate effect.

2. Several opportunities were given to the respondents to file their reply, but they did not file any reply. However, learned counsel for the respondents appeared at the time of final hearing and his only submission was that the applicant's case is not covered by para 405 of the Railway Pension Manual on the provisions of which learned counsel for the applicant had relied during the course of oral hearing. We have also perused the material on record.

3. The applicant claimed benefits of his service under the S.S. Light Railways for purposes of retirement on superannuation on the following grounds: -

- (1) The applicant could not be given a fresh appointment by the Northern Railway, as no such appointment could be given to a person of the age of the applicant, who was 52½ years of age at that time.
- (2) While the previous service in any other organisation is not protected in case of any fresh service, in the case of the applicant, the same was protected because his emoluments were restored to the level he was drawing at the closure of the aforesaid private company in 1970 on his appointment under the Northern Railway.
- (3) Whereas no yearly or half-yearly free pass facilities are available to any Railway servant below the service of 15 to 20 years as the case may be, the applicant had been regularly given two sets of second class free passes in a year and this could be possible only if his service under the S.S. Light Railways is counted. It is further stated that if that service could be counted for the above purpose, to be continued after retirement from Northern Railway, there is no reason as to why the same length of service should not count towards pension and other retirement benefits.

(4) Even the S.S. Light Railways was governed by the same Railway Board / Conference as that of Northern Railway so far as coaching tariff, passenger safety and amenities on board etc. were concerned.

4. The appointment of the applicant at the age of 52 years in the circumstances of the case and increasing his pay from the initial ^{stage} of the pay scale to which he was appointed to a higher stage in the pay scale, have no relevance in law to the claim made in this application. Further, there is nothing on record to substantiate the contention of the applicant that Group III employees of the Northern Railway are not entitled to yearly or half-yearly free pass facilities until ^{they have} put in 15 / 20 years of service. We are given to understand that the position in the relevant rules is not so. The regulations which governed the S.S. Light Railways in matters like coaching tariff, passenger safety and amenities on board are not relevant for the purpose of issue in this application. It may also be noted here that the applicant has not disclosed in this application whether he was paid any amount on account of Contributory Provident Fund for his service after the closure of the S.S. Light Railways and what payment, if any, was paid to him by the Northern Railway for the service put in by him under that Railway in the shape of terminal gratuity. During the course of hearing, learned counsel for the applicant stated that no such payments have been made to the applicant.

5. The relevant provision in the Railway Pension Manual, on which learned counsel for the applicant relied, is reproduced below: -

"405. (1) Service rendered under Private Railway Companies and quasi-Railway bodies.-

The previous service of staff of the former Private Railway Companies, as for example, ex-D.S. Railway, ex-B.L. Railway, ex-K.F. Railway and quasi-Railway bodies, such as, Station Committees,

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Staff Benefit Fund, ex-Cash Contractors, who were subsequently absorbed in or appointed as fresh entrants on the Indian Government / ex-Company/ ex-State Railways, rendered under the ex-Private Railway Companies or quasi-Railway bodies in question will be taken into account if it counts as service for Special Contribution to Provident Fund under the extant orders.

Such orders will generally fall into the following three broad groups: -

(i) previous service does not count for Special Contribution to Provident Fund (e.g., staff of Kalighat Falta Railway Company fall in this group as per Railway Board's letter No.E(G)56 TR4/2/2 dated 12th March 1957);

(ii) previous service counts for determining the eligibility for Special Contribution to Provident Fund, but for calculating the amount of Special Contribution to Provident Fund only service on the Indian Government/ex-Company/ ex-State Railways is taken into account (e.g., staff of ex-Cash Contractors of ex-B.B. and C.I. and N.W. Railways fall in this group, as per Railway Board's letter No.E(W)56PF-1-27 dated 22nd November 1957); and

(iii) previous service counts in full or Special Contribution to Provident Fund (e.g. staff of Tezapore Balipara Railway Company fall in this group, as per Railway Board's letter No.E51TR4/5/2 dated 9th August 1952).

The previous service of group (i) will not be taken into account at all and the whole of the previous service of group (iii) will be taken into account. As regards group (ii), the previous service will be taken into account for the purpose of determining the eligibility for pensionary benefits but for calculating the amount of the pensionary benefits, only the service actually rendered on the Indian Government/ex Company/ex-States Railways will be taken into account.

The case of each group of such staff should be carefully examined and any doubtful cases should be referred to the Railway Board.

Previous service which may be taken into account in accordance with the above, will be treated as service on railways (for only eligibility to pensionary benefits or for both eligibility to and calculation of amount of pensionary benefits, as the case may be).

(2) Service rendered in the Indian Railway Conference Association.-

If a part of the service rendered by a Railway servant has been rendered in the Indian Railway Conference Association, such service shall be deemed as having been rendered under the Government and shall be taken into account for calculating the qualifying service provided the transfer has been effected as a result of the Railway servant's application having been forwarded through proper channel or in consequence of the Indian Railway Conference Association and the Indian Railway Administration having agreed to the transfer on account of the employee's special qualification or experience etc."

6. From the above, it is seen that while these instructions apply to the employees of some private Railway Companies and quasi-Railway bodies, who were subsequently absorbed in or appointed as fresh entrants on the Indian Government / ex-Company / ex-State Railways, the name of the S.S. Light Railways does not appear in these instructions. There is also nothing to show that the S.S. Light Railways was taken over by the Government. The request of the applicant for pensionary benefits was rejected on the ground that he was a fresh entrant on the Northern Railway in terms of the extant orders of the Railway Board and, as such, his request for counting his previous service of the ex-S.S. Light Railway towards retirement benefits could not be acceded to. Cases of some fresh entrants are covered in the aforesaid provision of the Railway Pension Manual. It is, however, not clear whether the case of the applicant comes within the purview of these instructions. The respondents have not filed any reply and the material placed on record is totally inadequate for us to come to any definite conclusion on the point whether the service

rendered by the applicant in the S.S. Light Railways could be counted for eligibility and/or calculation of pensionary benefits on his retirement on superannuation from the Northern Railway.

7. It is also necessary to discuss the question of limitation at this stage. The applicant admittedly retired on 31.12.1976. His prayer for relief, as claimed in this application was rejected in June, 1976, and again in July, 1976. There is nothing before us to show that the applicant is *prima-facie* entitled to pension inasmuch as for the period of little over $5\frac{1}{2}$ years of service under the Northern Railway, he would be entitled, if otherwise eligible, only to payment of terminal gratuity. Thus, the cause of action can be deemed to be arising from month to month only if the monthly pension is sanctioned or can be sanctioned. Even in that case, the question of arrears, if any, will have to be determined with reference to a period of 12/18 months, as the case may be, prior to the date of filing the application.

8. In view of the foregoing discussion, we are of the view that a direction is required to be issued to the respondents to examine the prayer of the applicant in the light of the relevant rules on the subject and pass a speaking order, under intimation to the applicant. If the applicant is still aggrieved by the order so passed, he would be free to approach the Tribunal again in accordance with law, if so advised. The application is disposed of accordingly, leaving the parties to bear their own costs.

(P.C. JAIN)
Member (A)

(G. SREEDHARAN NAIR)
Vice-Chairman (J)

8.2.1991.