

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(15)

O.A.No.791/90

DATE OF DECISION 24.10.91

SHRI H.L.MALIK

-- APPLICANT

VS

UNION OF INDIA

-- RESPONDENT

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

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

FOR THE APPLICANT

SHRI R.L.SETHI, COUNSEL/
SHRI G.D.BHANDARI, COUNSEL

FOR THE RESPONDENT

SHRI O.P. KSHATRIYA, COUNSEL

(J U D G E M E N T)

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

The applicant, was retired as Assistant Station Master, filed this application under Section 19 of the Administrative Tribunals Act, 1935 aggrieved by

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the order dated 2-5-1988 (Annexure A-2). By this order issued by Head Qrs., Baroda House, New Delhi the applicant was informed through D.R.M., Northern Railway, Bikaner Division that in terms of Railway Board's Confdl.letter No.EG/80 TR 4-7 dated 22-9-1980, Ex.Employees of S.S.Light Railway who were re appointed on Indian Railways were to be treated as fresh entrants as temporary employees and as such their past service on the Light Railway is not to be taken into account for the purpose of pensionary or any other benefit. The applicant made representation dated 16-11-1988 in which he mentioned that from 31-8-1981 to 1987 for six years he was getting post retirement complimentary passes but thereafter the said facility of retirement complimentary passes has been denied to him. In the O.A. he has stated that his total service is over 37 years: (Military 30-6-1941 to 26-12-1946; S.S.Light Railways (Martin Light Railways) Aorio, 1948 to September, 1970 and Northern Railway 11-4-1971 to 31-8-1981.

2. The applicant has claimed the following reliefs:-

- (a) The respondents be directed to restore applicant's post-retirement complimentary Railway passes forthwith; and
- (b) Applicant be allowed compensation for the arbitrary, unilateral, discriminatory and

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abrupt decision to stop post-retirement
complimentary passes for the years 1988
and 1989.

3. The case of the applicant is:- that the applicant joined the military railways on 30-6-1941 and remained in the military till 26-12-1946. After that the applicant joined the S.S.Light Railways from April, 1948 to September, 1970 and finally from April, 1971 the applicant joined the Northern Railways and remained in service till August, 1981. The applicant claims that the services he has rendered under S.S.Light Railways be also counted in calculating qualifying service under the Northern Railways. The applicant has referred to Rule 5 Chapter VI Para 601.22(d) of IRCA Rules regarding passes to retired employees. "Passes are not admissible to retired employees of non government railways for journeys over government railways vice versa except in the case of Martin Light Railways post retirement passes to employees of Martins Light Railways, for journey over Government Railways and vice versa are admissible irrespective of the date of appointment". The grievance of the applicant is that without any notice his post-retirement complimentary passes have been stopped.

4. The respondents contested the application and took the preliminary objection that the application is timebarred

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under Section 21 of the Administrative Tribunals Act, 1985 as the applicant was finally informed vide letter dated 2-5-1988 (Annexure A-2) that his request for issuing complimentary railway passes cannot be acceded to. The present application has been filed by the applicant in April, 1990. However, it is stated by the respondents that the applicant has based his case for entitlement of the complimentary passes on I.R.C.A. Rules which are not applicable to the applicant as he was never posted in IRCA. either on deputation by the Railways, or on transfer from his Railway Company where he was originally appointed in 1948.

5. The respondents have only certified the service of the applicant in Norther Railway from 12-4-1971 to 31-8-1981. Prior to 12-4-1971 the applicant has served in Army (Royal Indian Engineering) for the period from 3-6-1941 to 26-12-1946 out of which war service rendered by him was from 31-8-1941 to 25-10-1943 and 21-12-1943 to 3-8-1946. The Railways Board vide its letter dated 22-2-1983 conveyed sanction for condonation of break in military service and railways service of the applicant as a special case in relaxation of the Rules treating the period of break in service as 'dies-non'. The applicant has been paid pensionary benefits for military service rendered from 31-8-1941 to 25-10-1943 and 21-12-1943 to 3-8-1946. By combining this military service with Railways Service from 12-4-1971 to 31-8-1981 the total

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service of the applicant for all admissible retirement benefits comes to 15 years and 2 months.

6. As regards the service rendered by the applicant in the S.S.Light Railways, a private company from 1948 to 1970, it is stated in the reply that in terms of railways Board's Confdl. letter No.E/G/80/TR/4-7 dated 22-9-1980 Ex-employees of S.S.Light Railways, who were appointed on Indian Railways, were to be treated as fresh entrants temporary employees and as such their past service on the S.S.Light Railway was not to be taken into account for the purpose of pensionary or any other benefits. (Annexure R-III). The employees of S.S.Light Railways, unlike those of Martin Light Railway, are not eligible for post retirement complimentary passes over Govt. Railway and vice versa as is evident from Rules 108(20) of Northern Railways. Pass Mannual 1976 and Rule 601.21(5) Chapter VI of I.R.C.A. The applicant is not entitled to issue of post retirement complimentary passes as he has not rendered 20 years service in the Northern Railways which is the minimum requisite service for entitlement. Thus as per respondents reply the applicant is not entitled to any relief.

7. We have heard the applicant in person. In fact the applicant has earlier filed a case which was transferred to the Tribunal and registered as T.A.No.537/86 and decided on

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11-8-1988. In this case the applicant has prayed for the grant of pensionary benefits. A photostat copy of the judgement in this case has been filed by the learned counsel of the respondents and para 5 of its judgement is reproduced below:-

"In the facts and circumstances, we decree the suit with the declaration that the plaintiff is entitled to get the entire period of training between 12-4-1971 and 13-10-1971 reckoned as qualifying service and direct the respondents that the plaintiff should be given pension and other benefits with effect from 22-12-1983 by counting the entire period from 12-4-1971 to 31-8-1981 as qualifying service for pension. Sanction and payment order with effect from 22-12-1983 should be issued within a period of two months from the communication of this order. The respondents are also directed to take a decision on the General Manager, Northern Railways aforesaid letter of 13-6-1988 within a period of two months from the date of the communication of this order and take a decision on further revising his pension if condonation of the break between war service & Railway Service is allowed within a period of two months thereafter. The plaintiff will be at liberty to approach the Tribunal, if so advised, if he feels aggrieved by any order regarding condonation of the break and revision of his pension pursuant to this judgement. There will be no order as to costs."

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That applicant, therefore, has no case that service under S.S.Light Railways be also taken into account for calculating the period of 20 years so as to get him entitled for issue of complimentary Railways Passes. Regarding this position the applicant could not show any relevant rule whereby the services rendered under S.S.Light Railways can be added to his service in the Indian Railways. The case of employees of Martin Light Railways is on different footings. The Railway Board, by its letter dated 22-2-1989 has condoned the break in service for the period from 27-12-1946 to 11-4-1971 in relaxation of rules and to count his pre-interruption military service for pensionary benefits subject to certain conditions. The letter of 22-2-1989 is reproduced below:-

"Subject:- Payment of Pension to Shri H.L.Malik, retd.
ASM/Delhi Sarai Rohalla, N.Rly.

Reference correspondence resting with your letter No.145-E/66194/BI/RB/SSB dated 21-02-1989 on the above noted subject.

The matter has been considered carefully by the Ministry of Railways in consultation with the Department of Pension, and Pensioners' Welfare and in view of the special circumstances of case they have decided to condone the break in service for the period from 27-12-1946 to 11-4-1971 of Sh.H.L.Malik, retd.A.S.M., Delhi Sari Rohilla, as a special case in relaxation of the rules, treating the period of break as dies-non and to count his

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pre-interruption Military Service rendered by him during the period from 30-6-1941 to 26-12-1946 for pensionary benefits subject to the refund of the terminal benefits received by Shri Malik from the military authorities alongwith the simple interest at the rate of 6% per annum.

This has the sanction of the President and issues with the concurrence of the Finance Directorate of Ministry of Railways."

This letter goes to show that even in the grant of pension a relaxation has been made in the case of applicant. The circular of the Railway Board dated October, 1976 clearly lays down that a qualifying limit of service in the case of Class III and Class-IV staff for eligibility to post retirement complimentary passes and the scale thereof should be as under:-

(a) Not less than 20 years service

but below 25 years.

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(b) 25 years and above

-2 set

According to the above circular the applicant does not qualify for grant of post Retirement Passes.

9. During the course of argument the applicant has stated that while employees of Martin Light Railway are getting Post Retirement complimentary passes but that will not be a precedent for the award of passes to the applicant because the applicant was never in the service of Martin Light Railways and further Rule 5 of I.R.C.A. Para 601.20 in Chapter 6 clearly confers

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right of entitlement of passes to employees of Martine Light Railways.

9. The applicant has also asserted that he was being given the facility of passes till 1987 but later on deprived of the same facility. The respondents have filed copy of letter dated 5th October, 1990 issued by Hd.Qurs. Norther Railway (Annexure R-4) which states that the question of issuing complimentary passes from 81-87 to Mr. Malik could not be verified at this distant date. The applicant has not filed any letter or evidence to show that any such passes were issued to him after 1987.

10. Taking all these facts into account we find that the present application is devoid of merit and is, therefore, dismissed leaving the parties to bear their own costs.

J. P. Sharma

(J.P. SHARMA) 24.10.91
MEMBER (J)

D. K. Chakravorty

(D.K. CHAKRAVORTY)
MEMBER (A) 24-10-1991