

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No.

O.A. No. 117/91

199

T.A. No.

DATE OF DECISION

DATE OF DECISION

30.9.1997

Shri Hari Har Saroop

Petitioner

Shri B.B. Raval

Advocate for the Petitioner(s)

Versus

DDI & Others

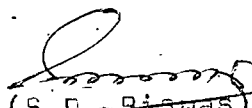
Respondent

Shri K.K. Patel

Advocate for the Respondent(s)

CORAM**The Hon'ble Mr.s. Lakshmi S.aminathan, Member (C)****The Hon'ble Mr. S.P. Biswas, Member (A)**

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?


 (S.P. Biswas)
 Member (A)

59

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.117/1991

New Delhi, this 5th day of September, 1997

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Hari Har Saroop
A-3, Krishna Vihar, New Delhi ... Applicant
(Shri B.B. Raval, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House New Delhi
2. Divisional Personnel Officer
Northern Railway
Bikaner (Rajasthan) ... Respondents
(By Shri K.K. Patel, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

Heard learned counsel for both the parties. The only issue for consideration is the legality of applicant's claim for counting his previous services with the privately run Shahdara-Saharanpur Light Railways (SSLR for short) as spent on duty on Indian Railways for the purpose of getting pensionary and other benefits from GM/Northern Railway(N.Rly for short) where he joined later on following the winding up of the SSLR unit.

2. The applicant, who initially joined SSLR, a part of the organisation under "Martin's Light Railway" on 8th May, 1952, was promoted as Assistant Station Master (ASM for short) on the same Railway on 31.8.70 and joined Indian Railways on 21.7.71 as Booking Clerk at Prayag Ghat station of N. Rly. After attending a training

course as ASM from 12.4.71 to 11.3.71, the applicant started working in Jodhpur Division of NR in the capacity of ASM and finally retired from services of Indian Railways with effect from 30.6.90.

3. Several of applicant's claims remain unsettled even today but four of them, as per applicant, continue to be very important and these relate to (i) treating the period of service in SSLR as spent on duty on the Indian Railways for pensionary benefits; (ii) issue of complimentary passes; (iii) treating the period spent on medical examination as duty alongwith pay and allowances and (iv) payment of overtime allowance for the period he was asked to work beyond rostered hours of duties. Pensionary benefits have been claimed under Rule 4051 of Pension Rules, 1950, whereas relief of complimentary passes has been claimed under Rule 601.21(d) of IRCA Rule 1972. Overtime allowance has been claimed on the basis of orders received by him from his superiors to perform additional work. The claim for treating the medical examination periods as spent on duty is on the basis of Railway Board's instructions. All these claims have been turned down vide Annexures A to D issued separately. The applicant has therefore prayed for quashing all of them alongwith issuance of direction to the respondents to settle the aforesaid outstanding issues at the earliest.

4. The learned counsel for the applicant made strenuous efforts to establish that the applicant was given due consideration by the authorities while relaxing medical and education standards, arranging

61

training in relaxation of rules and providing full pay protection. All these were necessary "trappings" of "absorption". The fact that employees, like the applicant herein, were taken on "absorption basis" is evident in the Railway Board's letters No.E(G)/C3/TR-4-3 dated 22nd July, 89 and No.E(G)/70-TR-4-7 dated 23.1.72 addressed to the GM/N.Rly, the counsel argued.

5 To buttress his arguments further, the counsel submitted that similarly situated persons (Shri R.K. Sharma for example) and employees of other privately owned Railways like AK/BK/SDR and KF Railways have been granted the aforementioned reliefs. Respondents, however, decided to turn Nelson's eye discriminatively on the same very claims preferred by applicant herein.

6 In support of his contention, learned counsel for the applicant sought to draw strength from the decision of the apex court in the case of Sushil Kumar Yadunath Jha Vs. UOI & Anr. AIR 1986 SC 1636 and of the Tribunal in the case of N.I.George Vs. The Chief Executive, Heavy Project & Anr. 1989(3) CAT 135. In the former case services of a temporary teacher in Kendriya Vidyalaya were terminated, fresh appointment given but without the benefits of past service. The apex court held that he was entitled to the benefits of continuous service notwithstanding the terms contrary to his fresh appointment. In the second case, service of the applicant was terminated, appointed afresh after some months but past service was not counted. Respondents' plea that he accepted fresh appointment and

9/2

so could not claim any benefit of the previous service was turned down by the Tribunal on grounds of hardships caused and harsh circumstances.

7. We now come to the main issues. Annexure A-2 document by which the applicant was given temporary appointment as ASM in the grade of Rs.130.240 is relevant in this connection. It mentions that even before training, the applicant accepted the initial offer of appointment made to him by the Railways vide their letter No.220E/ASM/Recdt/Vol.VI(RA)/57 dated 30.9.71. The applicant is not in a position to produce that document before us. In a subsequent communication dated 17.9.80, the GM/N.Rly asked the Railway Board to clarify whether the services rendered by the employees on the SSLR and subsequently appointed as "fresh recruits" can be taken into account for "pensionary benefits". This question was raised by the Zonal Railways as one of the employees, similarly placed, had been urging for grant of pensionary and other benefits like the applicant herein. In reply to the aforesaid communication of GM/NR, the Railway Board vide their communicated dated 22.9.80 replied as under.

"Ex-employees of SS Light Railway 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 Railway is not to be taken into account for the purpose of pensionary or any other benefits"

(Authority - Ministry of Railways
letter No.E(G)80-TR 4-7 dated 12.9.80)

The applicant has raised no objection against the above two communications dated 17.9.80 and 22.9.80 respectively. In the background of above documents, it is not possible to accept applicant's contention that he is not a fresh entrant.

8. The fact that the applicant was re-employed as ASM in the Jodhpur Division is not disputed and the fact that he accepted A-2 letter (page 15 of the paper book) is also not in dispute. At the same time, applicant appears to have been told again and again that ex-employees of CSLR who were appointed on any line of Indian Railways on temporary basis would be treated as fresh entrants and their past services would not be taken into account for the purpose of post-retiral benefits.

9. The circular of Railway Board dated October, 1970 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 ... One lot
- (b) 25 years and above ... Two lots

According to the above circular, the applicant does not qualify for grant of post-retirement passes. He had little less than 20 years' service.

10. By specifically referring to details in A-7 and A-8, the applicant has claimed that he was taken on absorption basis to support his claim for continuity in

69

service. The term "absorbed" in service jurisprudence, with reference to a post implies that an employee who has not been holding a particular post in his own right by virtue of either recruitment or promotion to that post but is holding a different post in a different department, is brought to that post either on deputation or by transfer and is subsequently absorbed in that post whereafter he becomes a holder of that post in his own right and loses lien on parent post. In the present case there are no evidences to indicate that the applicant was taken on deputation or on transfer basis from SSLR. The basic document preceding A-2 communication is missing in this case. That is required to ascertain the grade, status (temporary or permanent or absorption basis) and other relevant pre-conditions hedged with such normal offer of appointments. The learned counsel for applicant admits that the said document is not available. Nor could the letter/order asking the applicant to first join at Prayaġ Ghat station could be produced.

11. We need to examine another crucial issue to determine the eligibility of pension. All the railway servants prior to 1972 were given several options from time to time to opt for pension scheme. The fourth Pay Commission also recommended that those covered by Contributory Provident Fund (CPF for short) scheme shall be deemed to have been covered by the pension scheme effective from 1.1.86 unless they specifically opt out and continue under the CPF scheme. Consequent on the switching over from the provident fund scheme to the pension scheme, several options have been given to

12

65

railway employees, even to those who joined prior to April, 1972. There are no records to show that the applicant herein applied for the pension scheme or preferred to enjoy benefits under the old scheme by expressing appropriate option available to him at that time.

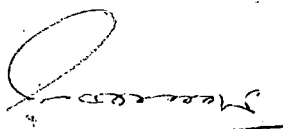
12. Recently, the Hon'ble Supreme Court while examining a railway officer's plea to come under the pension scheme, held that the pension scheme having been formulated and options having been given to the retired employees after failure to avail of the remedy, they are not entitled to come back for the benefit of pension and it was held that it is not violative of Article 14 of the Constitution. (See UOI & Ors. Vs. A.J. Fabian 1997(1) SC SLJ 546 decided on 9.12.96). After 1957, when liberalised pension scheme was introduced in Railways, none could be denied pension benefits unless they chose to remain outside the scheme. The applicant is silent as regards exercising such options.


13. Cases cited do not render any assistance to the applicant. In the first case, services of the teacher working in Kendriya Vidyalaya Sangathan were terminated. He was re-appointed in the same organisation with the condition that the break-in-service will not be condoned. Later on, benefits of continuous service were allowed based on teacher's praiseworthy performance in subsequent periods. In the second case, the applicant, after retirement from Army, joined on 30.4.74 Heavy Water Plant, Baroda, as Assistant Security Officer. Look out

was declared in the plant and his services were terminated on 22.7.79. In November, 1980, he was taken as a fresh entrant on the condition that his past services will not be counted. His past services rendered in the same water plant were taken into account because of hardships and harsh circumstances.

14. During the course of arguments, the learned counsel submitted that similarly situated employees in other such railways are getting post-retirement complimentary passes. This however cannot be precedent for the award of post-retirement passes to the applicant. More so, Rule 108(20) of NR Pass Manual 76 as well as Rule 601.21(5) in Chapter 6 of IRCA part II 79 confer no right to such benefits for SSLR employees. We also find our views get support from the decisions of this Tribunal in OA 791/90 (decided on 24.10.91) wherein similar claims made by yet another SSLR (Martin Light Railways) employee were denied.

15. For the reasons aforementioned, we find that the present application is devoid of merits. It is accordingly dismissed but without any order as to costs.


(S. P. Biswas).
Member (A)


(Mrs. Lakshmi Swaminathan)
Vice-Chairman (J)

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