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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD

. . . . .  
T.A. No. 1125 of 1986  
( C.A. No. 32 of 1986 )

Narvada Prasad . . . . . Appellant.

Versus

Union of India and others . . . . . Defendants.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member Administrative.

( By Hon'ble Mr. K. Obayya, A.M. )

The above civil appeal is before us on transfer from the Court of District Judge, Kanpur under section 29 of the Administrative Tribunals Act 1985. The appellant is a retired employee of the Northern Railway and his grievance is that his army service has not be counted towards qualifying service, for pensionary benefit. Consequently he is being paid lesser pension than his entitlement. He made several representations in this regard, to the department, and as the response was not favourable, he instituted a suit (O.S. 1139 of 81) before the Munsiff city, Kanpur, praying for a decree of declaration that he is entitled for computation of army service as qualifying service for pensionary benefit, that his pension be stepped up by adding differential amount, that the cut in pension for the period 1.7.1980 to 31.7.1980 be restored and that balance of gratuity of Rs. 952/- be paid to him.

2. Briefly the facts of the case are, the appellant joined Northern Railway as driver 'C' in 1948 and retired from service on 30.8.1980 from the post of driver 'A '. Prior to joining the Railways, he was in the army during II World War, from 4.1.1943 to 26.4.1946, and his appointment in the Railways was as an-ex-army personnel and in accordance with

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pension rules and Government orders service rendered by him in the army for more than three years, should be treated as qualifying service for pensionary purposes, and his pension fixed by clubbing Army Service with the Railway Service.

3. The defendant's case is, that the appellant is not entitled for the benefit of war service to be added to his Railway Service for pension purposes, as his appointment in the Railways was as a direct recruit and not against 70% ex-servicemen's quota. It is denied by them that there was any cut in pension or gratuity, the appellant was paid all his dues after adjusting Government dues towards rent, electricity charges etc. for the Quarter, occupied by him even after retirement.

4. We have heard the counsel of the parties; and perused the record. The fact that the appellant was in the army prior to his employment in the Railways is on record; There are also representations to speak of this; and it would appear that he was also given a personal hearing after which a communication dated 8.5.1980 ( 33 Ga ) was sent informing that " No benefit is admissible under the rules. This clearly shows that the defendants were not unaware of appellants war service. May be his appointment in the Railway was not in reserved quota for ex-service men.

5. In this background, a reference to the rules on the subject becomes necessary. Both sides placed reliance on pension rules in support of their respective stands:- Rule 19 of ( C.C.S. ) pension rules 1972, laysdown that a Government servant can opt and count previous military service as qualifying service for pension, subject to refunding the military pension already drawn. Rule 20, goes even further and mentions that an ex-army person, shall be allowed to count

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army service, even if he had not earned pension, as qualifying service in civilian employment. Similar provisions exist in the Railway Pension Rules i.e. rule 231B(C.S.R.357-C) which indicates that Railway servants who have rendered war service during the period 3.9.1939 to 1.4.1946 should be allowed to count war service as qualifying service for pensionary benefits. The benefit under this rule is not limited to ex-service men appointed against reserved quota, but to all these ex-service men appointed in direct recruitment.

6. From the rule position as discussed above, it is evident that ex-servicemen appointed in the Railways are entitled to count their war service as qualifying service for pension. Entry into Railway Service against ex-service men's quota may be relevant for purposes of seniority, fixation of pay but not so for pension purposes. The issue in this case before us is not on seniority or fixation of pay. In these circumstances we are of the view that the learned Munsiff erred in dismissing the Suit by holding that benefit of past war service is available only to those appointed against ex-servicemen's reserved quota.

7. The other prayer of the appellant is for restoration of 1 month pension 1.7.1980 to 31.7.1980 and gratuity of Rs. 952/-. The defendants deny that these amounts are outstanding and according to them all the dues were settled after adjustment of <sup>rent for</sup> quarters under occupation of the appellant after retirement. The appellant has not come with any specific case as to why he was entitled for these amounts; besides a vague denial in his replication. We do not see any merit in these claims.

8. In result we consider that the appeal is liable to succeed. We set aside the order and judgement of Munsiff city Kanpur dated 1.10.1985 in O.S. 1139 of 1981, and hold that the

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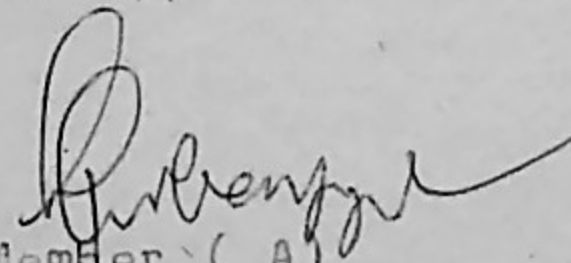
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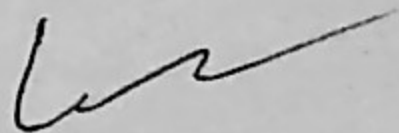
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appellant is entitled for army service rendered by him to be counted towards qualifying service for pension payable by the Railways. We accordingly direct the defendants to take action as follows:-

1. To include the army service rendered by the appellant from 4.1.1943 to 26.4.1946, as qualifying service for determining his pension entitlement.
2. To revise the pension of the appellant by adding army service to the total service rendered in the Railways.
3. To revise the gratuity payable to the appellant in accordance with rules by adding army service as qualifying service.
4. We further direct the defendants to work out differential amounts due to the appellant under the above heads i.e, pension and gratuity and pay to him the same within the three months from the date of receipt of a copy of this order.

9. The appeal is allowed as above with no order as to costs.

  
Member (A)

  
Vice-Chairman.

Allahabad 18<sup>th</sup> November, 1991

(RKA)