

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
Registration T.A.No. 499 of 1987

B.N.Mishra Applicant
Vs.
Union of India & Others..... Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

This is a transferred case under Section 29 of the Administrative Tribunals Act, 1985. The applicant filed a suit in the Court of Munsif Hardoi which was dismissed, thereafter he filed an appeal to the District Judge which has been transferred before this Tribunal. The applicant was Sub-Postmaster, Post Office, Patranaga, District Barabanki upto 24.7.1975 and who was treated on duty upto 21.4.76. A chargesheet under Rules 14 C.C.S. C.C.A. 1965 was served upon the applicant on 31.3.76. An enquiry on the basis of the chargesheet was proceeded and before completion of the enquiry of the said charge the Superintendent of Post Offices ordered compulsory retirement of ^{the} applicant under C.C.S. Pension Rule-48 of 1972 on 22.4.76. Subsequently the proceedings initiated against the applicant under C.C.S. Pension Rules-48 of 1972 were also dropped by the S.P.O.'s Barabanki Memo dated 20.11.82. According to the applicant when the order of compulsory retirement was passed the applicant had not completed 30 years of qualifying services, and in the said suit the applicant challenged the order of compulsory retirement which was passed by way of punishment after enquiry on the ground that the same was not void as under the pension rules nobody can be retired without completion of 30 years of qualifying service. The applicant made representations against the

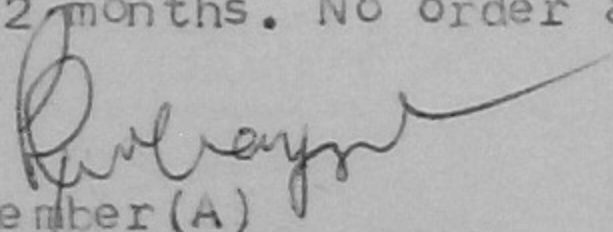
same but failing to get any relief he filed a suit in the Court of Munsif for declaration praying that his compulsory retirement of null and void and the period from 22.4.76 to 30.6.82 be treated ^{as} on duty and the full benefit admissible to a government servant on duty will be permitted.


2. The suit was resisted by the respondents who filed a Written Statement **refuting** the claim of the applicant and justifying their action. One of the plea which has been raised by the respondents that the earlier judgment in appeal No.145 of 1980 operate for resjudicate and it is no longer ^{open} for the applicant to raise any contention in respect of the matter which has become final. The earlier suit was decided by the Vth Additional Munsif vide order dated 21.5.80 and the appeal was decided by the Court of **1st** Additional District & Sessions Judge, Hardoi vide order dated 30 April, 1981. In the said suit the applicant challenged the order of compulsory **retirement** which was passed by way of punishment. The Appellate Court after considering the merits held that the order of compulsory retirement was legal and valid.

3. We have gone through the pleadings that undoubtedly there was some issue regarding the date of retirement or the period of retirement but the Appellate Court diluted the entire matter and the Appellate Court refused to decide this question as to whether the applicant has completed 30 years of qualifying service only whereafter he could have been retired under the pensionary rules. The applicant did not decide this question stating that as no plea was taken by the applicant in this behalf this question will not be decided. Undoubtedly there is some discussion by the Appellate Court as referred to above that the applicant has completed 30 years of service and he can be retired, but merely a completion of 30 years of total

service will not be enough under the pension rules for retiring a person unless he had completed 30 years of qualifying service. The applicant undoubtedly completed 30 years of service but in view of the **definition of** the qualifying service given in the Pension Rules the applicant completed little less than 29 years of the service when he was retired. Accordingly his retirement order was not in accordance with the Pension Rules. The findings though recorded by the Appellate Court after making the observation this plea has not been specially taken **it cannot be said** that this will operate as resjudicature. As the said finding cannot operate resjudicate, the retirement order of the applicant was legally bad. Accordingly the retirement order dated ²⁰~~22~~.4.76 is quashed and the applicant will be deemed to be continuing in service upto the date of attaining the age of superannuation and he will be entitled to pensionary benefit in accordance with law. Accordingly the respondents are directed to calculate the monetary and other benefits which the applicant is entitled to in accordance with law within a period of 3 months from the date of communication of this order and make the payment to the applicant including the arrears within another 2 months. No order as to costs.

Conceded
✓
4/9/92


Member (A)


Vice-Chairman.

18th December, 1991, Alld

(sph)