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Court No. 1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No. 502 of 1987

{Original Civil Suit No. 2190 of 1985}
{of the Court of Munsif-I, Gorakhpur }

Durga Prasad Misra Applicant

Versus

Union of India through
General Manager, North Eastern
Railway, Gorakhpur. Opposite Party

Hon. Justice Kamleshwar Nath, V.C.

Regular Civil Suit described above is for disposal before this Tribunal on transfer under Section 29 of the Administrative Tribunals Act, 1985. The relief sought is for a declaration that the applicant was a pensionable railway servant and was entitled to receive pension since 1.4.75. There is also a prayer for grant of arrears. The suit was filed on 19.11.85.

2. The admitted facts are that the applicant was appointed as Casual Turner in the N.E.R. on 14.5.52 and was accused of theft of railway property on 2.4.68, ^{for} which he faced a criminal trial for an offence punishable under Section 4 of the Railway Properties Unlawful Possession Act, 1968. He was also placed under suspension pending criminal trial.

3. The applicant was convicted of the offence by the Trial Court, confirmed by appellate judgement dated 17.11.69. Later on he was acquitted by the Hon'ble High Court on 8.2.71 after which he appears to have been reinstated. The matter figured before the Hon'ble Supreme Court of India which set aside the judgement of the Hon'ble High Court and restored the conviction sentence awarded by the Trial Court.

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The judgement was set aside by the Supreme Court on 23.8.74. Consequently, the applicant's services were terminated by order dated 12.3.75.

4. The applicant's case is that he had put in 23 years of service from 14.5.52 to 12.3.75 and therefore under Chapter 14 of the Railway Establishment Code, Volume II, he was entitled to receive pension. The reply of the opposite party in para 13 of the Counter Affidavit is that Railway Establishment Code, Volume II, does not contain chapter 14 and that the provisions of pension to railway servants are contained in the Manual of Railway Pension Rules, 1950. It was pointed out that under Sub Rule 1 of Rule 101 of those Rules, pension is admissible to permanent railway servant except those who are removed or dismissed from service before completing 30 years of qualifying service. It is also stated that under Rule 309 of the said Rules no pensionary benefits are admissible to those railway servants on whom a penalty of removal or dismissal from ^{Service} has been imposed. It is clear from the admitted facts of the case that the applicant's services were terminated in consequence of his conviction for committing theft of railway property.

5. The opposite party does not admit that the applicant's period of service would be 23 years because it included such period during which he had been reinstated on account of the orders of the Hon'ble High Court. That order, according to the opposite party, could not bring any benefit to the applicant because it had been set aside by the Supreme Court. It is also pointed out that according to

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para 1 of the plaint, the applicant was appointed as a Casual Turner and may have secured only a temporary status after six months when he was given a C.P.C. scale. In any event, the length of his qualifying service could never reach the duration of 30 years as requisite under Rule 101 (1) of Manual of Railway Pension Rules, 1950.

6. In view of the above facts, the applicant had no right to receive any pension.

7. At the time of hearing of this petition, no one appeared on behalf of the applicant. I have gone through the record of this case with the aid of Shri V.K.Goel who is appearing on behalf of opposite party. I do not propose to dispose of the case ex parte and consider it appropriate to dispose it off on merits under Sub Rule 1 of Rule 15 of the Central Administrative Tribunals (Procedures), 1987. For reasons recorded above, the petition must fail.

8. The petition/Suit is dismissed. Parties shall bear their costs.

(Signature)

Vice Chairman

Dated the 23rd Nov., 1989.

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