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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

.....

O.A. No. 343 of 1987

Dr. M. N. Sharma ... ... ... Applicant.

Versus

Union of India and two others ... ... Respondents.

Hon'ble Mr. Justice, K. Nath, V.C.

Hon'ble Mr. K. Obayya, A.M.

( By Hon'ble Mr. Justice, K. Nath, V.C. )

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for awarding of additional benefit of Five years qualifying service for superannuation pension under rule 2423-A of the Railway Establishment Code, Vol.II.

2. On the recommendation of the respondent no. 2, UPSC, the applicant was appointed as District Medical Officer in the Superior Revenue Establishment of Indian Railway Administration by appointment letter dated 9.5.1962(Annexure-1). In view of his certain special academic qualifications, he claimed benefit of five years additional qualifying service under the aforesaid rule. The Railway Board felt inclined to accept the claim, but since the UPSC did not agree, whose consultation was essential, the railway administration declined the benefit by their letter dt. 25.4.1983(Annexure-3). This petition was filed before this Hon'ble Tribunal on 27.3.1987.

3. The applicant's case in paragraph no. 6(X) of the application is that he had represented <sup>to</sup> the Railway Board that he was entitled for grant of the benefit of

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additional qualifying service for superannuation pension as stated above, as he fulfilled the conditions laid down in Rule 2423-A of the Railway Establishment Code, Vol. II, which has force of law. It was also stated that some other medical officers, similarly placed, have already been given benefit of that rule but the applicant has been wrongly denied the same.

4. The rule is extracted at page-13 of this application, the relevant portion of which runs as follows;

"An officer appointed to a service or post on or after 1st April, 1960 may add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds twenty-five years or a period of five years, whichever is the least, if the service or post is one.

- (a) For which post-graduate .....
- (b) To which candidates of more than twenty-five years of age are normally recruited.

Provided that this concession shall not be admissible to any such Officer unless his actual qualifying service at the time ~~he~~ quits Government service is not less than twenty years;

provided .....

Note:- (1) .....

(2) The decision to grant the concession under this rule shall be taken by the Railway Board at the time of recruitment in consultation with the Union Public Service Commission."

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5. Notices were issued to all the respondents, and appearance was made only on behalf of the respondent no.3, General Manager, N.E. Railway, Gorakhpur. The respondent nos. 1 to 2 including the UPSC are presumed served.

6. In the counter affidavit of respondent no. 3, the contents of paragraph nos. 3(X) of the application are admitted in paragraph no. 9. Further, it is added that the decision to grant the benefit in question is taken by the Railway Board at the time of recruitment in consultation with the UPSC. In paragraph no.8 of the counter affidavit, the statement is that while the railway administration agreed with the applicant's statement contained in para 6(VIII)& 6(IX) of the application and had approached the UPSC to extend the benefit, the UPSC did not agree. It is stated that the UPSC took the stand that since there was no specific provision in the Recruitment Rules of Medical Officers that the service/post is one which carries this benefit, it was not possible for UPSC to agree to extend the benefit. This stand is also contained in the rejection letter dated 25.4.1984 (Annexure-3).

7. We have heard the counsel for the applicant and Shri G.P. Agrawal, for the respondent no.3 and have gone through material on the record and we immediately notice that there is nothing in rule 2423-A of the Railway Establishment Code, Vol.II to show that before that rule can be made applicable, a particular service/post must be declared to fall within its purview. The opening clause of the rule provides that, " An Officer appointed

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to a service or post on after 1st April, 1960 may add to his service ..... ". The provision is general. There is no clause limiting or confining the application of the rule to any particular service or post. It is futile for the UPSC to look for some provisions in the Recruitment Rules of DMOs. for grant of benefit of this rule. On the contrary, one should expect that if a particular service or post is to be treated to be outside the scope of the rule, some provisions, including the Rule ought to provide for the negative. It is not shown that the Recruitment Rules applicable to the applicant, said that rule 2423-A was not applied to the D.M.Os recruited there under. The applicant's counsel points out that the provisions of the said Railway Establishment Code, are made specifically applicable to the terms and conditions of the applicant's service in para 1(VIII) of the appointment letter (Annexure-1).

8. Shri G.P. Agrawal has raised two points before us. He refers to para-4 of the counter indicating that the applicant was born on 10.12.1929, was appointed on 5.6.1962 and was 32 years, 6 months and 4 days of age when he entered the railway service. The learned counsel feels that in this state of facts, the rule in question does not apply. We find nothing in these facts to disqualify the applicant from the benefit of this rule. The second point is that the claim petition is barred by limitation. It is pointed out that the claim for additional 5 years of qualifying service was rejected by the letter dated 25.4.1983 (Annexure-3), whereas, the present application was filed on 27.3.1987.

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Apart from the fact that the rejection was rendered before the Administrative Tribunals Act, 1985 came into force, the cause of action for granting five years of qualifying service for superannuation pension would arise when the incumbent retires. The applicant admittedly, retired in November, 1987. We are of the view, therefore, that the question of limitation does not arise at all.

9. The last question concerns the effect of consultation with the UPSC. It is well established that the UPSC is a recomendatory body and the ultimate responsibility for making a decision rests on the appointing authority. While, the appointing authority may abide by the recommendation of the UPSC, the operation of the appropriate law can not be prevented by the UPSC. The Railway Board have been in error in refusing the benefit on the recommendation of the UPSC; that only compounded the fault of both the UPSC and the railway board.

10. The petition is allowed. It is directed that the respondents shall add a period of five years of qualifying service for superannuation pension to the applicant's service and fix his pension accordingly. Parties shall bear their costs.

*R. Bhagat*  
Member(A)

*GB*  
Vice-Chairman

Dt/- 22 Feb. 1991

Allahabad

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