

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALIA HABAD.

Allahabad this the 26th day of May 1997.

Original Application no. 1269 of 1994.

Hon'ble Mr. S. Dayal, Administrative Member.

Lal Gopal Srivastava, S/o Late Shri B.G. Srivastava, r/o C. 6/26 Bagh Bariar Singh, Chetganj, Varanasi, retired as Asstt. Commercial Supdt, Northern Railway, Varanasi. Where he was **last** posted.

... Applicant

C/A In person

Versus

1. Union of India through General Manager Northern Railway Headquarter Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazaratganj, Lucknow.

... Respondents.

C/R Sri B.B. Paul.

O R D E R

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant seeks the relief of re-fixation of pensionery benefits with effect from 30.09.91 after

// 2 //

giving him full benefit of rule 2423a of Indian Railway Establishment Code Vol. 2 adding at least 5 years of legal practice to applicant for qualifying service and giving benefit of  $2\frac{1}{2}$  years on account of late appointment by adding  $2\frac{1}{2}$  years of qualifying service and thus taking period of service to be 34 years and not about  $26\frac{1}{2}$  as computed by the respondents. The applicant also prays for payment of arrears with interest of 15% per annum and cost of the application.

3. The facts as stated by the applicant are that he was selected as Law Inspector in 1962. Minimum qualification for the post of Law Inspector which was later on changed to Law Assistant was Law Graduate of three years of legal practice as pleader and the maximum age limit was 30 years. Appointment letter was, however, issued on 17.04.65 and the applicant joined on 03.05.65. The applicant claims that the candidate who joined were mostly recruited after they completed 25 years of age. The applicant retired on 30.09.91 as Assistant Commercial Superintendent at Varanasi. He had put in about  $26\frac{1}{2}$  years of service. He claims that he was entitled to get 5 years added to this qualifying service of pension on account of provision of rule 2423 A of Indian Railway Establishment Code and loss of  $2\frac{1}{2}$  years of service because of late appointment. The representation made by the applicant in order to get the benefit of rule 2423 A etc yielded no result. Therefore, he has filed this application for relief.

// 3 //

4. Arguements of Sri L.G. Srivastava in person were heard. Shri B.B. Paul appeared subsequently and sought permission to produce a copy of the Judgement of the Supreme Court relating to the issue. He was permitted to do so and furnish a copy of the judgment of the Supreme Court reported in 1996 (7) JT 706 in The Secretary (Estt) Railway Board and others Vs. D.Francis Paul and others.

5. The applicant has relied upon the judgment in OA 181/91 decided on 31.03.93, the judgment in following five cases:-

- i. ATC 1989 Hyderabad (61) at page 62
- ii. ATC 1989 New Delhi page 516
- iii. ATJ 1994 Calcutta 148-152
- iv. ATJ 1994 Ahmedabad 223
- v. AIR 1996 SC 669

In R. Sangeeta Rao Vs. U.O.I & Ors (1989) 11 ATC 516, the Principal Bench has ruled that <sup>there</sup> where is recurring cause of action eg grievance relating to payment of salary or pension, it can be entertained in principle inspite of the facts that cause of action arose much earlier.

In C.N. Lokhanathan vs. U.O.I. & Others (1989) 9 ATC 61 and 4 others applications decided by the same order, the same ratio was arrived at. This was again reiterated at Natya Gopal Bhowal vs. U.O.I. and others 1994 (1) ATJ Calcutta 148 and in Smt. Sharda Ben S. Bhatt vs. U.O.I. & others 1994 (2) ATJ Ahmedabad 223. The applicant has also cited M.R. Gupta vs. U.O.I. & Others AIR 1996 SC 669 laying down that non fixation of pay was continuing wrongly

// 4 //

and the question of limitation does not arise in such cases.

5. The applicant has based his claim for relief mainly on the ground of judgment in OA 181/91 passed by the Central Administrative Tribunal, Allahabad on 31.03.93 in which benefit of relief 2423 A of Indian Railway Establishment Code Vol 2 was allowed to an application under similar circumstances and 5 years were added to his qualifying service ~~for~~ computation of pensionary benefits. It has been mentioned in the judgment that the applicant was entitled to add 5 years because the official was appointed to a service or post on or after 01.04.60, the age of candidate recruited was in most cases are more than 25 years and the minimum qualification of Law Graduate coupled with 3 years standing as pleader. The judgment also takes into account amendment of rule 2413 A brought about by Railway Board letter no. F (E) iii-87-TNI/21 dated 04.12.87 which makes the benefit of his added years of service applicable to all those who retired from service or post after 31.03.60.

6. The judgment produced by learned counsel for the respondents in The Secretary (Estt) Railway Board and others Vs. D. Francis Paul (supra) etc. In this case also the Tribunal had allowed the claim of the applicants by addition of 5 years of qualifying ~~their~~ service for computation of pension and it was challenged on the ground that the applicant could be allowed the benefit only if recruitment rules in respect of the said service/post contained specific provision that the ~~at~~ post is one which carries ~~the~~

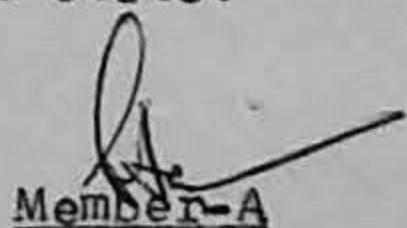
// 5 //

benefit of these rules. Which was held that because of the amendment came into effect from 15.11.76, candidates who had joined service in 1963 and 1964 could not be brought under perview of this amendment and were entitled to the benefit of rule 2423 A as it exsisted as its preamended form.

7. The claim of the applicant for addition of  $2\frac{1}{2}$  qualifying years of service on account of delay in his appointment can not be allowed. From the evidence of the record it can not said that the delay was either deliberately on account of negligence of the respondents. The delay could also be on account of completion of preappointment formalities and without any evidence as to how much time for such formalities actually took. The claim of the applicant does not have any validity. Therefore, addition of period of  $2\frac{1}{2}$  years of qualifying service can not allowed.

8. In any view of the matter the applicant is entitled to the benefit of rule 2423 A of Indian Railway Establishment Code Vol 2. The respondents are, therefore, directed to correct and re-fix the superannuation pension and other retiremental benefits of the applicant by adding 5 years of his qualifying service and pay difference on account of his re-fixation of pension and other pensionery benefits within the period of 3 months from the date of communication of this order. I am not inclined to grant any interest on account of facts that this claim was made nearly after three years of superannuation.

9. There shall be no order as to costs.

  
Member-A