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Shri Ramswaroop Sharma,
Plot No.156,
Sector No.4,
Gandhidham (Kutch)

: Applicant

Versus

1. Union of India
Owning Representing
Western Railway,
Through: General Manager,
Western Railway,
Churchgate, Bombay.
2. Divisional Railway Manager,
Western Railway,
Ajmer.

: Respondents

JUDGMENT

Date: 15-12-1989

Per: Hon'ble Mr. J.N.Murthy

: Judicial Member

The petitioner files this petition for a relief to approve free passes of post retirement of the class to which he is eligible as per rules and also to direct ~~the~~ to compensate him in monetary value for the years 1985, 1986 and 1987. and the letter No.EP.58/180 dated 24.7.1982 and June, 1983 which have been issued by the C.P.O., Western Railway, Bombay may be declared as illegal and void and in alternative ~~and~~ not applicable to the case of the Applicant, since these were issued after retirement of the applicant as on 1.1.1982 and the orders alleged to have been issued by the CPO, Western Railway, Bombay cannot have retrospective effect.

The facts of the case are briefly as follows:-

The applicant was working as Head Train Examiner in Western Railway, Ajmer Division at Gandhidham Railway Station. His date of birth was recorded in Railway records as 19th April, 1922 erroneously and accordingly he was due to retire from Railway service on the basis of the date of birth on 30th April, 1980. But his correct date of birth was 2.1.1924 and on the basis of the same he filed a Regular Civil Suit No.86/80 in the Court of Learned Civil Judge, Junior Division, Gandhidham along with the prayer for interim injunction, restraining the

Railway Administration from retiring the applicant from the services on the basis of the erroneous date of birth recorded in the railway records. The railway authorities carried out the said matter in the District Court, Bhuj by filing Civil Misc. Appeal No. 26/80 wherein the said appeal was allowed by the Dist. Judge, Bhuj on 14th December, 1981 and set aside the order passed by the Civil Judge, Jr. Division, Gandhidham on 24th April, 1980. After the District Judge's order the petitioner was made to retire on 1.1.1982. According to the birth date claimed by him as 2.1.1924 also he could have been continued in Railway service upto January, 1982. According to the birth date in the railway records he would have retired earlier than 1.1.1982. But he continued in railway service upto 1.1.1982 on the strength and force of the interim ~~rel~~ injunction granted on merits by the Civil Judge, Gandhidham. Accordingly he vacated the railway quarters on 31.7.1987. His provisional pension was fixed at Rs. 431/- vide PPO No. Bank/1155/D, dated 26.8.1982. Except this provisional pension nothing was paid to him. After the retirement, every staff retired is eligible and entitled to get one or two sets of First Class/2nd Class complimentary Post Retirement passes according to the length of services and scale of pay of the retired employee, for self and family for travelling throughout India. In the case of the applicant, he is entitled to get 2 sets of 1st class passes in a year according to the length of service he had put in and his scale of pay at the time of retirement. The applicant was accordingly given passes upto 1984. He received two passes in 1984 also.

He had applied for such passes on 16.8.1985 for the year 1985 by himself and his wife and he received a reply from the office that in terms of CPO CCG's letter No. EP.58/180 dated 24.7.1982 and June, 1983 he is not entitled to get post retirement passes upto a period of ten years since he has vacated the quarters only after 18 months of his retirement. The applicant approached the higher authority i.e. D.R.M,

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Western Railway, Ajmer by his written application dated 2.10.1985 but has not received any reply for the same. So he is entitled the said passes. He was not granted the retirement benefits in violation of the statutory rules as well as the fundamental rights. The petitioner was suffered by large for not giving all these benefits after his retirement so he is entitled to those benefits.

The respondent filed counter in the following contentions:

The above application is not against any order passed by the respondent authorities. The present application is against the alleging inaction by the respondent is not maintainable and tenable because the applicant had also filed Original Application bearing No.672/87 before this Hon'ble Tribunal wherein the Hon'ble Tribunal has directed by order dated 12th April, 1988 directing the respondent that as the suit filed by the applicant bearing Regular Civil Suit No.86/80 is no more pending and therefore the application was admitted directing the Tribunal's order dated 9th February, 1988 to be implemented by the respondents and the statement regarding implementation of the order be placed on record. After the above order Contempt Application 27/88 was filed in Original Application No.672/87 by the applicant in which the respondent - authority had made it very clear by giving details of payment, etc. wherein it was clearly shown that the excess amount and benefits extended to the applicant from 1.5.1980 to 1.2.1982 are recoverable and they are worked out as follows:-

1. Over payment of wages	Rs.19,462.30
2. Cost of passes and PTOs	Rs. 3,576.00
3. Medical facilities	Rs. 85.50
4. Excess commutation allowed from 2.1.82 to 31.12.85	Rs. 6,864.00
Total	Rs. 29,987.80

It is found in the record after verification that all the retirement benefits have been paid to the applicant except DCRC amounting to Rs.14,668.50 which cannot be paid as the total recovery of Rs.29,1987.80 ps. is outstanding

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against the applicant and therefore the railway authority has to recover still Rs.15,319.30 from the applicant. The respondent states that at the time of hearing this application, the record of original application No.672/87 may be taken into consideration so that the Court can analysis the real picture with regard to the allegations made by the applicant in this present application. The respondent admitted that they paid provisional pension Rs.431 by the letter dated 26th August, 1982 and ~~hexhas~~ has accepted by the applicant. Two passes were given to the applicant upto 1984 and thereafter the applicant was not entitled and therefore was not granted. The petitioner is not entitled for the passes after 1984. The same was already informed to the petitioner and the retirement benefits has already granted ~~to~~ and given to him but the respondent have already made it clear, unauthorisedly in occupation of the railway ~~quarter~~, he has not paid rent after he is to ^{be} employee of the railway authority and also suits were pending in the Trial Court, the respondent authority has to recover the excess amount paid to the petitioner. The respondent contended that the allegations in the various para of the petition are not correct and the petition is liable to be dismissed.

Mr.B.B.Gogia and Mr.B.R.Kyada, learned advocates for the parties argued the matter. It is ^{an} admitted fact that the petitioner is served under the railways and he has to retire on 30th April, 1980 but he filed inaction in the Civil Court and continued his service for two more years and he retired on 1.1.1982 according to the Court's orders and after he retired from service it is the case of the respondent that they paid his pensionary benefits. The only claim of the petitioner is that not given any retirement benefits but only to grant free passes after his retirement i.e. eligible for the same and he also claimed for not issuing the passes in the years 1985,86 and 87.

He claimed money from the railways for not issuing the passes to him.

He is a Railway employee and he is receiving his salary regularly and after retirement he received his retirement benefits if any amount dues it is in the evidence that it is pending with the Civil Court for the same and the petitioner has not asked for any retirement benefits in this petition and he only asked for free passes i.e. entitled after retirement. The respondent stated that as per the Railway Board Circular dated 2.4.1982 the petitioner is not entitled to the railway passes and he did not vacate the quarters until 18 months. But the circular was issued after the retirement of the petitioner and it has no retrospective effect and it is not applicable to the petitioner. So the petitioner is entitled to the railway passes claimed by him.

So far as the claim for the monetary benefits for not issuing passes in 1985, 1986 and 1987 the petitioner did not produce any money receipts to show that he perform the journey in those years. So he is not entitled for the monetary benefits for not issuing the passes in 1985, 1986 and 1987.

So far as the letter No.ER.58/180, dated 24.7.1982 and CPO letter dated 24.7.1982 are not applicable in the case of the petitioner as they were issued after the retirement of the petitioner. Those letters have no retrospective effect.

So we hold that the petitioner is entitled to past retirement passes as claimed by him and he is not entitled for money benefits for non-issuing of the passes in 1985, 1986 and 1987 as he did not perform the journey and he did not produce any money receipt to show that he perform the journey so he is not entitled to the same.