

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.446 OF 2000

Cuttack this the 23rd day of January, 2004


SMT. PRAMILA SUNDARI DEI ... APPLICANT


: VRS :

UNION OF INDIA & OTHERS ... RESPONDENTS

FOR INSTRUCTIONS

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(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 446 of 2000
Cuttack, this the 23rd day of January, 2004.

C O R A M:

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN
A N D

THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDICIAL).

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SMT. PRAMILA SUNDARI DEI @
Smt. Pramila Naik, aged about
62 years, retired Teacher
Gr. II, Khurda Division, at
present residing at 498,
Mahanadi Bihar,
post: Nayabazar,
Dist. Cuttack.

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Applicant.

By legal practitioner : M/s. P. K. Chand,
D. Satpathy,
S. Mishra,
B. P. Tripathy,
Advocates.

-Versus-

1. Union of India represented through
General Manager, South Eastern Railway,
Garden Reach, Calcutta (W.B.)
2. Chief Personnel Officer,
South Eastern Railway,
Garden Reach,
Calcutta (West Bengal).
3. Senior Divisional Personnel Officer,
South Eastern Railway, Khurda Road,
PO: Jatni, Dist. Khurda.
4. Divisional Railway Manager,
South Eastern Railway,
Khurda Road, PO: Jatni,
District-Khurda.

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Respondents.

By legal practitioner: Mr. P. K. Mishra,
Counsel for the Railways.

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O R D E R

MR. B. N. SOM, VICE-CHAIRMAN:-

This Original Application has been filed by Smt. Pramila Sundari Dei @ Smt. Pramila Naik, who was initially recruited as a Teacher Gr. IV on 22-01-1971 subsequently promoted to the post of Teacher Grade-II on 19-10-1979 and finally retired from Government service on superannuation, on attaining the age of 60 years on 31-01-1999. The grievance of the Applicant is that the Respondents, by virtue of their settlement Memo dated 04/29.1.1999 have allowed her retirement benefits in the pay scale of Janitor and not in the pay scale of Teacher Gr. II and therefore, she has prayed for a direction to be issued to the Respondents to fix her pay as a Teacher Gr. II in the scale of pay of Rs. 1400-2600/- w.e.f. 01-01-1986 and Rs. 5500-9,000/- w.e.f. 1.1. 1996 and pay arrears of difference of pay and allowances from 1-1-1986 till the date of retirement i.e. 31-1-1999 and accordingly, recalculate her retirement benefits.

2. The facts of this case in a nut-shell, are that the Applicant while working as Teacher Gr. II in the scale of pay of Rs. 440-750/- purely as stop-gap teacher, was posted 'on her own request', as Lady Janitor on reversion of pay of Rs. 560/- in the pay scale of Rs. 330-560/- in the South Eastern Railway subsidised

3:

Girl's Hostel at Cuttack. This posting under Annexure-2 dated 03.09.1985 was made temporarily for a period of three months. However, she continued in that post till her retirement. The Respondent No.2 did not approve such appointment of the Applicant and vide his letter No.P/^{had} ED/54/97-P.T.-VII dated 20-2-1987 advised the Respondent No.3 to post the Applicant back to her parent post. In response to the above order, Respondent No.3 directed the Applicant, vide his letter dated 06-11-1987 to be ready for transfer back to her original post. But no arrangement was made by the said Respondent to relieve her from the post of Lady Janitor. Applicant made several representations from time to time to relieve her from the post of Lady Janitor but without any success. Through her representations, dated 04-05-1989 and 28-12-1996, she specifically pointed out that Respondent No.2 vide his letter dated 31-07-1986 had clarified that Wardens or Janitors in Railway Hostels would maintain their lien in their parent line and, therefore, her name was appearing in the seniority list of Gr.II Teacher issued from time to time. Thereafter, in the year 1997, the Respondent No.3 issued an order regarding retirement of the Applicant, on completion of 58 years of age against which the Applicant had filed an Original Application No.16 of 1997 before this Tribunal and this Tribunal directed the Applicant to prefer an appeal/representation before the competent authority at the first instance. In pursuance of that, she had submitted her representation to the effect that

she being a Teacher Gr.II, was entitled to superannuate at the age of 60 years. Respondent Department accepted her plea and issued an order transferring her to the parent post of Teacher Gr.II and posting her in Mixed Higher Secondary School, Bandomunda. It was also directed to allow her to continue till she attained the age of 60 years. However, she was not relieved from the post of Janitor to take-up the job of Teacher Gr.II at Bandomunda. Applicant preferred a representation pointing out the inaction on the part of the concerned authorities in delaying her relief from the post of Janitor. But to no effect.

3. Respondents have contested the application in all respect. The main thrust of the Respondents is that the Applicant is only entitled to the pay scale of Janitor, as she was actually discharging the duties of Janitor from the year 1985 till her retirement, that the Applicant was posted as Lady Janitor on reversion, as per her own request and that in the Office order dated 03.07.1985 posting her as Lady Janitor, it was clearly mentioned that the Applicant will have no claim in future for any incremental benefits in her Gr.II teacher, and therefore, the Applicant cannot claim to have retired as Gr.II Teacher. The Respondents have also submitted that the Respondent No.2 vide his letter dated 10-1-1997 advised to transfer her back to her parent cadre and posted as Teacher Gr.II in Mixed Higher Secondary School, Bandomunda, but, she was not relieved from her post as Janitor

and she continued in that post till her retirement. They have further submitted that the Applicant continued in the post of Janitor, as per her own request and it is not ^{now} left to her to seek a direction from this Tribunal for monetary benefits, which is applicable to Gr. II teacher at the fag end of her service career and that, for such a disputed question of fact, the Applicant has to approach the Civil Court ; because the entire claim of her is a monetary one. They have also alleged that the Applicant has not approached this Tribunal with clean hands because she was posted as Lady Janitor only on her own request/at her behest and subsequently, at the fag end of her career and after her superannuation, she had submitted several representations in the year 1999 and 2000 for monetary benefits. Thus, all these representations are after thought, and therefore, not sustainable in the eye of law. They have further submitted that the Applicant remained in the post of Lady Janitor, as a matter of choice till her superannuation.

4. We have heard the learned counsel for the rival parties and have perused the records/materials placed before us.

5. The main prayer of the Applicant in this Original Application concerns granting of the benefits in the pay scale of Rs. 1400-2600/- w.e.f. 1-1-1986 that she would have received , had she been working as Teacher Gr. II and then the benefits of the pay scale of Rs. 5500-9000/- w.e.f. 1.1.1996. It is admitted that the Applicant migrated

herself from the scale of Rs.440-750/- to the scale of Rs.330-560/- to be posted as Lady Janitor in the Girl's Hostel, at Cuttack w.e.f. July, 1983. It is also admitted that she continued in that post upto the date of her retirement i.e. 31-1-1999. It is also a fact that during this period of her service career, the pay and allowances of the Government Servants were revised twice (first one w.e.f. 1-1-1986 and the second w.e.f. 1-1-1996) on the recommendations of the Central Pay Commissions. She got the benefits of Pay fixation of Lady Janitor and not that of the Gr. II Teacher. While the grievance of the Applicant is that the Railway Administration had treated her as Teacher all along till her superannuation (even by showing her name in the seniority list of Teacher Gr. II), but had failed to fix her pay in that grade. On the other hand, the Respondents have submitted that the Applicant by her own volition having continued in the post of Lady Janitor discharging the duties of that post, cannot claim the pay of any higher grade after her retirement. They further submitted that in her letter of appointment/posting as Lady Janitor, it was clearly mentioned; which she had consciously accepted, that she would have no claim in future for any incremental benefits in the higher grade of teacher in the scale of pay of Rs.440-750/-.

6. We have perused the representations submitted by the Applicant before her superannuation and after her superannuation. The representations which she had submitted before the retirement are one dated 4-5-1989 and the others are dated 28.11.1996, 14.12.1996 and 24-1-1997. In her representation dated 04-05-1989, she had requested the Respondent No.3 to revert her as Teacher. In her representation dated 28-11-1996, she made the plea that she could not be retired before she attained the age of 60 years. In her representation dated 14-12-1996 and 24-1-1997, she prayed before the Respondent No.3 that either she should be allowed to continue as Janitor till completion of 60 years or to transfer her as Teacher to her parent cadre. In none of these representations, she had either raised the issue of her pay scale or she had demanded pay protection. It was only after her retirement, she raised the issues like that her leave account should have been calculated taking her as a Teacher (representation dated 3-2-1999), and that her pay in the scale of Teacher Gr.II should have been protected (representations dated 24.6.1999, 20.12.1999, 16.1.2000 and 21.8.2000). It is also worthwhile to note that when she filed representation before the Respondents in the year 1997, at the direction of this Tribunal to retire her at the age of 60 years, in view of her lien being retained as Teacher Gr.II, she

didnot raise this point that her pay also to be protected at the appropriate stage as Teacher Gr.II and her pension to be calculated accordingly. Respondents,have clearly stated in their counter;which has not been rebutted by the Applicant,by filing any rejoinder,that the Applicant cannot claim the benefits applicable to Gr.II teacher, when she was not holding that post and,such an arrangement had taken place at her own request.It also reveals from our perusal of her representations dated 14-12-1996 and 24-1-1997 that she had requested the Respondents to pass an order either to allow her to continue as Lady Janitor till completion of 60 years of age or to post her as Teacher Gr.II immediately.In otherwords,she was more anxious with regard to the age of retirement at 60 years and the question of pay scale of the post was not weighing in her mind.It was only after she was allowed to retire on attaining the age of 60 years,she came out with her list of demands for enhancing her leave entitlement and for obtaining pension based on higher pay scale.As it now appears from the facts and circumstances of the case that the Applicant on her own volition and to suit her personal problems preferred to remain in the post of Lady Janitor in the lower scale of pay at Cuttack,she can ill-afford to have any grievance to the effect that she was not granted pension on a higher scale of pay, to which she would have been entitled to,had she reverted back to her substantive post.The point to be made clear

is that the Applicant having not ever applied for grant of lien in the cadre of Teacher Gr.II, if she could not be posted back as Teacher Grade-II, or ventilating her grievance about her being not transferred back as Teacher Gr.II or for extending the benefit of revised pay scales, which the Teachers in her parent cadre got successively, one on 1-1-1986 and another on 1-1-1996, and these points not being canvassed either before this Tribunal in her earlier O.A., or in this O.A., or in her representations submitted before the Respondents, her prayer in this O.A. to grant the benefit of pay protection in the scales of pay of Rs. 1400-2600/- w.e.f. 1-1-1986 and Rs. 5500-9000/- w.e.f. 1-1-1996 has no legal standing. Having accepted to remain in the lower post of Janitor for all these years, her case has to be governed by the law of acquiescence. It is also the law that pension is calculated on the average salary of the duty post held during last ten months of an employee's service. As the Applicant had discharged duties in the post of Lady Janitor since 1985, she is not entitled to pension on any pay scale other than the one in which she had performed her duties as Lady Janitor.

7. In the facts and circumstances of the case as enumerated above, this Original Application fails; being devoid of any merit. No costs.

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23/01/04
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

[Signature]
(B. N. SOM)
VICE-CHAIRMAN