

Original Application No.458/2001
Order dt.06.08.2003

The Original Applicant (Late Chatrubhuj Mohanty, who entered into Railway services as a Goods Clerk on 21.05.1957) had filed this case (on 17.09.2001) under Section-19 of the Administrative Tribunals Act, 1985, mainly, praying a direction to the Respondents/Railways for granting him pension and other admissible retiral benefits with interest.

2. In the counter filed by the Respondents/ Railways, it has been disclosed that the Original Applicant Late Chaturbhuj Mohanty having resigned from Railway services with effect from 07.04.1971; he was/is not entitled to any benefit; as claimed in this Original Application.

3. During pendency of this Original Application, the Applicant breathed his last on 15.11.2001 and in the said premises, his legal heirs (as named below) have been permitted to be substituted (vide order dt.30.07.2003 of this Tribunal) to prosecute this Original Application:

- (a) Priyadarshini Choudhury (daughter)
- (b) Subhadarshini Mohanty (daughter)
- (c) Tapan Kr. Mohanty (son)
- (d) Tapas Kr. Mohanty (son)
- (e) Tarun Kr. Mhanty (son)
- (f) Tanaya Kr. Mohanty (son)

4. For the reason of the pleadings placed above, it is to be decided in this case as to whether the Original Applicant (or his legal heirs) are entitled to any relief / pensionary benefit ; when the original Applicant resigned from railway services on 07.04.1971.

5. Heard Mr. D.P.Dhalsamant, learned counsel appearing for the Applicant and Mr.S.R.Patnaik, learned counsel appearing for the Respondents/Railways. At the hearing, the members of the Bar have drawn my attention to the case of Om Prakash Singh Maurya- Versus- Union of India and others that was decided by the Lucknow Bench of this Central Administrative Tribunal on 14.09.1998 (as reported in 11/99 Swanysnews 74), On perusal of which it appears that the issue involved in this case are no more res-integra; the views expressed therein having been based on the Judgements of Apex court (M/s J.K.Cotton Spinning and Weaving Mills Company Ltd.

Kanpur- Versus- State of U.P. and others) that was reported in AIR 1990 SC 1808. Extract of the case, as reported in 11/99 Swamynews 76(228) is noted herein below for a ready reference:-

~~By this~~ "By this O.A. the applicant has claimed pension with effect from 1.2.1978. As per the respondents, the applicant served the department for 14 years 4 months and 26 days with effect from 3.9.1963 to 1.2.1978. The main objection of the respondents is that as the applicant resigned from service, he is not entitled to pension in terms of Rule 26 of the Central Civil Services (Pension) Rules, 1972. A similar matter came up for consideration before the Division Bench of the Central Administrative Tribunal, Jabalpur in O.A.No.623 of 1991. A.P.Shukla-Vs- Union of India and others decided on 13.10.1995. In this case, the applicant had tendered resignation on 11.5.71 after completing 17 years 9 months and 10 days service. The Applicant therein was a Railway servant. The objection of the respondents was that since the applicant had resigned from the job, he was not entitled to pension under Rule 311 of the Manual of Railways Pension Rules, 1950. This question was dealt with ~~the~~ by the Jabalpur Bench in Paras 4, 15 and 16 of its order. The same is reproduced below :

" Para 4. The first question to be considered is whether the resignation tendered by the applicant can be treated as retirement for purpose of grant of pension. The applicant has relied on M/s J.K.Cotton Spinning and Weaving Mills Company Ltd., Kanpur-Vs.-State of U.P. and others(AIR 1990 SC 1808) in which the employee's request contained in the letter of resignation was accepted by the employer and that brought to an end the contract of service. The meaning of the term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'.

Therefore, when an employee voluntarily tenders

his resignation it is a act by which he voluntarily, gives up his job. Therefore, the resignation of the Applicant could be treated as superannuation for all purposes.

Para.15. The Apex Court in the case of M/s J.K. Cotton Spinning and Weaving Mills Company Ltd. Kanpur(supra) held that the resignation amounts to voluntary retirement. The applicant after all has served the department for 10 years. Had he not tendered his resignation he would have received pension. As such when there is voluntary resignation, there is a termination of service which for the purposes of pension may be treated as voluntary retirement thought under the rule this benefit is available only on completion of 30 years of service.

Para.16. Why a person who could get pension on completion of 10 years of service should not be equated with a person who has tendered resignation after 17 years of service as having performed his service for 10 years for purpose of obtaining pension ."

Learned counsel for the applicant has also placed reliance on another Division Bench decision of the Central Administrative Tribunal, Principal Bench, New Delhi in the case of Smt. Bimlar Devi-Vs- Union of India and others(1992 (2) SLJ 310). In this cited case also the applicant had submitted resignation. It was held that the applicant therein was entitled for pension. In view of the decisions in these cases, I am of the view that pension cannot be forfeited in terms of Rule 26 of the CCS(Pension) Rules, 1972."

6. The issues involved in the present case have already been answered in the above cases.

7. Coming to the present case, since the original Applicant late Chaturbhuj Mohanty, served the railways for about 13 years (i.e., for more than 10 years) and left the employment without any stigma by tendering voluntary resignation, he was entitled to get the benefit as were extended to other similarly placed persons covered under the cases referred to above;


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and, in fitness of the circumstances, all the terminal benefits, as due and admissible to a voluntarily retiring person, ^{are liable to} be paid to the Original Applicant and his legal heirs and the Railways/ Respondents should pay the same by treating the Original Applicant Chaturbhuj Mohanty to have gone on voluntary retirement on 07.04.1971.

8. The question of limitation has been raised in this case by the Respondents. For the reasons mentioned in case of S.K. Mastan Bee-Versus General Manager, South Central Railways and another (reported in 2003 S.C.C. (L.&S) 93) the said objection is hereby over-ruled; non-payment of pensionary benefit being a continuing wrong/cause of action.

9. In the above premises, the Original Application is allowed. All terminal/pensionary benefits ^{by the Respondents} be granted ⁱⁿ favour of the Original Applicant by taking into consideration his employment in pensionable establishment from 21.05.1957 to 07.04.1971 and the arrears be paid to his legal heirs within a period of six months hence. Such of legal heirs; who would be entitled to Family Pension/ such other benefits, should be given the same within the said period. No costs.

10. Send copies of this order to all the parties and free copies of this order be also given to the counsels appearing for the parties.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)