

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.614 of 1996

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Shri Asit Kumar Sanyal, S/O Late
Nagendra Nath Sanyal, resident of
Block 3, Flat No.2, 114W, Raja S.C.
Mullick Road, Calcutta-700 047, P.S.
Garia

... Applicant

VS

1. Union of India, service through the
Secretary, Ministry of Railway, Rail
Bhavan, New Delhi

2. The Chairman, Railway Board, Railway
Bhavan, New Delhi

3. The General Manager, Eastern Railway
Calcutta

4. The Financial Adviser & CAO, Eastern
Railway, Calcutta

5. The Chief Personnel Officer, Eastern
Railway, Calcutta

6. The Secretary (E), Railway Board,
Railway Bhawan, New Delhi

7. The General Manager, Korba (M.P.)
Bharat Aluminium Co. Ltd., Korba,
Madhya Pradesh.

8. The Chairman-cum-Managing Director,
Mining & Allied Machinery Corporation of
India Ltd., Durgapur-10

... Respondents

For the Applicant: Mr. B. Mukherjee, counsel
Mr. K. C. Saha, counsel

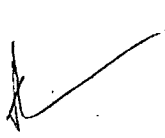
For the Respondents: Mr. P. K. Arora, counsel

Heard on 8.6.1998 & 11.6.1998 : : Date of order: 11.6.1998

O R D E R

The applicant having been retired from service from the
Department of Mining and Allied Machinery Corporation of India
Ltd., Durgapur (MAMC in short) which is a Government of India
Undertaking has approached this Tribunal by filing this
application for having a direction upon the respondents to grant
him pro-rata retiral benefits including DCRG for the period of

service rendered by him in the Railway from 27.6.1955 to 14.12.1969 before joining as Accountant in Bharat Aluminium Co. Ltd., Korba (BALCO in short), which is also a Government of India Undertaking, after tendering resignation from the Railway service with effect from 14.12.1969(AN). According to the applicant, he joined in the Railway service under Eastern Railway in the capacity of Clerk Grade-II under the control of the Dy. Chief Accounts Officer (Traffic Accounts) on 27.6.58. Thereafter he was promoted to the post of Clerk Grade I on substantive capacity and worked in that capacity upto 14.12.1969. While he was working as Clerk Gr.I he had applied for the post of Accountant in BALCO, Kobra through proper channel. The applicant also submitted that before joining BALCO he had submitted his resignation and his resignation was also accepted by the authority by a letter dated 12.12.1969 and after acceptance of the resignation he was released from the Railway Department on 14.12.1969(AN). It is alleged that although he had tendered resignation as a condition precedent to join new assignment, he was allowed to hold lien in his parent organisation as admitted by the Railways in their communication dated 28.8.1978 (Annexure/A2 to the application) and it is also stated that after serving about four years in the BALCO, the applicant has again been appointed as Senior Accounts Officer in MAMC, Durgapur on his own volition from the BALCO and there from he retired voluntarily with effect from 31.1.1994. According to the applicant, since he tendered resignation and that has been accepted by the authority after having lien for two years in BALCO which is a Government of India Undertaking, he is entitled to get pro-rata pension from the parent Department i.e., from the Railway Department and that has been denied to the applicant by a letter dated 5.6.95 (Annexure/A1 to the application) stating the reason which runs as follows:



"The case has been examined in consultation with Associate Finance of Ministry of Railways and it has not been agreed to grant pro-rata retirement benefits to Sri A.K. Sanyal as he had joined BALCO only as a fresh entrant i.e., neither on deputation, nor with lien retained on the railways."

Feeling aggrieved and dissatisfied by the said order dated 5.6.95 he has filed this application before this Tribunal for getting appropriate relief.

2. The case of the applicant is resisted by respondents by filing a written statement. They have denied the claim of the applicant stating inter alia that the application is not maintainable and the applicant is not entitled to get any relief in this case as it is barred by law of limitation. It is also alleged that the applicant served BALCO purely on temporary basis and he was never absorbed in BALCO on permanent basis and he was never a deputationist also. This fact was confirmed by the Administrative Officer, BALCO vide his letter dated 21/23.9.78 (Annexure/R4 to the reply) and the matter has been referred to the Railway Board through CPO, Eastern Railway so that the specific reason may be arrested by a modified order and the matter is now under reconsideration of the Railway Department, but the applicant has failed to fulfil the most essential condition to make him eligible to get the pro-rata retirement benefit in respect of service rendered by him in Railway for the period from 27.6.58 to 14.12.69 which is the condition of permanent absorption in public sector undertaking, as per Railway Board's letter in para 2 of the CAG's letter. It is also mentioned in the supplementary reply by the respondents that the applicant did not apply through proper channel and he quitted the service voluntarily and thereby he is not entitled to get any pension though he rendered the service for more than 10 years before leaving Railways for joining in BALCO. So, the application should be dismissed.

3. Mr. Mukherjee, learned counsel strenuously argued before me that the applicant applied through proper channel and his

resignation was accepted by the authority by a letter dated 12.12.69 and his lien was also maintained by the authority for two years on his resignation from the Railway Department and he relies on the letter at Annexure/R4 to the reply written by Dy. Chief Accounts Officer (TA), Eastern Railway, 14, Strand Road, Calcutta addressed to M/s Bharat Aluminium Co. Ltd., Korba (MP). Relying on the said letter he submits that reasons assigned for denial of the pension is not acceptable since the applicant applied for retention of his lien with the Railways for a period of two years from 15.12.69 to 14.12.71 and the same was granted but the letter dated 15.6.95 (Annexure/A1 to the application) clearly indicates that the claim of the applicant was refused on the ground that the applicant was neither sent on deputation nor with lien maintained with the Railways. Since the applicant maintained his lien with the Railway Department as per letter dated 28.8.78, Annexure/R4 to the reply, the applicant is entitled to get pro-rata pension for the service rendered in the Railway Department as permanent Government employee irrespective of the fact whether he was absorbed in the BALCO which is a Government undertaking because his resignation shall not entail forfeiture of past service since the applicant went to BALCO through proper channel. So, he is entitled to get pro-rata pension on acceptance of resignation. Mr. Arora, learned counsel appearing on behalf of the Railway Department has drawn my attention to the circular letter dated 12.6.1978, Annexure/A4 to the application and also Rule 24 of the Indian Railway Establishment Code Vol.I, 5th Edition, 1985 and submits that the applicant did not apply for the post in BALCO through proper channel and he voluntarily resigned from the service and that has been accepted by the authority. Moreover, he further submits that in view of the Railway Ministry's decision contained in the notification No. E(NG)II/69-AP.19 dated 7.3.1975 below Rule 244, the applicant is not entitled to get the benefit of pro-rata

pension since he was not absorbed in the BALCO on permanent basis and thereby he is not entitled to get any benefit. The said notification runs as follows:

"The lien of a permanent Railway servant appointed under another Central/State Government or office may be retained on the Railway for a period of two years (three years in exceptional cases). If he is permanently absorbed within this period in the new post, he should immediately on expiry of the said period, either resign from the Railway service or revert to his parent office. Applications should be forwarded only if an undertaking to abide by these conditions is given by the staff concerned."

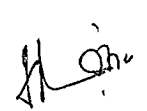
According to Mr. Arora since the applicant neither applied through proper channel nor given any undertaking to abide by the condition in such notification, thereby, he is not entitled to get any benefit of pro-rata pension, as claimed in the application.

4. In view of the divergent arguments advanced by the parties, it has to be considered first whether the applicant is entitled to pro-rata pension from the Railway Department on his resignation which was accepted vide letter dated 12.12.69, as submitted by him. It is well settled that a Government servant quitting service on resignation voluntarily will not be entitled for any pension, gratuity or terminal benefit etc. but when the Government servant applied for a post in the same or other Department through proper channel or with the consent of the employer ^{or in Public interest} then he is entitled for pension under the rules treating that resignation as a technical formality. Mr. Mukherjee at the time of hearing has produced the letter of acceptance of resignation dated 12.12.69, though it was not submitted along with the original application. However, in the interest of the justice I accept the same for consideration. On a perusal of the said letter it is found that the resignation was accepted with effect from 14.12.69(AN) with the approval of Dy. CAO (TA). On a careful consideration of the said letter it is found that the resignation was accepted by the authority before joining of the

applicant in the Department of BALCO by an order dated 12.12.69. But it is curious to note that the said resignation dated 12.12.69 does not say, the applicant was allowed to maintain lien or the applicant claimed lien or it was accepted for allowing him to join in the new post in this case. It is found from Annexure/R4 to the reply that the applicant applied for retention of the lien with the Railway for a period of two years from 15.12.69 to 14.12.71 and the same was granted. Mr. Mukherjee also could not produce the letter or resignation tendered by the applicant to show that he applied for lien on resignation and he applied through proper channel.

5. Mr. Mukherjee, learned advocate has drawn my attention to the judgment reported in AIR 1987 SC 2135 - State of Gujarat, Appellant vs. Akhilesh C. Bhargav and others. Referring to the said decision Mr. Mukherjee submits that the applicant was kept on probation for two years in the Department of BALCO, thereby he should be deemed to have been confirmed in the Department on the expiry of two years. But in this case, whether the applicant was kept on probation in the BALCO is not relevant here for the purpose of granting pro-rata pension. For granting pro-rata pension it is to be seen whether the applicant has submitted the application through proper channel and whether his resignation was accepted by the authority enabling him to join in the borrowing Department. The rule referred to above by Mr. Arora clearly envisages that a Railway servant who is selected for a post in a Central Public Sector Enterprise/Central Autonomous Body on his application through proper channel will be released only after obtaining and accepting his resignation from Government service. Such resignation enabling to join a new post will not entail forfeiture of the service for purpose of retirement/terminal benefits. In such cases, the Government servant shall be deemed to have retired from service from the date of such resignation and he will be eligible to receive all

retirement/terminal benefits as admissible under the relevant rules applicable to him, in his parent organisation. On a perusal of the said letter of acceptance it is found that the authority decided to accept the resignation with effect from 14.12.1969 and that resignation has become effective on 14.12.1969. Since the applicant failed to prove that he applied through proper channel and his resignation was accepted enabling him to join in the borrowing Department by any specific order except departmental communication which is not passed on proper file, I am of the view that he is not entitled to get any benefit of pro-rata pension in view of the rule 2433 of Indian Railway Establishment Coode, Vol.II. So, the application is devoid of merit and hence it is dismissed awarding no costs.


(D. Purkayastha)

MEMBER (J)

11.6.1998