

said order and was expecting that his legal dues would be sent to his Home address where the removal notice was sent but the respondents did not settle all the settlement dues of the applicant. According to the applicant, under para 6.01 of Railway pension scheme applicable to the applicant he is entitled to get pension from the Department since he was removed from the service for unauthorised absence from duty without attributing stigma of misconduct in the order of removal. Thereby he is entitled to get all pensionary benefits under the scheme framed for Railway servants.

2. The respondents filed written reply denying the claim of the applicant and it is stated by the respondents that he was removed from Railway service with effect from 29.9.76 under the D & A Rules for unauthorised absence from duty from 7.7.1975 to till dated of removal dated 29.9.1976 and as such he is not entitled to any benefit including pension. For DCRG etc. except his own provident fund contribution and for refund of security deposit money, the staff concerned has to apply in a prescribed form named as hypothecation form, which he failed to do so. He is entitled to payment of provident fund money which have been arranged for payment. It is stated by the respondents that for his unauthorised absence he was served with a chargesheet and he was ultimately removed from service for allegation of unauthorised absence. Therefore, he is not entitled to get any pensionary benefits as per pension rules and the application is devoid of merit and liable to be dismissed.

3. Mr. Chatterjee, learned advocate has drawn our attention to the pension scheme for Railway under the Eastern Railway and submits that in view of para 6.01 of the said pension scheme for Railway servants which is applicable to the applicant at the relevant period the applicant is entitled to get pension even for removal from service. Referring to the said para 6.01 of the said pension scheme Mr. Chatterjee has drawn our attention to the

removal order which indicates that the applicant was removed from service not attributing misconduct. The case of the learned advocate is that since the applicant was not attributed with any misconduct for unauthorised absence; therefore, he is entitled to get pension and that pension cannot be denied to him.

4. Mr. Arora, learned advocate appearing on behalf of the respondents contended that the applicant is not entitled to get any pension under the Pension Rules, 1993 since the applicant was removed from service for unauthorised absence which amounts to misconduct. Therefore, he is not entitled to get any pension under the Rules..

5. We have considered the submissions of the learned advocate of both the parties. It remains admitted fact that a chargesheet has been issued vide letter dated 15/17.9.76 against the applicant for unauthorised absence from duty. We have gone through the letter dated 15/17.9.76, Annexure 'A/1' where it is held that "you are guilty of absenting yourself from duty from 7.7.1975 without any authority, you shall be removed from service as a disciplinary measure and the same will take effect from 27.9.76." It is also found that the order of removal took effect from 27.9.1976, as the applicant did not prefer any appeal against the order of removal and therefore, the order of removal from service had been final. Now the question is when the applicant is entitled to get pension in view of para 601 of the scheme framed for pension for Railway servants. Mr. Arora, learned advocate contended that since the applicant remained in unauthorised absence from duty; therefore, it amounted to misconduct and removal order has been issued accordingly. So, he is not entitled to get any pension. It is clear that the Pension Rules, 1993 is not applicable to the applicant since the applicant had been removed from service in the year of 1976 and th Pension Rules, 1993 came into effect long after removal of the applicant. So, there is no doubt in our mind that the

applicant's case will be governed by the old pension scheme of Railway servants. Para 6.01 of the said pension scheme runs as follows :

"Resignation of the public service, or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination entails forfeiture of past service."

Para 6.04 of the said pension scheme runs as follows:-

" An interruption in the service of a Railway servant entails forfeiture of his past service except in the following cases :-

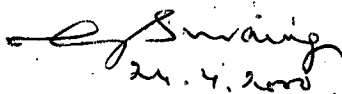
a) Authorized leave of absence.

b) Unauthorized absence in continuation of authorized leave of absence so long as the office of the absentee is not substantively filled; if his office is substantively filled, the past service of the absentee is forfeited;"

It is found that no finding has been made by the disciplinary authority to the effect that his unauthorized absence amounted to misconduct. So, the expression of the word 'misconduct' is found absent from the order of the disciplinary authority by which the applicant has been removed from service. Therefore, in order to bring the case of disentitlement of pension on removal from service, the respondents must bring out the case within meaning of misconduct. In the chargesheet also the respondents did not attribute that the applicant is guilty of misconduct. No finding to the effect of misconduct for the applicant's removal has been made, therefore, it can be said that the applicant was not removed from service for misconduct. Since the applicant was not removed for misconduct by the disciplinary authority, under the old schemes for pension for Railway servants he is entitled to get pension. The respondents in the written statement did not disclose under what provision of the rules the applicant would not be entitled to get any pensionary benefit as claimed in the application. In the absence of that, he will be entitled to pension. The principle of law laid down in the case reported in 1995(1) ATJ 85 (Umesh Prakash vs. Union of India) will squarely

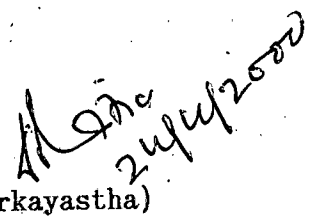
apply in this case. It is stated by the learned advocate that during the pendency of the case the applicant has been paid provident fund dues which was admissible to him, but he has not been granted the benefit of pension as claimed by him. Regarding limitation, we are of the view that the question of limitation would not be applied in this case because the denial of pension is concerned with the livelihood of the employees. Since it is apparent that it is a belated application, we are of the view that the grievance of the applicant would be met, if we direct the respondents to grant pension to the applicant from the date, when he filed this application before the Tribunal. The applicant would not get arrears of pension for the period before the date of filing this application.

6. Under the facts and circumstances stated above we are of the view that the applicant would be entitled to be considered for pension, as he rendered more than 10 years' qualifying service from the date of appointment till the date of removal. This exercise should be done by the respondents within a period of three months from the date of communication of this order and the applicant should be paid pension in view of the observation made above. With the observation the application is disposed of awarding no costs.


24.4.2000

(G. S. Maingi)

MEMBER (A)


24/4/2000

(D. Purkayastha)

MEMBER (J)