

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. 1152 of 1996

Date of order: 19.9.01

Present : Hon'ble Mr. D. Purkayastha, Member (J)

Hon'ble Mr. S. Biswas, Member (A)

Ashok Kumar Mitra,  
Dy. Manager,  
M/s Burn Standard, Howrah,  
R/o 13/1/1, Dr.P.K.Banerjee Road,  
P.O. PS Howrah

vs

1. Union of India through the General Manager, E.Rly. Calcutta-1
2. General Manager, E.Rly. Calcutta
3. Chief Personnel Officer, E.Rly.
4. Chief Works Manager, E.Rly. Liluah
5. FA & CAO, E.Rly. Calcutta-1

..... Respondents

For the applicant : Mr. B.C.Sinha, Counsel

For the respondents : Mr. P.K.Arora, Counsel

O R D E R

D.Purkayastha, J.M.:

The question before us for decision is whether the applicant after rendering service for about 16 years under the railways and subsequently absorbed in the Public Sector Undertaking i.e. Burn Standard Co., is entitled to get the benefit of pension under the Railway Pension Rules for the period of his railway service.

2. The applicant was initially appointed as an Apprentice Mechanics on 21.1.66 in the Eastern Railway at Jamalpur. On successful completion of training, he was appointed as a Trainee Chargemen, C (Welder) w.e.f. 28.7.71 in the scale of Rs. 205-280/- against 80% quota. He was to remain on probation for one year vide annexure-A2 dt. 27.7.71. The applicant was transferred as Chargeman, C (Welder) from Jamalpur to Liluah as per order dt. 8.11.73 as per annexure-A3. Thereafter, the name of the applicant was forwarded by the respondent authorities to the Chairman of M/s Burn Standard Co. Ltd. as per latters request for being appointed there

on deputation basis. The applicant having been selected, he was released from his Liluah office w.e.f. 14.7.81 on deputation (annexure-A5). Accordingly, he was appointed as Supervisory Engineer under the Burn Standard Company, a Govt. of India Undertaking, w.e.f. 14.7.81 on deputation basis. As per rules, the pension and leave salary contributions were also paid by the borrowing department to the railways from time to time and finally the applicant was permanently absorbed in the said Undertaking w.e.f. 14.8.83 and his lien was also severed from his parent office from that date. The applicant also submitted his technical resignation which was accepted by the railway authorities as per office order dt. 7.10.83 w.e.f. 13.8.83.

3. The grievance of the applicant is that though he is entitled to pension as per rules for the service rendered by him under the railways for which he made several prayers but the same were rejected. Being aggrieved, he filed an OA before this Tribunal earlier being OA No. 501 of 1995 which was disposed of on 7.2.96 by directing the respondent authorities to consider the representation of the applicant and to pass a speaking and reasoned order. In compliance thereto, the respondent No. 4 i.e. Chief Works Manager, Liluah, has passed a detailed order 5.6.96 which is under challenge in the present OA.

4. In the impugned order dated 5.6.96, the respondents have rejected the claim of the applicant for pensionary benefits mainly on the ground that before his absorption in the Public Sector Undertaking, he was not confirmed in any post under the railways and therefore, he is not entitled to any pensionary benefits under the rules.

5. No written reply has been filed by the respondents. However, Mr. P.K.Arora, 1d. counsel for the respondents has argued the case on behalf of the respondents.

6. According to the 1d. counsel for the applicant, confirmation is not a pre-condition for sanction of pension under the Railway Pension Rules and therefore, the railways cannot deny the legitimate claim of the applicant for pension for the period he rendered service

under the railways. He has also stated that the applicant was appointed initially on probation for one year and even though no formal confirmation order was issued, he should be deemed to have been confirmed as he was allowed to continue thereafter. It is also contended that so long the applicant was on deputation, his pension and leave salary contributions were also regularly deposited with the railways as per rules and he was retaining his lien in the railways. Therefore, from the date of his initial appointment in the railways till his absorption in the Public Sector Undertaking on 14.8.83, he was a railway employee and had rendered more than 10 years service and, therefore, he is entitled to pension on pro rata basis as per rules.

7. Mr. P.K.Arora, on the other hand, has reiterated the reply given by respondent No. 4 in his speaking order to defend the action of the respondent authorities to deny pension to the applicant.

8. We have considered the matter very carefully. The basic facts are not in dispute. It is not disputed that the applicant was initially appointed as an Apprentice and thereafter he was appointed as a Trainee Chargeman, C (Welder) w.e.f. 28.7.71 against 80% quota and his probationary period was fixed for one year only. He worked under the railways till he was sent on deputation w.e.f. 14.7.81 and he was finally absorbed there w.e.f. 14.8.83 after his technical resignation was accepted by the railway authorities w.e.f. 13.8.83. It is claimed by the applicant he has rendered service from 21.1.66 to 13.8.83 which is more than 10 years and hence under the rules he is entitled to pension for the aforesaid service.

9. From rule 20 of Chapter III of Railway Services (Pension) Rules, 1993, we find that qualifying service for the purpose of pension commences from the date a railway servant assumes charges of the post to which he is first appointed either substantively or in an officiating or temporary capacity, provided that officiating or temporary service is followed without interruption, by substantive appointment in the same or another service or post. It is not in

dispute that the applicant was appointed as a Trainee Chargeman after successful completion of apprenticeship training w.e.f. 28.7.71 against 80% quota. He was placed on probation only for one year which was not extended nor any confirmation order was issued. The respondents have denied the claim of the applicant for pension only on the sole ground that he was not confirmed before his absorption in the Public Sector Undertaking. We are unable to sustain this stand of the respondents. Unless a person holds a post in substantive capacity he cannot be sent on deputation in public interest and during the period of his deputation, he retains his lien under the rules in his parent department. In the absorption order also it is clearly mentioned that his lien was being severed on absorption. From the rule mentioned above, we do not find anything that for being eligible to get pension, an employee has to be confirmed in a post. Even temporary employees are eligible for pension if he has rendered more 10 years service.

10. In this context, it will be useful to refer to the decision of the Hon'ble Apex Court in the case of Praduman Kumar Jain -vs- UOI reported in 1994 SCC (L&S) 1149. In that case the appellant was directly appointed through UPSC and served for about 13 years under the Govt. and resigned in order to join a Public Sector Undertaking. He was denied pension on the ground that he was not confirmed before his resignation. The Hon'ble Apex Court held that the appellant was entitled to pro rata pension with 12% interest relying on rule 13 of CCS(Pension) Rules, which is pari materia with rule 20 of Railway Pension Rules referred to above.

11. Ld. counsel for the applicant has relied on the decision of Principal Bench of the Tribunal in T.S.Assudani -vs- UOI case reported in (1990) 12 ATC 583 wherein it was held that no explicit confirmation order was needed when the petitioner had served for more than 20 years and he was thus entitled to pension. A reference has also been made to DOPT OM dt. 30.12.80 and Pension Deptt. OM dt. 14.4.87 and it was observed that previously pension was admissible only to permanent Govt. employees but now even temporary employees with 10 years

service are entitled to pension. It is also contended by the 1d. counsel for the applicant that even though the applicant was not confirmed, he ought to have been declared as quasi permanent after serving for more than three years as per rules, which was also not done and for the laches of the authorities, the applicant cannot suffer. He has also contended by relying on certain other decisions that after completion of probationary period, a probationer is automatically confirmed unless his probationary period is extended or he is discharged for any misconduct. We need not discuss this point any further as there are divergent views on this point. In any event; it is not in dispute that the applicant has rendered more than 10 years service under the railways either in temporary or officiating capacity and therefore he should be deemed to be a quasi permanent railway employee, if not a permanent employee, as contended by the railways.

12. For the reasons stated above, we are of the opinion that the applicant is entitled to pension on pro rata basis including other retiral benefits as admissible for the service rendered by him under the railways upto the date to his permanent absorption in the Burn Standard Company, which is a Govt. of India undertaking. The application is accordingly disposed of with a direction to the respondent authorities to sanction and pay to the applicants pension and other retiral benefits as admissssible under the rules for the period he served under the railways i.e. from the date of his initial appointment till the date of his permanent absorption in the public sector undertaking. The order be complied with within three months from the date of communication of this order. The applicant shall cooperate with the authorities so that the order is complied with within the time limit prescribed. No costs.

*S. Biswas*  
(S. BISWAS)

MEMBER(A)

*D. Purkayastha*  
(D. PURKAYASTHA)  
9/9/2001

MEMBER(J)