

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,

J O D H P U R

Date of order : 19.5.1998.

O.A.No. 318/1997.

Harbhajan Singh S/o Shri Keshar Singh aged about 66 years, R/o Vill. Alawda, Teh. Ramagarh, Distt. Alwar, Rajasthan, last employed on the post of in the office of Cabinman at Churu Railway Station, Northern Railway.

..... Applicant.

Vs.

1. The Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Accounts Officer, Northern Railway, Bikaner Division, Bikaner.
3. Divisional Personnel Officer, Northern Railway, Bikaner Division, Bikaner.

..... Respondents.

•••••

CORAM :

HONOURABLE MR. A. K. MISRA, JUDICIAL MEMBER

•••

Mr. J.K. Kaushik, counsel for the applicant.

Mr. Jagdish Vyas brief holder for Mr. V.D. Vyas, counsel for the respondents.

•••••

BY THE BENCH :

The applicant has filed this OA with the prayer that the respondents be directed to revise the Pension Payment Order dated January 1994 (Annex.A/1) by incorporating the date of retirement of applicant as 31.12.1991 and revise

2/11/

2

the pensionary benefits i.e. arrears of pension, gratuity, commutation, leave encashment etc. accordingly. Applicant be also allowed interest at market rate. The applicant has further prayed that respondents may be restrained from ~~recovering~~ the damage rent etc. for the quarter held by him after his retirement.

2. Notices of the OA were issued to the respondents who have not filed their reply inspite of many opportunities. Today again, time is being sought for filing the reply. But in view of the ordersheet dated 7.4.1998 I ~~had~~ refused to adjourn the case for filing reply. Arguments of both the parties were heard.

3. It is alleged by the applicant that he was initially appointed on the post of Gangman on 13.5.1956 and thereafter continued in service till his retirement. He has stated that date of birth in the service record has been mentioned as 30.06.1932. He being an illiterate person is not aware of actual and correct date of birth. It appears from the C.A. that actually as per the date of birth, the applicant should have been superannuated on 30.6.1990 but for certain administrative lapse, he continued to be in service right up to 31.12.1991. It is on the basis of the date of retirement i.e. 31.12.1991, the applicant is claiming revised pension and pensionary benefits as per the last pay drawn.

J.M.

.3.

4. It was argued by the learned counsel for applicant that applicant has rendered his services up to 31.12.1991 therefore, his pension and other pensionary benefits should be calculated as per the last pay drawn during the last ~~ten~~ months of his service carrier. This contention of the learned advocate has been repelled by the learned counsel for the respondents on the ground that the natural date of superannuation of the applicant was 30.6.1990. If for certain reasons or due to some administrative lapse, the applicant has continued for another year and a half, that does not entitle him to revised pension as per the arguments advanced by the learned counsel for applicant. He has also argued that applicant has been sanctioned pension as per rules and keeping in view his last pay and the pay drawn during last ten months of his service carrier i.e. up to 30.6.1990. He has also been paid all pensionary benefits accordingly. Therefore, the OA has no force.

5. I have considered the application and perused the record. Since the applicant has not come out with a case of his date of birth being different than what is recorded in his service book, therefore, in my opinion for all service matters, his date of superannuation shall have to be calculated on the basis of the date of birth entered in service record. This has been done by the Railways as is cleare.

Jan

.4.

from the Pension Payment Order (Annex.A/1). The period of service which the applicant has rendered to the respondents from 1.07.90 till 31.12.1991 can at the most be taken to be a period of deemed extension because the applicant was actually ^{to}retired on 30.6.90 but due to some administrative lapse, continued till 31.12.91. Therefore, in my view, the pay of last ten months of the year 1991 cannot form basis for calculation of pension and pensionary benefits. The prayer of the applicant in this respect is without any force, hence, arguments of learned counsel for applicant deserves to be rejected.

6. The learned counsel for applicant has also argued that the Railways has not provided him Passes as per his entitlement. But there are no detailed averments as to when the applicant applied for Railway Passes and when the same were refused, therefore, the prayer in this respect being ambiguous, is not liable to be granted.

7. The learned counsel further argued that the Railway authorities are proceeding to recover the Damage Rent from the applicant, treating his actual date of retirement, as calculated on the basis of date of birth, on the basis of un-authorised occupation of Railway quarter up to the date of vacation. Therefore, applicant is entitled to a declara-

9/11

•5•

tion that up to the date of his retirement i.e. 31.12.91, his occupation should be treated as authorised. The learned counsel for the respondents has opposed this argument on the ground that the applicant should have vacated the quarter within the prescribed period as allowed by rules after 30.6.1990. Thereafter, on expiry of the prescribed period, the applicant can only be treated as an un-authorised occupant and is, therefore, liable to pay damage rent.

8. I have considered the rival arguments. In my opinion if the Railways had for some reason or the other retained the applicant on duty role up to 31.12.1990 and has paid to him salary for that period, therefore, by no stretch of imagination, applicant can be said to be in an unauthorised occupation of the Government accommodation. Had the applicant been retired on 30.6.1990, he would have been an un-authorised occupant after expiry of the permissible period but this is not the case here. The applicant continued in service up to 31.12.91, therefore, he had no occasion to imagine that he was living un-authorisedly in the quarter. It also does not appeal to reasons that if the applicant was actually serving the Railway up to 31.12.91 he would be living un-authorisedly in allotted the Railway quarter. Therefore, the prayer of the applicant

Jan

deserves to be accepted on this count. In my opinion, the applicant was entitled to retain the Railway quarter up to 31.12.1991 when the Railway authorities after discovering the mistake, retired him finally. Thereafter, the applicant could retain the quarter for another period of four months as a retired Government servant, who are entitled to retain Government accommodation up to four months after retirement. The applicant has actually vacated the quarter as per the allegations in the O.A. on 8.4.1992, therefore, it can be concluded that he had vacated the quarter within the period prescribed under the rules for vacating the quarter by a retired Government servant. The respondents, therefore, cannot proceed to recover any damage rent from the applicant. The arguments of the learned counsel for applicant deserves to be accepted and are hereby accepted.

9. As per the foregoing discussion, the O.A. is liable to be accepted in part.

10. The O.A. is therefore, partly accepted. The respondent are hereby directed not to realise from the applicant any use and damage rent for occupation of the Government accommodation which he had vacated on 8.4.1992. If any amount has been recovered from the applicant on this count that should be refunded without interest and if for safe-guarding the

mm

(12)

recovery of damage rent if any amount has been withheld, out of the pensionary benefits of the applicant, by the Railway authorities that should be refunded to the applicant with simple interest @ 12% p.a. from the date it was due for payment till the date it was actually paid, forthwith and in any case not later than two months from the date of issue of this order. Rest of the prayers of the applicant are rejected. The parties are left to bear their own costs.

J.M.
(A.K.MISRA)
Judicial Member

• • •

MEHTA

PL
Parasuram for Mr. P.D. Myers
27/5/98

Copy of order
Sent to Counsel
for per 24
regd AP 219
vide 11
obt 03.6.98
2/6/98

Part II and III destroyed
in my presence on 17.3.2003
under the supervision of
Section Officer () as per
order dated 31.12.2003

Section Officer (Record)