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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 131/99
T.A./No.

1999

DATE OF DECISION 27.08.1999

BHARAT SINGH

Petitioner

{ APP LICANT IN PERSON
(MR. MAHESH KUMAR, ADV.)

Advocate for the Petitioner (s)

Versus

UNION OF INDIA & OTHERS

Respondent

--

Advocate for the Respondent (s)



CORAM :

The Hon'ble Mr. A. K. Misra, Judicial Member

The Hon'ble Mr. --

1. Whether Reporters of local papers may be allowed to see the Judgement? *NO*

2. To be referred to the Reporter or not? *YES*

3. Whether their Lordships wish to see the fair copy of the Judgement?

4. Whether it needs to be circulated to other Benches of the Tribunal? *NO*

On
(A. K. MISRA)
Jud 1. Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
JODHPUR

DATE OF ORDER : 27.8.99

O.A. No.131/1999

Bharat Singh S/o Late Shri Hamir Singh, Retired Senior Clerk, Mechanical Branch, Divisional Office, Northern Railway, Bikaner, Residential Address : Near Daga School Bikaner (Rajasthan) 334 005.

..... Applicant.

Versus

1. Union of India through General Manager, Northern Railway, Headquarter, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Bikaner (Raj) 334 001.
3. The Senior Divisional Personnel Officer, Northern Railway, Divisional Office, Bikaner (Raj) 334 001.
4. The Divisional Accounts Officer, Northern Railway Divisional Office, Bikaner (Raj) 334 001.

..... Respondents.

CORAM

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

.....
Applicant present in person.
Mr. Meheesh Kumar, Advocate, present for the applicant.

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BY THE COURT :

In this O.A., the applicant has prayed for quashing the respondents order dated 29.4.1999 (Annex. A/1). He has also prayed that the Pay and Pension of the applicant be ^{correctly} refixed w.e.f. 1.1.1986 and the applicant be awarded actual monetary benefits with interest at the rate of 18%.

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2. I have heard the learned counsel for the applicant at the stage of admission-hearing and considered the O.A.

3. In order to appreciate the claim of the applicant, few bare facts are required to be given. The applicant, who was borne on 2.7.1932, was appointed by the respondents w.e.f. 7.10.1949. Thereafter, the applicant remained in continuous service of the respondents. The applicant voluntarily retired from Railway service w.e. 1.3.1978 as per the then prevailing Railway Board's Standing Order P.S.No. 6902 dated 9.11.1977 (Annex.A/3) The applicant, who had by that time completed more than 28 years of service, was granted weightage of additional five years of qualifying service restricting it up to 30 years of qualifying service, as mentioned in Railway Board's Circular Annex.A/3. It is alleged by the applicant that the Railway issued another Standing Order P.S.No. 8440 dated 9.11.1983 (Annex.A/4) mentioning therein that in case of voluntary retirement, weightage of additional five years of qualifying service be given up to 33 years but the applicant was not granted this benefit and his pay and pension was wrongly fixed. On representation by the applicant, the relief claimed was not granted and he was informed vide Annex.A/1 date 29.4.1999 that he is entitled for computation of pension on the basis of maximum qualifying service restricted to 30 years.

4. The applicant has claimed the relief on the basis that liberalised pension scheme which came into

Onwards

effect subsequently, was fully applicable to the applicant and his pension is required to be re-calculated and fixed computing his service up to 33 years by giving weightage of 5 years.

5. I have considered the arguments which were advanced as per the pleadings. In my opinion, the benefit of weightage of 5 years computing the qualifying service up to 33 years, as mentioned in Railway Board's letter dated 9.11.1983 (Annex.A/4) is not applicable to the applicant as he had retired much prior to the date this Circular came into effect. In Clause 6 of Circular dated 9.11.1983 (Annex.A/4), it is mentioned that "these orders will take effect from 10.9.1983". If the Railway Board had intended to extend the benefit of computation of weightage of 5 years of qualifying service extending up to 33 years to the persons retired earlier than the implementation of this Circular, then the Circular would have contained a Clause that this benefit shall be available to the retired persons also but this is not so. Without any specific clause extending the benefit to the already retired persons, the benefit of computation of qualifying service up to 33 years cannot be deemed to have been extended to the earlier retirees. The benefit should be found to have been extended by specifically mentioning the same. Such benefits cannot be deemed to have been granted to the earlier retirees by deriving an analogy on the basis of benefits granted to subsequent retirees.

5. The applicant had sought voluntary retirement in

9/2/1984

terms of Railway Board's Circular dated 9.11.1977 which provided that allowing the weightage of five years of qualifying service shall not, in any event, exceed 30 years of qualifying service. The pension of the applicant was worked-out and paid on the basis of the aforementioned clause of the scheme. Subsequent fixation of pension etc. has also been done keeping in view the new pay scale and the terms of voluntary retirement prevailing at the time of applicant's voluntary retirement. Without any clause for retrospective effect of implementation of allowing the weightage of five years ~~extending the qualifying service up to 33 years~~ in the Railway Board's Circular of 9.11.1983, the applicants pay and pension cannot be calculated by the ~~in the manner~~ respondents as claimed by the applicant. In my view, the applicant is not entitled to claim the benefit of weightage of qualifying service up to 33 years as the same is only applicable to persons retiring on or after 10th of September, 1983 and not to the persons who had already retired prior to this date.

6. To claim the benefit of weightage of five years, extending up to 33 years of qualifying service, the learned counsel for the applicant has cited 1983 SCC (L&S) 145 - D.S.Nakara and Ors. Vs. U.O.I., 1999 SCC (L&S) 78 - V.Kasturi Vs. Managing Director, State Bank of India, Bombay and Others and 1998 SCC (L&S) 982 - Dhanraj and Ors. Vs. State of Jammu & Kashmir and Ors.

7. I have gone through the rulings. In my opinion, the rules propounded in these rulings do not apply to

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the instant case because of difference of facts and circumstances. Rules propounded in these rulings are based on different context than the one in hand, therefore these rulings cannot be made applicable in the instant case.

8. The claim of the applicant is ill founded and bears no merit and the Original Application is, therefore, dismissed in limine.

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27/8/99
(A.K.MISRA)
Judicial Member

MEHTA

Copy with O/A Copy & Annotations
Copy of order sent by post to
Respondents Virele —
No 262 to 265
dated 31-8-99.

Received Copy
m/s/vm 2/9/99
from
A/P receiving R 2, R 3 & R 4 as they have
forwarded the copy of order
John Q
6/10/99.