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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO. 10/2003 & M.A. NO.5/2003.

DATE OF DECISION: 8.9.03

Joga Ram Son of Shri Ghisooji Gujar aged about 55 years, Resident of No.2A, Panchavati Colony, Ratnada, Jodhpur, Rajasthan (Ex-Typist from the office of Divisional Railway Manager, North-Western Railway, Jodhpur.

....**APPLICANT.**

V E R S U S

1. Union of India, through the General Manager, North-Western Railway, Jaipur.

2. Divisional Railway Manager, North-Western Railway, Jodhpur, Rajasthan.

3. Divisional Personnel Officer, North-Western Railway, Jodhpur, Rajasthan.

.....**RESPONDENTS.**

Mr. S.K.Malik : Counsel for the applicant.
Mr. Salil Trivedi : Counsel for the respondents.

CORAM:

The Hon'ble Mr. Justice G.L. Gupta , Vice Chairman
The Hon'ble Mr. S.K. Malhtora, Administrative Member

O R D E R

PER MR.JUSTICE G.L. GUPTA:

Through this O.A., the applicant calls in question the letter Annexure – A-1 dated 9.12.2002 whereby his request for the grant of pension was rejected. It is prayed that the respondents be directed to release the pension to the applicant w.e.f. the date of acceptance of his resignation i.e. 8.8.1978 along with interest @ 12% p.a.

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2. The applicant was initially appointed on the post of Hospital Attendant w.e.f. 1.9.1965 in the pay scale of Rs.70-85 p.m. He was promoted to the post of Typist on officiating basis in 1973 in the pay scale of Rs.260-400 p.m. and was allowed increments thereafter. A selection test was conducted for the post of Typist against the promotion quota in the year 1976. The applicant participated in the test and was declared suitable and was placed in the panel vide letter dt. 24.9.1976. He was promoted to the post of Typist on regular basis w.e.f. 25.9.1976. It is stated that due to ill-health the applicant submitted his resignation on 25.7.1978 which was accepted by the respondent NO.3 on 7.8.1978 with immediate effect.

2.1. The case for the applicant is that he had put in 12 years, 11 months and 6 days of service and thus he had rendered more than 10 years of qualifying service and therefore, he was entitled to pension vide para 623 of the Manual of Railway Pension Rules, 1950 (MRPR for short) and Rule 18 of the Railway Services Pension Rules, 1993 (RSPR for short).

2.2. This O.A. has been filed on 20.1.2003 i.e. about 25 years after the acceptance of his resignation, therefore, Miscellaneous Application has been filed for condonation of delay in filing the O.A. It is stated in the M.A. and in the O.A. that the applicant came to know in May/June 2002 through the Railway Federation News (publication) that there is Judicial verdict that an employee resigning after completion of 10 years qualifying service is entitled to pension.

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3. In the counter, the respondents have resisted the claim of the applicant on various grounds. It is stated that this O.A. has been filed 25 years after the date of acceptance of resignation and therefore, is liable to be dismissed being hopelessly barred by time. It is further stated that in terms of para 311 of the MRPR pension cannot be granted as the applicant resigned from service. It is averred that the provisions of Para 623 of MRPR and Rule 18 of RSPR do not entitle the applicant to pension.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. It is admitted position of the parties that the applicant was initially appointed on 1.9.1965. He resigned from Railway service vide his application dt. 27.5.1978 and his resignation was accepted on 7.8.1978. The facts indicate that the applicant had certainly put in more than 10 years of Railway service before his resignation was accepted.

6. The following points arises for determination in this case :-

i) whether by serving Railway for more than ten years, the applicant had a right to get pension ?

ii) If the answer to point No. (i) is given in affirmative whether the applicant can succeed in this matter which has been filed 25 years after resignation.

7. Para 311 of the MRPR 1950 provided that no pensionary benefit were to be granted to a Railway Servant who resigned from service. Para 101 (i) stated in specific terms that pensionary benefits were not admissible to a permanent railway servant who resigned before completing 30 years qualifying service. Admittedly the applicant had resigned from service when the MRPR Rules, 1950 were in force. In

view of the specific provisions in paras 311 and 101 of MRPR the applicant cannot succeed in getting pension.

8. The contention of the learned counsel for the applicant was that the Supreme Court and some Benches of this Tribunal have taken the view that resignation should be treated as retirement where the employee had rendered more than 10 years qualifying service. Mr. Malik cited the cases of i) Smt.Bimla Devi Vs. Union of India & Ors. (1992-2 S.L.J. (CAT) 310), ii) A.P.Shukla Vs. Union of India & Ors. (1996 (2) A.T.J. Vol. 21 pg. 157), iii) Om Prakash Singh Maurya Vs. Union of India & Ors. (O.A. No.353/94 decided by the Lucknow Bench on 14.9.1998 – printed at Sl. No.228 of Swamy's News 1999.

9. On the other hand, Mr. Trivedi urged that the rulings are distinguishable and in view of the specific provisions, the applicant cannot succeed in this case. He relied on the observations of the Supreme Court in the case of Union of India vs. Rakesh Kumar 2001 SCC (L&S) 207.

10. We have given the matter our thoughtful consideration.

11. The Hon'ble Supreme Court in the case of Rakesh Kumar (supra) has made observations on this aspect of the matter that whether an employee, who resigns after putting in more than 10 years of qualifying service, becomes entitled to pension. It was contended before their Lordships that the employees who had resigned after ten years of service are entitled to pension in terms of Rule 49 of the CCS (Pension) Rules and also in terms of provisions of Border Security Act, 1968, and BSF Rules 1969. Their Lordships rejected the claims of the employees on three grounds. One of the

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ground was that quitting service by tendering resignation does not amount to retirement from service. The relevant observations made at Para 16 of the report are reproduced here under :-

> However, this has nothing to do with the quitting of service after tendering resignation. It is also to be stated that Rule 26 of the CCS (Pension) Rules specifically provides that resignation from a service or post entails forfeiture of past service unless resignation is submitted to take up, with proper permission, another appointment under the Government where service qualifies. Hence, on the basis of Rule 49 a member of BSF who has resigned from his post after completing more than 10 years of qualifying service but less than 20 years would not be eligible to get pensionary benefits. There is no other provision in the CCS (Pension) Rules giving such benefit to such government servants."
>
> (emphasis supplied)

12. There being identical provisions on resignation and forfeiture of services at Paras 101, 306 and 426 in MRPR 1950 the applicant's service cannot be said to be qualifying service to entitle him to pension.

13. The case of J&K Cotton Spinning & Weaving Company Ltd., (supra) in our respectful submission does not laid down a law that in all cases the resignation should be treated as retirement.

13.1 The question before their Lordship in that case was whether the workman who had submitted his resignation and when his resignation was accepted, could it be said to be case of retrenchment. Their Lordships held that one of the meaning for 'resignation' is 'retirement' also and hence the acceptance of resignation did not amount to retrenchment and the employee was not entitled to compensation under clause (i) of Section 2(s) of the Industrial Disputes Act, 1947. This ruling does not lay down the law that in all cases resignation should be treated as retirement.

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13.2 The case of Rakesh Kumar (Supra) is directly on the point and on the basis of the observations made therein, it has to be held that a Government servant or Railway servant, if quits the service by resignation, cannot be treated to have retired.

13.3 The other cases relied on by Mr. Malik were decided by the Tribunal on the basis of the decision in the case of M/s J & K Cotton spinning and Weaving Company (supra). In view of the decisions rendered in the case of Rakesh Kumar (Supra), these rulings do not have binding effect. Moreover, in those cases neither it was argued nor decided that whether in the presence of specific provisions in the Pension Rules, the resignation could be treated as retirement.

14. Keeping in view the decision in the case of Rakesh Kumar (supra), it is held that the applicant was not entitled to pension under the MRPR 1950 as he had resigned from service.

15. Apart from that, even on assuming for argument's sake that the resignation amounts to retirement, the applicant cannot get relief in this case, as he had not put in 30 years qualifying service.

15.1 Para 101 of MRPR said that retrial benefits were admissible to all permanent railway servants provided they had put in 30 years qualifying service.

The relevant paras of MRPR 1950 are reproduced hereunder :-

" Para 101

1. The retirement benefits under these rules for a permanent railway servant comprise of two elements viz.

i) (a) ordinary gratuity/pension; and
   (b) death-cum-retirement gratuity; and
ii) family pension.

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The benefits are admissible to all permanent Railway servant except those who are removed or dismissed from service or resigned from it before completion of 30 years qualifying service.

(2) xxxx xxxxx xxxxxxxx

xxxx xxxxx xxxxxxxx

Para 102

102. Ordinary gratuity/pension becomes due on quitting service on account of any one of the following reasons :-

(a) abolition of post ;
(b) Medical invalidation
(c) Retirement on completion of 30 years qualifying service
(d) Superannuation.

No ordinary gratuity/pension is, however, payable if the Railway servant dies while in service. A permanent railway servant who quits service before completion of 10 years qualifying service is given an ordinary gratuity but no pension. Pension is granted only if a permanent Railway servant quits service after completion of at least 10 years qualifying service.

Para 302

""ordinary pension" means the amount payable monthly (under para 624) to a person who has retired from service after completion of 10 or more years of qualifying service.

Para 623

A Railway Servant who has completed less than 10 years of qualifying service is entitled to only a gratuity. Pension is granted to Railway Servants who have completed 10 or more years qualifying service."

16. It was canvassed that the rules clearly provided that on rendering 10 years or more qualifying service a railway servant was entitled to pension.

17. In our opinion, this contention is not acceptable. The provisions cannot be interpreted to mean that in all cases where a

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railway servant renders more than 10 years of qualifying service, he had a right of pension. Under Chapter VI of the Rules of 1950 there were following types of pension :-

a) compensation gratuity/pension.

b) invalid gratuity/pension.

c) superannuation gratuity/pension.

All these pensions come in the category of 'ordinary' pension. The 'ordinary' pension is governed by the Pension Act 1871. Though in the Rules of 1950, there is no reference of pension other than 'ordinary' pension. However, Chapter XXVII of the Railway Establishment Code Vol. II provides that they may be `Wound and other Extraordinary pensions'.

We are concerned with the `ordinary' pension which was payable monthly under para 624 to a person who had retired from service after completion of 10 or more years of qualifying service.

18. We have already read Para 101 where under the pensionary benefit was admissible only on condition that the employee had completed 30 years qualifying service.

19. The question for consideration is how the provisions in Para 101 and 102 and 302 reconcile. Para 302 and 102 said that pension was payable on completion of 10 years qualifying service, while Para 101 said that it was payable only where the employee had completed 30 years of qualifying service. In our opinion, there is no contradiction in the provisions. What was provided was that a Railway Servant could not get pension unless he had rendered more than 10 years qualifying service. This is the general principle. The principle applied to all types of `ordinary' pensions.

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19.1. In the case of 'superannuation pension' it was payable on attaining the age of compulsory retirement, which was 58 years at the relevant time. However, it was payable only when the Railway Servant had rendered at least 10 years qualifying service. Admittedly, the applicant had not attained the age of compulsory retirement when he had resigned. Therefore, he was not entitled to 'superannuation pension'.

19.2. 'Retiring pension' was payable to a Railway Servant who had retired after completing 30 years qualifying service (Para 670) or who had retired voluntarily or was retired compulsorily under the relevant provisions after attaining 55 years of age. Admittedly, the applicant had not retired under those provisions. There could be a case where the employee, though had not rendered 30 years qualifying service, yet retired under the provisions of compulsory retirement on the ground of age. In that situation, he was entitled to pension provided he had rendered 10 years qualifying service. It is not the case for the applicant that he had been compulsorily retired. Therefore, he was not entitled to 'Retiring pension'.

19.3. The case of the applicant also did not come under Para 601 or 608 as he was not discharged due to abolition of post or because of becoming invalid. The Railway Servants discharged under these provisions became entitled to pension on rendering more than 10 years of qualifying service. The applicant did not fall in that category, so he could not get pension even if his resignation is treated as retirement.

20. Learned Counsel for the applicant's contention was under that Para 623 and 624 of Rules of 1950, the applicant was entitled to pension.

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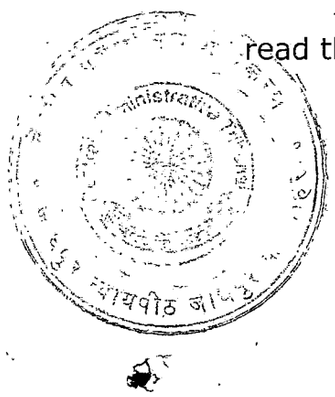
20.1 Paras 623 and 624 do not by themselves create a right of pension. These paras are under the heading `Amount of Ordinary Gratuity/Pensions'. The provisions simply said how the benefits would be calculated on or after 10 years qualifying service.

20.2. In the case of Rakesh Kumar (supra) their Lordships have considered Rule 49 of the C.C.S. (Pension) Rules which is more or less same as Para 623 and 624 of the Rules of 1950. Rule 623 was almost identical to sub rule (1) and sub rule 2 (b) of Rule 49 CCS (Pension Rules). It was contended before the Hon'ble Supreme Court that under Rule 49 of the CCS (Pension) Rules, pension was payable on rendering on 10 years of qualifying service. The contention was repelled. It was observed that Rule 49 is for calculating and quantifying the amount of pension. It is profitable to read the relevant part of Para 16 of the report hereunder :



"On the basis of Rule 49, it has been contended that qualifying service for getting pension would be ten years. In our view, this submission is without any basis. Qualifying service is defined under Rule 3(q) to mean service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these Rules. Rule 13 provides that qualifying service by a government servant commences from the date from which he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. This Rule nowhere provides that qualifying service for getting pension is 10 years. On the contrary, there is a specific provision that if a government servant retires before completing qualifying service of 10 years because of his attaining the age of compulsory retirement, he would not get pension but would get the amount of service gratuity calculated at the rate of half month's emoluments for every completed six-monthly period of qualifying service. In these appeals, we are not required to consider other conditions prescribed for qualifying service as it is admitted that the respondent members of BSF have completed more than 10 years of qualifying service. Further clause (2) (a) of Rule 49 specifically provides for grant of pension if a government servant retires after completing qualifying service of not less than 33 years. The amount of pension calculated at fifty per cent of average emoluments subject to maximum provided

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therein. Clause (2) (b) upon which much reliance is placed indicates that in case of a government servant retiring in accordance with the provisions of the Rules before completing qualifying service of 33 years, but after completing qualifying service of ten years, the pension shall be proportionate to the amount of pension admissible under clause (2) (a) and in no case, the amount of pension shall be less than Rs.375 per month. This would only mean that in case where a government servant retires on superannuation i.e. *the age of compulsory retirement as per service conditions or in accordance with the CCS (Pension) Rules,* after completing 10 years of qualifying service, he would get pension which is to be calculated and quantified as provided under clause (2) of Rule 49. This clause would cover cases of retirement under Rules 35 and 36, that is, voluntary retirement after 20 years of qualifying service, compulsory retirement after the prescribed age and such other cases as provided under the Rules.

(emphasis supplied)

20.3 It is manifest that Para 623 did not create a right to get pension on completion of ten years qualifying service. It only meant that if the right to get ordinary pension arose under 'retiring pension' 'superannuation pension' 'invalid pension' and 'compensation pension' on the basis of ten years qualifying service, the pension would be granted as per the table under Rule 624.

21. Keeping in view the decision of their Lordships in the case of Union of India & ors. Vs. Rakesh Kumar (Supra), it has to be held that the applicant who had rendered 12 years of service on the date of acceptance of his resignation was not entitled to ordinary pension, even if the resignation of the applicant is treated as retirement.

22. That apart, Section 21 of the Administrative Tribunals Act, 1985 provides a period of one year for filing an application. If the claim is not lodged within the stipulated period stated above, satisfactory reasons are required to be shown as to why the O.A. was not filed within the period of limitation. As already stated, in the instant case the application has been filed 25 years after the

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alleged accrual of cause of action. The explanation of the applicant is that in May/June 2002 only he came to know about the verdict of the Tribunal and the Court that in the matter of resignation an employee is entitled to pension.

22.1. In our opinion, this cannot be a valid ground for condonation of delay that the applicant was not aware of his right. In the case of State of Karnataka & Ors. Vs. S. M. Kotravya & Ors. [1996 SCC (L&S) 1488], it has been held that the explanation that the respondents on coming to know that in similar claims relief had been granted by the Tribunal, would not be a proper explanation to justify the condonation of delay. It is profitable to reproduce the observations appearing at para 9 of the report hereunder :-

> "Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-section (1) & (2) of section 21, but they should given explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August, 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under Sub-sections (1) & (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) & (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."
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> (emphasis supplied)

In the instant case, the condonation of delay has been sought only on the ground that the applicant had come to know this decision in May/June 2002. This cannot be a sufficient ground for condonation of delay as has been held by the Apex Court in the case of S. M.

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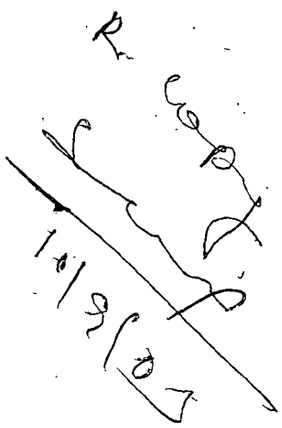
Kotrayya (supra). The OA is therefore, also liable to be dismissed as barred by limitation.

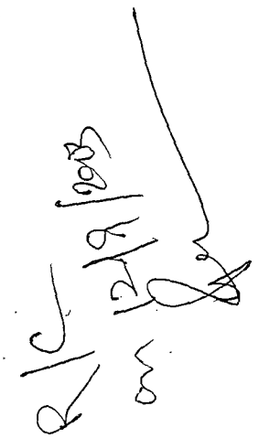
23. For the reasons stated above, we find no merit in this O.A. and dismiss it with no order as to costs. MA also stands dismissed.

(S.K.Malhtora)
MEMBER (A)

(G.L.GUPTA)
VICE-CHAIRMAN

SVS





Part II and III
In my
under
section
order

Section officer (Record)

Part II and III destroyed
In my presence on 24.7.09
under the supervision of
section officer ( ) as per
order dated 8/4/09

Section officer (Record)