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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 90/2003
~~T.A. No.~~ &
M.A. No. 53/2003

~~128x~~

DATE OF DECISION 16.03.2004

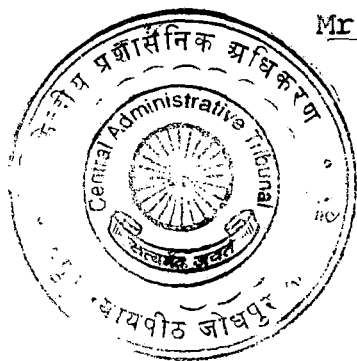
Mangi Lal Bhati Petitioner

Mr. S.K. Malik & Mr. Daya Ram Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. Vinit Mathur Advocate for the Respondent(s)



CORAM :

The Hon'ble Mr. J.K. Kaushik, 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 ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes


(J.K. Kaushik)
Judl. Member

2/8
7/11

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 90/ 2003

&

Misc. Application No. 53/2003

Date of decision: this the 16th day of March, 2004

CORAM:

Hon'ble Mr. J.K. Kaushik, Judicial Member

Mangi Lal Bhati S/O Late Shri Jasraj Bhati aged about 67 years,
R/O 5/6 Chopasani Housing Board, Jodhpur (Rajasthan).
(Ex Clerk from the Office of Dy Chief Mechanical Engineer
(Workshop), North Western Railway, Jodhpur (Rajasthan).

...Applicant

(Rep. By Advocate Mr. S.K. Malik & Mr. Daya Ram,
for the applicant)

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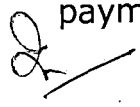
- (1) Union of India through General Manager, North Western Railway (N.W.R.), Jaipur (Rajasthan).
- (2) Deputy Chief Mechanical Engineer (Workshop), North Western Railway, Jodhpur (Rajasthan).
- (3) Assistant Personnel Officer, North Western Railway, Jodhpur (Rajasthan).

...Respondents

(Rep. By Advocate Mr. Vinit Mathur, for the respondents)

ORDER

Shri Mangi Lal Bhati has filed this Original Application assailing the impugned order dated 05.12.2002 at Annexure A/1 and for seeking a further direction to the respondents to release the pension of the applicant with effect from the date of acceptance of his resignation i.e. 01.11.1975 along with payment of arrears with interest @ 12% per annum.





2. With the consent of the learned counsel for the parties, the arguments were heard for final disposal at admission stage. I have carefully perused the pleadings and the records of this case.

3. The undisputed factual scenario of this case as culled out from the pleadings, depicts that the applicant was initially appointed to the post of Key Boy on 03.02.1955 in Carriage Repair (Workshop) at Northern Railway, Jodhpur. He enjoyed his further promotion to the post of Tool Checker (Store Keeper) in group "C" w.e.f. 20.10.1959 and thereafter he became Clerk w.e.f. 15.04.1964. He served the respondent-department upto 31.12.1975 when his services came to an end as a result of his resignation. He completed 20 years and 9 months of service.

4. The applicant submitted an application on 10.07.1998, requesting grant of ex-gratia pension as per the Scheme in vogue which came to be turned down vide communication dated 07.08.1998. Another representation was made on 29.10.2002 for grant of pension in pursuance with the judgements published in Railway Federation News Mar-Apr, 2001 at page 18 of the paper book, the case was turned down vide impugned order dated 05.12.2002 (Annexure A/1), on the ground that ex-gratia pension is not payable in case of resignation.



I/10
4/13

5. The Original Application has been filed on number of grounds mentioned in para 5 and its sub-paras. The main of them is that as per Para 623 of Railway Pension Rule 1950 and para 18 of the Railway Service (Pension) Rules, 1993, a railway servant who has completed 10 years or more of qualifying service is entitled for pension. Resignation amounts to voluntary retirement as per the verdict of the Supreme Court. The action of the respondents is colourable exercise of power etc.



6. As regards the variances it is averred in the reply that the applicant gave his resignation from the railway service on 24th Oct., 1975 and the same was accepted. He was not a pension optee and opted for SRPF (Sic. P.F.) Scheme. The voluntary retirement scheme was for the first time introduced in Railways on 9th November, 1977. The para 623 of MOPR 1950 and another Rule 18 of the Railway Service Rules, 1993 have no application to his case.

7. The learned counsel for the applicant has vociferously endeavoured to persuade the court that applicant submitted an application for voluntary retirement and the same was accepted. He has also submitted that the applicant was never asked to give option for opting the pension scheme. The learned counsel for the applicant has also banked upon that resignation is also a retirement and since the applicant has completed more than 10 years of service he is entitled for the pension as per the pension

I/II
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rules. He also submitted that the subject matter of this Original Application related to grant of pensionary benefits which gives rise to continuing cause of action and therefore the Original Application is within the limitation. However, he also submitted that a Misc. Application has been filed for condonation of delay in the matter. In support of his contention reliance has been placed on the decisions in the case of **A.P. Shukla vs. Union of India and Ors.**; 1996 (2) ATJ 157, **Bimla Devi (Smt.) vs. Union of India and Another**; 1992 (20) ATC 873, **M/s J.K. Cotton Spg. & Wvg. Mills Company Ltd., Kanpur vs. State of U.P. and others**; AIR 1990 SC 1808 and **S.K. Mastan vs. G.M. South Central Railway**; 2003 SCC (L&S) 184.



8. Per contra, the learned counsel for the respondents has opposed the contentions raised on behalf of the applicant. He has made me to travel through the various documents and submitted that it was a pure and simple case of resignation and neither the scheme of voluntary retirement was in existence at the relevant time nor factually any such voluntary retirement was accepted. The learned counsel for the respondents has submitted that the applicant was SRPF (known as CPF) optee and he never opted for pension scheme. Therefore question of grant of any pension to him does not arise. It is also averred that firstly there no specific prayer for grant of ex-gratia pension in the relief clause, secondly, ex-gratia pension is not admissible

2

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in cases where the employee has been dismissed or removed from service or where one has resigned from service, thus the applicant, who has admittedly resigned from service, is not entitled for ex-gratia pension also. The learned counsel for the respondents next contended that the applicant has concealed the material fact from this Tribunal inasmuch as he has not disclosed the resignation letter dated 24th October 1975 and has made a false statement that his voluntary retirement application dated 17th October 1975 at annexure A/2 which was not in fact accepted. The Original Application is otherwise hit by the limitation and no good and sufficient reasons have been made out in the Misc. Application.



9. I have considered the rival contentions put forward by the learned counsel for the parties. At the very outset, I am constrained to observe that the learned counsel for the applicant has tried to twist the factual aspect of the matter so as to fit the same into the four corners of the judgements which are being relied upon by him. But one thing I would like to make it clear that square pegs cannot be fitted in round holes. The learned counsel for the applicant argued that the applicant was never asked to give his option for changing over from SRPF to the pension scheme but there is no such averment in the Original Application. I find from the records that for the first time on 29.10.2002 at Annexure A/7, the applicant has indicated that he

2/15

I/13
17/16

applied for grant of pensionary benefit to CPF (Contributory Provident Fund) on 14.01.1988 which clearly indicates that he never applied for switching on from SRPF Scheme to Pension Scheme. It is only in reply to 4.6, 4.7 and 4.9 wherein it has been stated that the applicant was a SRPF (Sic. P.F.) optee and the same remains un-refuted inasmuch as no rejoinder has been filed denying the same. Whereas the applicant has never opted for pension scheme and has enjoyed the benefit under SRPF/CPF Scheme, his claim for grant of pension as such cannot be sustained. However applicability or otherwise of the judgements cited on behalf of the applicant is discussed as under:-



(i) **A.P. Shukla vs. Union of India and Ors.**; 1996 (2) ATJ 157. In this case the applicant completed more than 17 years of service and tendered his resignation on 11.08.1971. His option for pension scheme was not decided. It was held that having performed 10 years of service he was not entitled for pension and also giving resignation voluntarily amounts to voluntary retirement. The same is distinguishable on facts inasmuch as in the instant case the applicant has never opted for pension scheme and enjoyed the benefit of SRPF Scheme, thus, the said judgement does not support the case of the applicant.

(ii) **Bimla Devi (Smt.) vs. Union of India and Another**; 1992 (20) ATC 873. It was also a case of resignation and the question was from which date the resignation became

2

effective. However, before the date of the acceptance of the resignation the applicant died and the respondents were directed to release family pension from the date of death of government servant. The facts of that case are quite distinguishable from the present one and the ratio of the decision has no application and does not support the applicant in any manner.

(iii) **M/s J.K. Cotton Spg. & Wvg. Mills Company Ltd.,**

Kanpur vs. State of U.P. and others; AIR 1990 SC

1808. In this case, It has been held that employee voluntarily tendering resignation and accepted by the employer would tantamount to voluntary retirement. Even if in the instant case, it were taken as a case voluntary retirement, the applicant would not be entitled for pension since he has never opted for the same, he being SRPF optee, thus, the case is distinguishable on facts and the decision cannot have any relevancy to the controversy involved in the instant case.



10. Now examining the controversy from yet another angle since the applicant has never opted for pension scheme till now he cannot now switch on to the pension scheme even if he is giving his option now. This proposition has been laid down by the Apex Court in case of **Krishna Kumar vs. UOI: AIR 1990 SC 1782.** The similar question was adjudicated upon by the

22

Supreme Court in case of **V.K. Ramamurthy vs. Union of India & Anrs.** (1996) 10 SCC 73 wherein it has been held that CPF retiree were not entitled to opt for pension long after retirement and the case quoted by the applicant was distinguished. In this view of the matter also no benefit under pension scheme can be extended to him by any stretch of imagination on any count.

11. Now adverting to yet another alternative prayer (even though no specific relief has been asked for in the Original Application under relief clause) made orally, I could have refrained from debating on this but to set at rest the complete controversy and since the elaborate arguments have been advanced on this point, I have ventured to adjudicate on this aspect also.

12. As regards the grant of ex gratia pension the specific circulars have been issued by the Railway Board on 27.01.1998 as RBE No. 19/98 and RBE No. 260/98 dated 23.11.1998. The relevant paras from these circulars are abstracted as under:-

Extract from RBE No. 19/98.

"The ex gratia payment is not admissible to (A) those who were dismissed/removed from service and (B) those who resigned from service.

Extract from RBE No. 260/98.

1. With reference to Board letter of even number dated 27.1.98 instructions have been issued for grant of ex gratia payment at Rs. 600 per month with effect from 1.11.97 to the superannuating CRPF (C) retirees of the

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period from 1.4.97 to 31.12.85 subject to the condition that such retirees should rendered at least twenty years of continuous service prior to their superannuation for becoming eligible to the ex gratia payment.

A reference has been received from one of the Railway seeking clarification as to the applicabilities of these instructions to case of retirement on medical, invalidation, voluntary retirement etc. It is hereby clarified that in terms of instructions contained in Board's letter dated 27.4.98 ibid ex gratia payment is admissible only to those who had retired on superannuation subject to fulfillment of the condition that the superannuated CRPF (C) beneficiaries should have rendered at least 20 years of continuous service prior to their superannuation those SRPF (C) beneficiaries who had retired from service other than on superannuation viz; on medical invalidation, voluntary retirement, compulsory retirement as a measure of penalty, premature retirement, retirement absorption in/or under (a) Corporation or company or Body corporate or incorporate etc., are not eligible for grant of ex gratia payment."



13. A perusal of the aforesaid provision clearly indicates that the scheme do not apply to the person who had resigned from service. Not only this it does not apply even to the person who has not retired on superannuation. It also excludes a number of other type of retirement and clearly specifies that it would apply only to the person who are retired on superannuation. In this view of the matter also the applicant's claim is not sustainable. The aforesaid rules framed by the Railway Board have not been challenged.

14. As regards the objection relating to the limitation, it is settled position of the law that pension as such gives a recurring

2

I/17
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cause of action and the law of limitation does not get attracted in pension matters. However, in the instant case, we cannot afford to refrain from mentioning that first the applicant was required to come to pension scheme from SRPF Scheme and that may attract the limitation being one time exercise, however, we leave the question of limitation open for adjudication in some appropriate case. The Misc. Application stand disposed of accordingly.

15. In view of the foregoing discussions, we pass the following order:

"The result is rather ~~than~~ unfortunate, but in view of the rules position, foregoing discussions especially the law laid down by the Hon'ble Supreme Court in case of V.K. Ramamurthy (supra) and specific circulars issued by Railway Board (supra) there is no option but to dismiss the Original Application. I dismiss the same accordingly but with no order as to costs.




(J.K. KAUSHIK)
Judl. Member

Kumawat

RIC
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DANARAM
(Adv)

Part II- and III destroyed
in my presence on
under the supervision of
Section officer () as per
order dated 18/10/2013

Section officer (Record)

18/3