

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH: CALCUTTA

Original Application No. 391/97

Date of decision: 21.12.84

Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member.

Hon'ble Mr. M.K. Misra, Administrative Member.

1. Smt. M. Ghosh, Wife
2. Sandip Kr. Ghosh, Son
3. Smt. Ranjana Ghosh, Daughter
4. Smt. Chunki Sinha, daughter. : Applicants.

Applicants are legal heirs of late Dinesh Chandra Ghosh and they were substituted vide order dated 13.07.2000 in M.A. No. 227/2000.

rep. by Mr. S. K. Dutta : Counsel for the applicants.

versus

1. Union of India service through the General Manager, Chittaranjan Locomotive Works, Chittaranjan Burdwan.
2. General Manager, Chittaranjan, Locomotive Works Chittaranjan, Burdwan.
3. Chief Personnel Officer, C.L.W., Chittaranjan Dist. Burdwan.
4. Principal, Technical Training Centre, C.L.W. Chittaranjan, Dist. Burdwan.
5. Railway Board, service through the Chairman Railway Board, Rail Bhawan, New Delhi.

: Respondents.

rep. by Ms. U. Bhattacharya; Counsel for the respondents.

ORDER

Mr. Mukesh Kumar Gupta, JM

The O.A was originally filed by Dinesh Chandra Ghosh. During the pendency of the O.A he died and the legal heirs were brought in vide order dated 13.07.2000 in M.A. No. 227/2000.

2. Late Dinesh Chandra Ghosh, seeks a declaration that he is entitled to serve upto the age 60 years interms of the judgement and order 27.02.91 passed by this Tribunal in O.A. No. 370/88 (C.R. Arya vs. UOI and ors.) He also prayed for payment of consequential benefits including arrears of salary, enhanced pensionary benefits along with interest and costs.

3. The facts of the case are that late Dinesh Chandra Ghosh joined Chittaranjan Locomotive Works as Trade Apprentice and after successful completion he was posted as Turner on 12.05.58. Thereafter he was selected for the post of Junior Trade Instructor Gr. II vide memorandum dated 16.03.66 and was confirmed vide memo dated 06.05.86, in the said post. He was further promoted to the post of Sr. Technical Instructor. It is contended that in the capacity of Instructor he was imparting teaching and as such he was entitle to remain in service upto the age 60 years like other teaching staff. But he was retired from service on attaining the age of 58 years vide memo dated 30.07.94 with effect from 31.01.95. He submitted a representation dated 23.08.94, seeking continuation in service upto the age of 60 years, which was not attended to and meanwhile he was retired from service on 31.01.95. He submitted further representations on 11.10.95 and 22.03.96.

4. Similar issue was adjudicated upon before this Tribunal in O.A. No. 370/88, by one C.R. Arya which was decided in favour of the applicant therein and it was held that Junior Technical Instructor was to be

treated at par with teachers and as such entitled to continue upto 60 years.

5. The respondents contested the claim of the applicant and stated that the O.A is barred by limitation. As far as the engagement of the applicant as Turner and later as Junior Trade Instructor Gr.II, is concerned, the said facts were not disputed. It was contended that the nomenclature of the Technical School was changed as Technical Training Centre, in terms of the Railway Board's letter dated 14.09.92. The age of retirement of instructor is 58 years and not like other Railway employees as 60 years as contended by the applicant. There was no general direction issued by this Tribunal in C.R. Arya's case (supra) i.e the benefit of retirement age as 60. The applicant also cannot treat himself at par with teachers in academic schools, as the rules and regulations, recruitment of instructors is different from that of the teachers in academic schools. The applicant attained the age of 58 years on 31.01.95 and the present application was instituted only on 11.04.97 and as such the applicant is not entitled to any relief.

6. The respondents also placed reliance on the facts that the applicant has accepted the terminal benefits without any protest and as such he is barred from rake up the issue. Further reliance was also placed on the order of this Tribunal dated 01.04.93 in O.A. No. 321/93 (Ram Dular Chakravorty vs. UOI and others.) wherein the applicant

was an Instructor in Chittarajan Locomotive Works and retired on 31.10.85, asking for the benefit of age of retirement as 60 years instead of 58 years. The said O.A was dismissed, with the following remarks

" We have considered the case from all its aspects. "

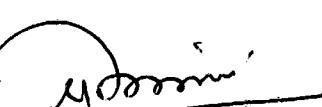
7. We heard the learned counsel for the parties and perused the pleadings. We bestowed our careful consideration on the orders and judgements relied on by both sides. We find that the judgement and order in O.A. No. 370/88 (C.R. Arya vs. UOI and others) rendered on 27.02.91, is a detailed and exhaustive judgement, while the order dated 01.04.93 in O.A. No. 321/93 was not a such detailed judgement. The applicant in O.A. No. 321/93 had already retired on 31.10.85 and it seems that he has filed a representation seeking the benefit of the judgement in C.R. Arya's case (supra) thereafter.

8. Para 15 of order & judgement in C.R. Arya's case reads as under:

" 15. After giving our careful consideration to the materials on record and the submissions of the two counsel, we have no hesitation in holding that the judgement in Nakuleswar Ganguly's case, following the earlier judgement in O.A. No. 247/86, is fully applicable in the present case. It is on record that the applicant had been absorbed in the technical training school w.e.f. 03.03.1966 and was confirmed w.e.f. 30.04.86, in the cadre of the technical training school. After discussing Railway Board's letter dated 09.05.1984 this Bench had held in Nakuleswar Ganguly's case that the Teachers of the Technical Training School and those of the academic schools under the Railways were at par so far as the age of retirement is concerned. Thus, the applicant was obviously entitled

to superannuate on attaining the age of 60 years. Instead of that, he was made to retire on 31.10.86 even after his confirmation in the cadre of the Technical Training School, on attaining 58 years of age. Obviously the decision of the respondents to retire him on 31.10.1986 was arbitrary, illegal and discriminatory. Thus the application must succeed."

9. On bestowing our consideration, we find that the issues raised in the present O.A. ^{is} squarely covered by aforesaid order and judgement and we have no hesitation to hold that the applicant should have been allowed to continue in service till 60 years of age instead of 58 years of age. Keeping in view the applicant filed the present O.A after a period of more than two years after his retirement on 31.01.95, he would not be entitled to any arrears of pay and allowances for the period from 01.02.95 to 31.01.97. However, he would be entitled to notional fixation of pay. The respondents are directed to treat the applicant continued in service till 31.01.97 on notional basis. The applicant would be entitled to difference in view of the enhanced pension and other pensionary benefits till the date of his death. The respondents are further directed to revise the family pension, as if the applicant retired on 31.01.97. All the arrears should be paid to the legal heirs as per rules. This exercise should be completed within a period of four months from the date of receipt of a copy of this order. It is made clear that the applicant/ his legal heirs are not entitled to any interest. O.A is allowed as above. No costs.


(M.K. Misra)
Administrative Member


Mukesh Kumar Gupta)
Judicial Member.