

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.454/2010

Dated this the 31st day of January, 2011

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

M.V. Sudheer, S/o. M.V. Velayudhan
(Ex-Goods Driver,
Southern Railway, Erode)
Residing at Mandumparambil House
Kodannur (P.O.), Trichur District

..... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Vs

1 Union of India
Represented by the General Manager
Southern Railway, Headquarters Office
Park Town (P.O), Chennai - 3.

2 The Chief Personnel Officer
Southern Railway, Headquarters Office
Park Town (P.O), Chennai - 3

3 The Divisional Railway Manager
Southern Railway, Palghat Division
Palghat.

4 The Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat.

..... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The Application having been heard on 13.1.2011, the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant who had earlier worked in the Railways is aggrieved by the refusal on the part of the respondents to grant him pension and other retirement benefits w.e.f. 13.6.1999 under Rule 53 of the Railway Service (Pension) Rules, 1993.

2 The facts in brief are as follows. The applicant entered service of the Palghat Division, Southern Railway as an Assistant Driver on 17.7.1989. While working so he applied through proper channel for recruitment to the post of Sub Engineer in the Kerala State Electricity Board. Having selected and appointed, he submitted resignation from the Railways and joined the Board on 13.6.1999. He requested the KSEB to reckon his service in the Railways for all service benefits in KSEB. Relying on the analogy of the case of one O. Mohanan who while working under the respondents resigned to join the KSEB and moved the Tribunal through O.A. 838/2005 which was disposed of directing to consider the pending representation with reference to Rule 53 and 69 of Pension Rules of Railways (A-8) The respondents held that the applicant therein was entitled to be granted pension and other retirement benefits as if he had retired from Railways(A-9). Similarly, Sri G. Padeepkumar was also granted pro rata pensionary benefits(A-10). Since repeated representations did not elicit response, the applicant filed this Application for similar treatment as in the cases cited above.

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3 The respondents have filed reply statement rebutting the claim of the applicant. At the outset, they have stated that there is considerable delay of more than eight years in filing the O.A , hence it is hit by Limitation Act, therefore liable to be dismissed in limine on delay and laches.

4 They further stated that the applicant had got only 9 years and 9 months of qualifying service in Railways at the time of submission of resignation and hence he is not eligible for pension from Railway. They have forwarded the required service particular of the applicant to the KSEB by Annexure A-4 and that as per the extant rules on the subject, the liability for pension including gratuity should be borne in full by the Central/State Government to which the employee permanently belongs at the time of retirement. The PF credit of the applicant was transferred to the KSEB in 1999. They submitted that in O.A. 650/2007 the Tribunal dismissed the O.A holding that there is a Pension scheme in the KSEB, the applicant was entitled to exercise his option either to count the service rendered under the Railways and KSEB for pension or to receive pro rata pension under Rule 53(3) ibid. They have also stated that the applicant has not submitted any representation.

5 The applicant filed rejoinder producing Annexure A-13 in which K.Manoj Kumar, an employee of the Railway Board who had resigned from Railway Service w.e.f. 30.11.92 to join KSEB, necessary order was issued for remittance of pro rata pension liabilities. He has also produced the calculation sheet issued on 5.2.2009.

6 We have heard learned counsel for the parties and perused the documents produced before us.

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7 The short question that comes up for consideration is whether the applicant is entitled to be granted pension and other retirement benefits w.e.f. 14.6.1999 duly deeming him to have retired from service on 13.6.1999. Appendix 7 of CCS (Pension) Rules 1972 deals with broadly the pro-rata retirement benefits to central government servants absorbed in PSU, Central and State autonomous bodies etc. and is governed DOPT OM No. 28016/5/88-Estt. (c) dated 31.01.1986, Department of Personnel and Pension Welfare OM No. 28 (10) 84-P. PW/Vol. II dated 07.02.1986, 17.06.1986 and 20.03.1987, etc. contained in orders 1 and 7 respectively of Appendix 7. As far as the applicant is concerned, the sub rule 3 (b) of order 10 shall be applicable. The relevant portion is extracted below:-

CCS (Pension) Rules, APPX. 7 Order 10 Para (3)(b) In case of absorption in an Autonomous Body under the State Government having a pension scheme on the pattern of the Central Government, the employee will have the option to count the service for pension, provided the concerned State Government has entered into reciprocal arrangements with the Central Government for counting of service for pension. Otherwise, the employee will be entitled to the payment of pro rata retirement benefits only. [Order (7) for State Governments which have entered into reciprocal arrangements with Central Government]

(These are incorporated in Rule 53(1) and (3) of Railway Services (Pension) Rules, 1993). Format II prescribed for permanent absorption of a central government employee shows that the option to count the service rendered under central government for pension in the service now absorbed or for receipt of pro rata retirement benefits shall be exercised within six months and option once exercised shall be final. In case no option is exercised within the stipulated period, the employee will be deemed to have opted for sub clause (i) i.e. to count his service for pension. He cannot at this juncture submit a revised option for pro rata retirement benefits. The respondents produced R-I, dated 02.04.2002,



which is the option exercised by the applicant, to reckon his service in Railways towards pensionable service in KSEB. Admittedly, the applicant has less than 10 years service in the Railways as on the date of relief from Railways which is the minimum period required for pension. Therefore, the applicant is not eligible for pension. The applicant has produced copy of remittance of pro rata pension liabilities in case of one Shri K.Manoj Kumar, an employee of the Railway Board who resigned from service w.e.f. 30.11.1992 and joined the KSEB. In that case, a calculation sheet indicating service particulars and pension liabilities (pro rata DCRG and Service Gratuity amount) to be paid in case of the employee therein was sent to the Pay & Accounts Officer, Railway Board, New Delhi with copy to the Dy. Chief Engineer, KSEB. His request was also reckon his service in Railway Board for pensionary benefits in KSEB, Kerala.

8 In the case of the applicant, though it is seen that the third respondent had already intimated the pay particulars of the applicant for the period of ten months prior to termination of service in the Railways, a calculation sheet indicating pro rata DCRG & Service Gratuity due to be paid to the KSEB, as in Annexure A-13, is to be prepared and forwarded to the concerned authorities for further action at their end. In O.A. 567/2009 the applicant having more than 10 years service in the Railways, was eligible for pension. Therefore, the order in that case would not apply in the case of the applicant.

9 In the result, I am of the view that the interest of justice will be met if the Application is disposed of with a direction to the respondents to prepare the calculation sheet indicating pro rata DCRG & Service Gratuity due to be paid to the applicant herein and forward the same to KSEB Kerala, to enable them to count the applicant's service



in Railways, for pensionary benefits in KSEB. It is ordered accordingly.

No costs.

Dated 31st January, 2011



K. NOORJEHAN
ADMINISTRATIVE MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.454/2010

Dated this the 9th day of January, 2012

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

**M.V.Sudheer, S/o MV Velayudhan
(Ex-Goods Driver) Suthern Railway, Erode)
R/o Mandumparambil House, Kodannur P.O, Trichur. Applicant**

(By Advocate Mr.TCG Swamy)

Vs

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| 1 | Union of India represented by the General Manager
Southern Railway, ParkTown, Chennai-600 003 | |
| 2 | The Chief Personnel Officer, Southern Railway
Headquarters Office, Park Town, Chennai-3. | |
| 3 | The Divisional Railway Manager
Southern Railway,
Palghat Division Plghat. | |
| 4 | The Divisional Personnel Officer,
Southern Railway
Palghat Division, Palghat. | .. Respondents |

(By Advocate Mr. Sunil Jacob Jose)

ORDER

HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Applicant in O.A. 454/2010 has filed Review Application No.11/2011 praying for review of the order of this Tribunal and re-hear the O.A which was decided by order dated 31.1.2011, The R.A was listed for

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hearing on 19.12.2011. After hearing the learned counsel for the parties review application was allowed on the basis of the Railway Board Orders RBE No.187/90 dated 25.10.1990 (Annxs.RA-2 and RA-3). The orders passed in OA 454/2011 dated 31.1.2011 was recalled and the O.A restored to its original position. On the same day the OA was heard afresh on merit and orders reserved.

2 The applicant who had earlier worked in the Railways is aggrieved by the refusal on the part of the respondents to grant him pension and other retirement benefits w.e.f. 14.6.1999 under Rule 53 of the Railway Service (Pension) Rules, 1993.

3 The facts in brief are as follows. The applicant entered service of the respondents in Palghat Division, Southern Railway as an Assistant Driver on 17.7.1989. While working so he applied through proper channel for recruitment to the post of Sub Engineer in the Kerala State Electricity Board. Having selected and appointed, he submitted resignation from the Railways and joined the KSEB on 13.6.1999. He requested the KSEB to reckon his service in the Railways for all service benefits in KSEB. Relying on the analogy of the case of one Shri O.Mohanan who while working under the respondents resigned to join the KSEB and moved the Tribunal through O.A. 838/2005 which was disposed of directing to consider the pending representation with reference to Rule 53 and 69 of Pension Rules of Railways (A-8) The respondents held that the applicant therein was entitled to be granted pension and other retirement benefits as if he had retired from Railways(A-9). Similarly, Sri G. Padeepkumar was also granted pro rata pensionary benefits(A-10). Since repeated representations did not elicit response, the applicant filed this Application for similar treatment as in the cases cited above.

4 The respondents have filed reply statement rebutting the claim of the applicant. At the outset, they have stated that there is inordinate delay of more than eight years in filing the O.A , hence it is hit by

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Limitation Act, therefore liable to be dismissed in limine on delay and laches.

5 They further stated that the applicant had got only 9 years and 9 months of qualifying service in Railways at the time of submission of resignation and hence he is not eligible for pension from Railway. They have forwarded the required service particular of the applicant to the KSEB by Annexure A-4 and that as per the extant rules on the subject, the liability for pension including gratuity should be borne in full by the Central/State Government to which the employee permanently belongs at the time of retirement. The PF credit of the applicant was transferred to the KSEB in 1999. They submitted that in O.A. 650/2007 the Tribunal dismissed the O.A holding that there is a Pension scheme in the KSEB, the applicant was entitled to exercise his option either to count the service rendered under the Railways and KSEB for pension or to receive pro rata pension under Rule 53(3) *ibid*. They have also stated that the applicant has not submitted any representation.

6 The applicant filed rejoinder producing Annexure A-13 in which K.Manoj Kumar, an employee of the Railway Board who had resigned from Railway Service w.e.f. 30.11.92 to join KSEB, necessary order was issued for remittance of pro rata pension liabilities. He has also produced the calculation sheet issued on 5.2.2009.

7 Heard learned counsel for the parties and perused all the documents produced.

8 The short question that comes up for consideration is whether the applicant is entitled to be granted pension and other retirement benefits w.e.f. 14.6.1999 duly deeming him to have retired from service on 13.6.1999.

9 It is an admitted fact that the applicant had more than 9 years 9 months of qualifying service in the Railways at the time of submission of his resignation. It is also not disputed by the respondents Railways that the Railway Board order, Annx.RA-2, No.187/90 dated 25.10.1990 provides that

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a person who has completed 9 years, 9 months and above service but less than 10 years, would be deemed to have completed '20 six monthly' periods of qualifying service and such person shall be eligible for pension treating him to have completed the requisite period. In this case, the applicant had completed more than 9 years, 9 months service and in terms of Rule 69(3) of the Railway Services (Pension) Rules, 1993, in calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service. In the light of the above statutory provision and orders of the Railway Board on the subject, the applicant's service of 9 years, 10 months and 26 days with respondent Railways as qualifying service should be treated as equal to 10 years of qualifying service. Thus the applicant would be entitled to get pension.

10 It is not disputed by the respondents that the applicant had applied through proper channel and on his selection he was relieved as per rules to enable him to join KSEB. All these things would go to show that the applicant has acted in accordance with the extant instructions. The Rule 53 of the Railway Service (Pension) Rules, 1993 provides as under:

a) in Rule 53, for sub-rule (1) the following sub-rule shall be substituted:-

"A railway servant who has been permitted to be absorbed in a service or post in or under a Corporation of Company wholly or substantially owned or controlled by the Central Government or a State government or in or under a body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub rule (3), he shall be eligible to receive retirement benefits, if any, from such date as may be determined in accordance with the orders of the railways applicable to him."

11 Recently in a similar case this Tribunal in OA 567/2009, Shahabudeen A Vs. Union of India & Ors, allowed the OA by order dated 7.4.2010 and granted the pensionary benefits. The respondents have filed WP(C) No.20632/2010, against the said order before the Hon'ble High Court of Kerala and the High Court by order dated 14.12.2010 upheld the

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decision of the Tribunal.

12 In the present case, the documents produced by the applicant, the genuineness of which have not been disputed by the respondents, are sufficient enough to confirm that the applicant did apply through proper channel and had completed more than 9 years, 9 months of qualifying service. If there is any objection for grant of pension, such objection will not adversely affect the case of the applicant, in view of sub-rule (1) of Rule 53 supra. As per Rule 53 above, absorption in a Corporation or body owned or controlled by State Govt like KSEB is permitted. As in the case of Shahabudeen A (supra) and other similar cases, the respondents are to consider the request of the applicants therein for payment of pension for the period of service rendered by them in the Railways. Thus, the legal position is settled in favour of the applicant herein as the orders of this Tribunal in the cited cases have become final. Factually and legally, the respondents have no grounds to deny the applicant his retirement benefits. The applicant has been forced to resort to litigation on account of the failure on the part of the respondents to meet their obligation towards the applicants.

13 In view of the foregoing, the OA succeeds. In the interest of justice and balance of convenience, I direct the respondents to grant pension and other retirement benefits w.e.f 14.6.1999 and compute his monthly pension as if he has completed 10 years service at the earliest, at any rate within 4 months from the date of receipt of a copy of this order. The OA is allowed to the above extent. No costs.

Dated 9th January, 2012.


K. NOORJEHAN
ADMINISTRATIVE MEMBER