CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 592 of 2008
with
Original Application No. 506 of 2008

Wednesday, this the 07th day of October, 2009

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. **O.A. NO. 592 OF 2008**

Ponnamma Joseph,
(W/o. Late Joseph Thomas,
Retired Mate, Office of the Depot Store Keeper,
Construction, Southern Railway, Quilon)
Residing at Manipuzhayil House,
Edathala P.O., (Via) Thiruvalla,
Alappuzha District ... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India,
Represented by the Secretary to
The Government of India,
Ministry of Railways, Rail Bhavan,
NEW DELHI.

2. The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3

3. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14

4. The Chief Medical Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai . ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

2. **O.A. No. 506 of 2008**

P.T. Jose,
S/o. Thomas,
(Retired Mate, Office of the Deputy Chief Engineer,
Construction, Southern Railway, Calicut)
Residing at Plakkala House, Vennoor P.O.
Annamanada, Trichur District. ... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India,
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4. The Chief Medical Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai . ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

The Original Applications having been heard on 29.09.09, this Tribunal on ...07-10-2009... delivered the following :

O R D E R

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

As the issue involved in the two O.As is one and the same, these O.As are dealt with in this common order.

2. Facts in OA No. 506/2008 :

The applicant initially joined Railway Service as a Casual Labourer of Construction Organisation in February, 1973 and later on with effect from 01.01.1981, he was awarded temporary status followed by regular absorption

with effect from 10.03.1997. He superannuated on 31.01.2008. For the purpose of pensionary benefits, his services were taken into account to the extent of full service on regular basis from March 1997 to January 2008 and half the temporary service from 01.01.1981 to 09.03.1997. This constituted about 19 years of qualifying service under the Pension Rules. In so far as entitlement to medical facilities after retirement is concerned, Para 610 of Chapter VI of Medical Attendance and Treatment of the Indian Railway Medical Manual, vide Annexure A1 is applicable. In the wake of the 4th Central Pay Commission recommendations, the scheme of medical facilities was modified and a new scheme called Retired Employees Liberalised Health Scheme (RELHS) was introduced from September 1988 vide Annexure A2. Subsequently, Annexure A2 was also amended by Annexure A3 order. This has undergone further modifications as per Annexure A4. The applicant through this O.A. has sought the following reliefs :-

(i) Declare that the prescription of a qualifying service of 20 (twenty) years, for inclusion in Annexure A3 Retired Employees Liberalised Health Scheme, 1997 is arbitrary, unreasonable, discriminatory and unconstitutional;

(ii) Call for the records leading to the issue of Annexure A3 and quash the same to the extent it prescribes a minimum qualifying service of 20 years for inclusion in Annexure A3 scheme;

(iii) Declare that the applicant is entitled to be admitted into Annexure A3 scheme of "Retired Employees Liberalised Health Scheme-1997" and direct the respondents to admit the applicant accordingly and to direct further to grant him the consequential benefit thereof;

(iv) Award costs of and incidental to this Application;

(v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

3. Facts in OA No. 592/2008:

The applicant initially joined Railway Service as a Casual Labourer of Construction Organisation in April, 1973 and later on with effect from 01.01.1981, he was awarded temporary status followed by regular absorption with effect from 10.03.1997. He superannuated on 30.09.2008. For the purpose of pensionary benefits, his services were taken into account to the extent of full service on regular basis from March 1997 to September, 2008 and half the temporary service from 01.01.1981 to 09.03.1997. This constituted about 19 years of qualifying service under the Pension Rules. In so far as entitlement to medical facilities after retirement is concerned, Para 610 of Chapter VI of Medical Attendance and Treatment of the Indian Railway Medical Manual, vide Annexure A1 is applicable. In the wake of the 4th Central Pay Commission recommendations, the scheme of medical facilities was modified and a new scheme called Retired Employees Liberalised Health Scheme (RELHS) was introduced from September 1988 vide Annexure A2. Subsequently, Annexure A2 was also amended by Annexure A3 order. This has undergone further modifications as per Annexure A4. As the applicant expired during the pendency of this O.A., his wife has been substituted in the place of her husband. The substitution is on account of the fact that post retiral medical facilities are available even to the family members. The applicant through this O.A. has sought the following reliefs :-

(i) Declare that the prescription of a qualifying service of 20 (twenty) years (as defined under the pension rules), for inclusion in Annexure A3 Retired Employees Liberalised Health Scheme, 1997 is arbitrary, unreasonable, discriminatory and unconstitutional;

(ii) Call for the records leading to the issue of Annexure A3 and quash the same to the extent it prescribes a minimum qualifying service of 20 years for inclusion in Annexure A3 scheme;

(iii)Declare that the applicant is entitled to be admitted into Annexure A3 scheme of "Retired Employees Liberalised Health Scheme-1997" and direct the respondents to admit the applicant accordingly and to direct further to grant him the consequential benefit thereof; Or in the alternative :-

(iv)Declare that the applicant has more than 20 years service qualifying for medical treatment and direct the respondents to include the name of the applicant in Annexure A3 scheme ;

(v)Award costs of and incidental to this Application;

(vi)Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

4. Respondents have contested the O.A. Their version is as under:

The subject matter under challenge is a policy matter and as such challenge against Annexure A3 is not maintainable. The eligibility criteria for the scheme notified are as framed by the Expert Committee and they are beyond the purview of examination before this Tribunal. Annexure A3 is a new scheme and is in supersession of all previous instructions in the subject. Unless, the applicant has completed 20 years' qualifying service he would not be eligible for the medical facilities. Qualifying service shall be worked out as in the case of pension.

5. Counsel for the applicants contended that the Railway Medical Manual is a complete code by itself, unconnected with the Pension Manual and as such, definition of the term 'service' or 'qualifying service' as available in the Pension Regulations cannot be adopted for the purpose of interpreting such terms as available in the Medical Manual. Again, he has submitted that

the Apex Court in the case of ***Union of India v. S. Baliar Singh (Dr), (1998) 2 SCC 208***, has held as under:-

> *"The provisions of other rules cannot be imported into Railway Servants (Pass) Rules, 1986 unless these Rules so provide or unless any of the other rules so provide."*

6. In so far as interpretation of welfare legislation is concerned, the counsel for the applicant relied upon judgment in the case of **Union of India v. Prabhakaran Vijaya Kumar,(2008) 9 SCC 527.**

7. The learned counsel for the applicant took us through some of the relevant portions of the Railway Medical Manual as contained in Annexure A-1, A-2 and A-4, and contrasted the same with the impugned order at Annexure A-3 to hammer home the point that the term "20 years qualifying service" has not been found in the other orders and such a stipulation deprives the medical facilities to a good number of railway workers. Introduction of such a clause would mean creation of a class within a class, which is opposed to the principles of equality as held by the Constitution Bench in the landmark judgment in **D.S. Nakara.** Again, in interpreting the term qualifying service, the rigid interpretation as contained in the pension rules cannot be applied, as those employees, even during their temporary service were receiving the medical benefits as of a regular employee. Counsel for the respondents reiterated their stand as contained in the counter.

8. Arguments were heard and documents perused. The scheme of medical facilities for the retired railway employees was first introduced in 1966, vide para 610, Chapter VI of Medical Manual which reads as under:-

"610.(1). A retired Railway employee, who was governed by Railway medical attendance and treatment rules, irrespective of whether he retired from government managed, company managed or state managed Railways, and irrespective of the amount/type of retirement benefits (pension or provident fund) that he was/is in receipt of, who desires to avail of Railway medical attendance and treatment facilities, may elect to join the "Retired Railway Employees' Contributory Health Scheme". The scheme is also open to the surviving wife/husband of a deceased Railway employee.

(2). The benefits under this Scheme will be limited to outdoor treatment of the retired Railway employee and his/her consort and can be availed of at any of the nominated hospitals mentioned in Annexure I to this Chapter. The retired Railway employee and his/her consort will be entitled to the services of a Railway doctor of the same rank as the retired Railway employee was entitled to at the time of his/her retirement. Free supply of medicines and drugs ordinarily stocked in Railway hospitals for the treatment of outpatients may be permitted by the Railway doctor treating the case, who may also refer the case to an honorary consultant attached to a Railway hospital, for which no separate charges will be levied. Routine examination of blood, urine and stools may also be done free. Separate charges, based on 40 per cent of the schedule of charges laid down for outsiders will, however, be recovered for indoor treatment, specialized treatment, radiological examination and operations. Cost of medicines not ordinarily stocked in Railway hospitals for treatment in the

outpatients departments, charges for blood when supplied from the Railway hospitals, and charges for diet will be recovered in full. Fees for consultations and for conveyance in exceptional circumstances, in accordance with Note(4) below Para 628 will also be leviable for visits, if any, by Railway doctors."

9. In the wake of the IV CPC the above scheme was modified, vide Annexure A-2, Retired Employees Liberalised Health Scheme (RELHS) which inter alia reads as under:-

"Subject : Retired Employees Liberalised Health Scheme (RELHS) - Introduction of .

The IV Central Pay Commission had recommended that the Ministry of Railways may examine the improvements that will be necessary in extending further facilities of medicare to retired railway employees. They had also recommended provision/replacement of artificial aids after retirement in certain cases. The medical benefits, as available in Railway Hospitals/Health Units, were extended to retired railway employees, under Retired Railway Employees Contributory Health Scheme, introduced vide Board's letter No.64/H/1/2 dated 11-3-1996, as amended from time to time. The Ministry of Railways have considered the matter and have decided to introduce a Retired Employees Liberalised Health Scheme (RELHS).

2. The medical facilities under this Scheme will be open to all retired railway employees, who were governed by Railway Medical Attendance and Treatment Rules and who may be willing to avail of such facilities, irrespective of the amount/type of retirement benefits (pension or provident

fund) that they were/are in receipt of and will be on the following terms and conditions :

Scope :

3. The medical facilities under the liberalised Scheme shall be available on a Contributory basis as explained below to any retired employees, who elects to join this scheme, his/her wife/husband/widowed dependent mother and dependent children. The Liberalised Scheme is also open to the surviving wife/husband of a railway employee, who dies in harness or after superannuation. The definition of dependency will be the same as in pass rules. These orders are not applicable to those railway servants who quit service by resignation."

10. Vide Annexure A-3, certain conditions of eligibility have been prescribed and the same is as under:-

"Eligibility :

Minimum 20 years of qualifying service in the Railways will be necessary for joining the scheme and the following categories of persons will be eligible to join the same :

(i) All serving Railway employees desirous of joining the Scheme will be eligible to join it in accordance with the procedure laid down herein under 'Mode of joining'.

(ii) All retired Railway employees who are presently members of the existing RELHS will automatically be included in the RELHS'97.

(iii) Spouse of the Railway employees who dies in harness.

These orders are not applicable to those Railway servants who quit service by resignation."

11. A further modification took place in October, 1997 vide Annexure A-4, which interalia reads as under:-

"2.2 **Mode of joining** : For pre-96 retirees there is no cut off date for joining RELHS 1997. However, persons desirous to become members of the scheme will have to pay their contribution a rates mentioned in the preceding paragraph.

The post-1.1.96 retirees will continue to be governed by provisions contained in Board's letter No.97/H/28/1 dated 23.10.97 (Bahri's RBO 1997, P. 264). However, such of those post-1.1.1996 retirees who have not yet joined the scheme will be given another chance to join by 31.12.1999.

2.3 **Refund** : pre-1.1.96 Retirees who have already joined the RELHS-97 Scheme will be entitled to claim reimbursement of the amount paid in excess of the sum of two months pension as revised by the V Pay Commission. However, the claim for refund, if any, would be preferred only after final revision of pension in terms of Board's letter No. F(E)111/98/PN1/29, dated 15.1.99.

2.4 **Benefits under the RELHS-97 Scheme** : RELHS beneficiaries will be provided full medical facilities as admissible to serving employees in respect of medical treatment, special investigations, diet and reimbursement of claims for treatment in government or recognised non railway hospitals. They will also be eligible, inter alia,

> for (a) ambulance services (b) medical passes (c) home visits (d) treatment for first two pregnancies of married daughters at concessional rates and (e) treatment of private servant, as applicable to serving railway employees."

12. A perusal of the Annexure A1, A2 & A4 would go to show that there has been no stipulation of any service or qualifying service to become entitled to the benefits of the scheme. The exclusion clause that has been stipulated is only to the extent that "**These orders are not applicable to those railway servants who quit service by resignation**" vide para 3 of order dated 28-09-1988 extracted above. However, by the impugned Annexure A-3 order, under the heading, 'Eligibility', the Board has stipulated Minimum 20 years of qualifying service in the Railways will be necessary for joining the scheme. This means that for enjoying the medical facilities, mere retirement (in contra distinction to resignation) is not sufficient, and that such a retired employee should have put in 20 years of qualifying service. The question for consideration is :-

> (a) Whether rendering of the said 20 years' qualifying service is essential; and
>
> (b) what is the meaning of the term 'qualifying service' as stated above.

13. In the instant case, since the qualifying service as per Pension regulations comes to less than 20 years, the benefits are denied to the applicants/legal heirs.

14. It is the admitted fact that the term 'qualifying service' has not been defined in the Medical Manual.

15. As to the stipulation of 20 years, the same is contended to be a policy matter and judicial interference is normally not made in such matters of policy save when the same offends the fundamental rights of the affected individuals. This contention has been considered. It is appropriate to cite the observation of the Apex court in this regard, in a very recent case of CSIR v. Ramesh Chandra Agrawal, wherein the Apex Court stated:-

> *"33. Indisputably, a policy decision is not beyond the pale of judicial review. But, the court must invalidate a policy on some legal principles. It can do so, inter alia, on the premise that it is wholly irrational and not otherwise."*

16. When the liberalized Health scheme was formulated in 1988, vide Annexure A-2, there was no such stipulation of 20 years of qualifying service. All that it talks is about retired employees and with the exclusive clause of those who had left the service by way of resignation. The IV Central Pay Commission also does not have any such stipulation while making their recommendation. The recommendation reads as under:-

> "16.2 The medical re-imbursement scheme is applicable to those employees who are not covered under the CGHS or the RMS. Under this scheme, government notifies authorised medical attendants who may be doctors working in the state government/municipal hospital and other medical practioners. Expenses incurred on medical treatment as admissible are reimbursed under this scheme on production of vouchers duly certified by the authorised medical attendant.
>
> 16.3 Railway employees are entitled to medical attendance and treatment free of charge in railway hospitals, health units or consulting rooms maintained by the authorised medical attendants nominated under the scheme. In cases of emergency, the employees are also entitled to obtain treatment in any hospital or health units maintained by central or state government or local authority.
>
> 16.4 Retired railway employees are permitted to avail medical attendance and

> treatment facilities by joining the "Retired Railway Employees Contributory Health Scheme". The benefit of this scheme is limited to outdoor treatment of retired employees and their spouses and can be availed of at any of the authorised hospitals.
>
> 16.5 .....
> .....
> ..... Suggestions have also been received for improving the functioning of CGHS and expansion of RMS."

17. Stipulation of the above condition of 20 years of qualifying service would divide the the class of retired employees into two, viz., those retired employees who had completed 20 years of qualifying services and (b) those retired employees who do not fall within the above category. The question is as to whether such a division or class within a class is legally permissible, when the intention at the time of formulation of the scheme was to provide medical facilities to the retired employees without any such division within the retired employees. It has been held in a recent case,

> ***Union of India v. SPS Vains,(2008) 9 SCC 125,***
>
> **"28.** The question regarding creation of different classes within the same cadre on the basis of the doctrine of intelligible differentia having nexus with the object to be achieved, has fallen for consideration at various intervals for the High Courts as well as this Court, over the years. The said question was taken up by a Constitution Bench in *D.S. Nakara*[1] where in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that Article 14 of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two

> classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counterproductive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of Article 14 of the Constitution.
>
> **29.** The Constitution Bench (in *D.S. Nakara*[1]) has discussed in detail the objects of granting pension and we need not, therefore, dilate any further on the said subject, but the decision in the aforesaid case has been consistently referred to in various subsequent judgments of this Court, to which we need not refer. In fact, all the relevant judgments delivered on the subject prior to the decision of the Constitution Bench have been considered and dealt with in detail in the aforesaid case. The directions ultimately given by the Constitution Bench in the said case in order to resolve the dispute which had arisen, is of relevance to resolve the dispute in this case also.
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> **30.** However, before we give such directions we must also observe that the submissions advanced on behalf of the Union of India cannot be accepted in view of the decision in *D.S. Nakara case*[1]. **The object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of the same class equally.** To hold otherwise would cause violence to the provisions of Article 14 of the Constitution. It could not also have been the intention of the authorities to equate the pension payable to officers of two different ranks by resorting to the step-up principle envisaged in the fundamental rules in a manner where the other officers belonging to the same cadre would be receiving a higher pension. (emphasis supplied)."

18. Thus, stipulation of the condition of 20 years is not legally permissible. Assuming without accepting that such a stipulation is permissible, then again, the next question that crops up is whether the term 'qualifying service' should adopt the same meaning as provided for in the Pension Regulations. Medical manual is independent of Pension regulations. Generally, when a term is defined in a particular statute, the same shall have

to be kept in view while interpreting any part of that statute, and where any particular term has not been defined, then the general meaning of the term should be used.

19. In Greater Bombay Coop. Bank Ltd. v. United Yarn Tex (P) Ltd., (2007) 6 SCC 236 the Apex Court has held as under:-

> *"The elementary rule of interpretation of the statute is that the words used in the section must be given their plain grammatical meaning. Therefore, we cannot afford to add any words to read something into the section, which the legislature had not intended."*

20. Definition of any term as in Pension regulations cannot be imported in the Medical Manual unless it is so authorized in the Medical Manual. For, such a definition in pension scheme would be to meet the exigencies as available under the provisions of that Rule. Invariably, certain terms common to pension rules and other rules have different connotation so far as pension scheme is concerned. To cite an example, in the case of ***N.D.P. Namboodripad v. Union of India,(2007) 4 SCC 502***, the Apex Court had occasion to discuss about the definition of the term 'emoluments'. The Apex Court has held as under:-

> *"The word "emolument" no doubt is a wider term than basic pay. It generally refers to the salary or profits from employment or office. But the word "emolument" is not used in the general sense in the Service Rules relating to pension. The word is defined for purposes of pension. In fact, all rules governing pension define the word "emolument" by giving a special or specific meaning for purposes of pension calculation. Where a word is defined, there can be no reference or reliance on any general meaning. To bring in "generality" instead of "specificity" in defining the term "emolument" will defeat the very purpose of defining "emolument" for purposes of pension. Therefore, contextually the definition of "emolument" should be specific and not "expansive" or general."*

21. In fact, in so far as the term qualifying service for pension purpose is concerned, the same has been defined to suit the provisions of that rule. The rigidity fastened to that rule cannot be imported in Rules governing medical facilities. In fact, the Apex Court, while interpreting the term, "wholly dependent" in respect of medical attendance rules, held, in the case of State of M.P. v. M.P. Ojha, (1998) 2 SCC 554, ***"A flexible approach has to be adopted in interpreting and applying the Rules in a case like the present one."***

22. In addition, in the case of Union of India v. Prabhakaran Vijaya Kumar,(2008) 9 SCC 527, the Apex Court has held as under:-

> "11. No doubt, it is possible that two interpretations can be given to the expression "accidental falling of a passenger from a train carrying passengers", the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it **should receive a liberal and wider interpretation and not a narrow and technical one.** Hence, in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide *Kunal Singh* v. *Union of India* (SCC para 9), *B.D. Shetty* v. *Ceat Ltd.* (SCC para 12) and *Transport Corpn. of India* v. *ESI Corpn.*
>
> **12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation** vide *Alembic Chemical Works Co. Ltd.* v. *Workmen* (AIR para 7), *Jeewanlal Ltd.* v. *Appellate Authority* (AIR para 11), *Lalappa Lingappa* v. *Laxmi Vishnu Textile Mills Ltd.* (AIR para 13), *S.M. Nilajkar* v. *Telecom District Manager* (SCC para 12)."

23. Taking into account the above decisions of the Apex Court, we are of the considered view that the introduction of the term "20 years of qualifying service", which has created a class within a class is arbitrary, illegal and is opposed to the guaranteed fundamental rights under the provisions of Art. 14 and 16 of the Constitution and consequently the same appearing in Annexure A-3 is quashed and set aside. In any event, the term 'qualifying service' cannot ignore the temporary service rendered by the railway employees nor can the same be truncated to 50% as provided for in Pension Rules.

24. Accordingly, the O.As are allowed. It is declared that the applicants shall have the services of temporary service counted in full along with their regular services upto the date of retirement to work out their entitlement for medical facilities under the Scheme. The period of 20 years need not be insisted in such cases, if the individuals are entitled to pensionary benefits. No cost.

(Dated, the 07th October, 2009.)

K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER

Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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