

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.179 OF 2011

Wednesday, this the 14th day of December, 2011

CORAM:

HON'BLE Mr.JUSTICE P.R RAMAN, JUDICIAL MEMBER

Radhika Nair
Aged 45 years, W/o.Muraleedharan
(Ex Senior Commercial Clerk)
Southern Railway, Divisional Office
Palakkad) residing at "Remya Harma"
Palakurissi, Vennakkara East
Noorni Post
Palakkad – 678 004 - Applicants

(By Advocate – Mr.T.C.G Swamy)

Versus

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| 1. | Union of India, represented by
Secretary to the Government of India
Ministry of Railways
New Delhi – 110 001 | |
| 2. | The General manager
Southern Railway
HQ Office, Park Town P.O
Chennai – 3 | |
| 3. | The Senior Divisional Personnel Officer
Southern Railway
Palakkad Division
Palakkad – 682 001 | |
| 4. | The Chief Engineer (HRM)
Kerala State Electricity Board
Vydyuthi Bhavanam
Pattom
Thiruvananthapuram – 695 001 | - Respondents |

(By Advocate – Mr.Thomas Mathew Nellimoottil for R 1-3 &
Mr.Pulikool Aboobacker for R-4)

The application having been heard on 14.12.2011, the Tribunal on the same day delivered the following:

ORDER

1. The applicant, presently working as Assistant Executive Engineer, is aggrieved by the refusal on the part of the respondents 1-3 to remit the pro rata pension liability of the applicant for the services rendered by her between 16.07.1990 and 06.12.1999 in the Railways. The applicant was appointed in the Palakkad Division of the Southern Railways as a Commercial Clerk on 16.07.1990. Subsequently, she responded to a notification issued by the Kerala Public Service Commission for appointment to the post of Assistant Executive Engineer in Kerala State Electricity Board (KSEB for short) and she was selected. No objection certificate was issued by the Railways. On being appointed in the Kerala State Electricity Board, request was made by the applicant to the Railways for technical resignation from Railways so as to enable her to join in KSEB. That was accepted by the third respondent as per order dated 05.02.1999 and accordingly the applicant was relieved. The relieving order is produced in this case as Annexure A-1. According to the applicant, in terms of the Railway Services (Pension) Rules, 1993 and the instructions of the Railway Board issued on the subject matter, the applicant is entitled to reckon the service rendered by her in the Railways prior to the joining in the Kerala State Electricity Board towards the qualifying service required for pension provided the Railway administration remit the pro rata



pension liability for the service thus rendered by the applicant or the applicant can be deemed as retired from service on and with effect from 06.02.1999 and receive the benefit of gratuity/service gratuity etc. Since the applicant joined KSEB, request is made by the applicant to the KSEB as well as Railways to reckon her Railway service in the KSEB with a corresponding request to the Railways to remit the pro rata pension liability. Annexure A-2 is a letter dated 27.05.2005, as per which the KSEB wrote to the Divisional Railway Manager, Palakkad for issuing necessary certificate from Railways so that they can satisfy the audit queries with a view to getting the Railway service of Smt.Radhika Nair reckoned for pensionary benefits in the KSEB. Annexure A-3 is a certificate issued by the Southern Railway addressed to the Executive Engineer, KSEB, Palakkad giving the details of the pay drawn by her during 10 months period prior to the termination of her service from Railways. It is also mentioned that she has resigned from Railways to take appointment in KSEB. Annexure A-4 is another set of letters issued by KSEB to the effect that previous Railway service rendered by the applicant can be reckoned for pensionary benefits in the KSEB, subject to realization of pension liabilities from the former employer.

2. Though the applicant had submitted certain representations, the Railways did not respond favorably. The applicant contends that the refusal on the part of the Railways to remit pro rata pension liability to the KSEB for the service rendered by the applicant between 16.07.1990 to 06.02.1999 in the Railways is arbitrary and discriminatory resulting in violation of Articles 14 and 16 of the Constitution of India. It is also contented that in terms of Section 53



of the Railway Services (Pension) Rules, 1993 and the Railway Board instructions issued on the subject matter, Railway servant who has been permitted to opt in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the State Government or a State Government or in a body or in or under a body controlled or financed by the Central Government or State Government shall be deemed to have retired from the service from the date of such absorption and he shall be eligible to receive retirement benefits if any from such date as may be determined in accordance with the orders of the Central Government.

3. In the reply statement filed by the Railways it is contented that the present application is filed after 12 years of leaving the service of the Railways and further there is no separate petition for condonation of delay. It is also contented that the Department of Pension and Pensioner's Welfare, Government of India vide Office Memorandum No.28/10/95 – P & PW(B) dated 25.10.1996 stipulates that the liability for pension, including gratuity should be borne in full by the Central /State Government to which the Government Servant permanently belongs at the time of retirement and these provisions do not exempt any State Government from the applicability of the reciprocal arrangement which dispenses with sharing of pension liability. Annexure R-2 is Railway Board's letter dated 12.2.1997, as per which the liability for pension including gratuity shall be borne in full by the Department to which the Government servant permanently belongs at the time of retirement and no recovery of proportionate pension shall be made from other Department of the Central Government under whom he had served. Relevant page of the above



provision is produced as Annexure R-3. In short, the contention raised in the reply statement is that the entire pension is to be borne by the establishment from where ultimately the applicant will retire and no pro rata pension shall be paid by the Railways.

4. We have heard both sides. At the outset, I may say that relevant Rule 29 which reads as hereunder:-

“ Pension liability of Departments of the Central Governments – The liability for pension including gratuity shall be borne in full by the Department to which the Government servant permanently belongs at the time of retirement and no recover of proportionate pension shall be made from other Department of the Central Government under whom he had served. ”

5. As per the above Rule, if the applicant is subsequently appointed in another Central Government, then the entire pensionary benefits will be borne by that establishment. But here the applicant joined the another State Government establishment and therefore, the said Rule may not have any application in this case. Annexure A-9 and A-10 are letters by the Southern Railways and the Railway Board as per which it can be seen that in similar cases, pro rata pension has been remitted by the Railways. Therefore, a different yardstick cannot be followed in the case of the applicant. Admittedly, if the applicant gets the service rendered in the Railways for pensionary benefits then the pro rata pension has to be remitted or in case the applicant does not fulfill the minimum qualifying service in the Railways to consider her for getting retirement benefits like gratuity and terminal benefits then necessarily such benefits shall be made over to the Electricity Board so that finally when she retires from KSEB, she will be entitled for the same. It is true



that the applicant has approached this Tribunal after expiry of several years but the case was represented with the Department for making over the payment. It is a continuing cause of action and only when the applicant retires from the service of the KSEB, she will actually get the retirement benefits. As such, it is a continuing cause of action. In similar matters, it has already been held by this Tribunal that the Railway Board should remit their pro rata pension/retirement benefits to the KSEB to which the applicant stood appointed fully after getting permission from the Railway Board. In this case when the applicant got an employment in the KSEB, the Railways issued No Objection Certificate and based on that alone the applicant joined there. It is not a case of the Railways that the applicant is not entitled for any retirement benefits as on the date on which she got an appointment in the KSEB. Accordingly, respondents are directed that pro rata retiral benefit like gratuity or other benefits shall be calculated and remitted to the KSEB with an intimation to the applicant as early as possible, at any rate within 3 months from the date of receipt of a copy of this order. Original Application is allowed as above.

(Dated, this the 14th day of December, 2011)



(JUSTICE PR RAMAN)
JUDICIAL MEMBER