

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 19 OF 2009

Thursday, this the 14th day of January, 2010

CORAM:

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

Oomman C.O

(Retired Senior Clerk, Personnel Branch

Southern railway / Palghat Division)

Residing at " Sankaramangalam"

Pathiri Road, Dhoni P.O

Palghat - 9

... Applicant

(By Advocate Mr.TCG Swamy)

versus

1. Union of India represented by
the Secretary to the Government of India
Ministry of Railways, Rail Bhawan
New Delhi
2. The Senior Divisional Personnel Officer
Southern Railway,
Palghat Division, Palghat
3. The Senior Divisional Finance Manager
Southern Railway,
Palghat Division, Palghat ... Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

The application having been heard on 14.01.2010, the Tribunal on the same day delivered the following:

ORDER

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

The applicant is an Ex-serviceman having re-employed in the Railways since September, 1990. His date of birth being 16.04.1951 he completed 55 years of service as on 15.04.2006. Provision exists vide Rule 1802 (b) of the Railway Establishment Code Volume II to seek retirement on attaining the age of 55 years in which event, weightage of five years is also available. The applicant submitted his application for voluntary retirement on

30.04.2007, giving three months notice and requesting the authorities that he be relieved on retirement with effect from 31.07.2007. As no communication was received either rejecting or accepting the request, the applicant filed OA 564/2007 seeking a declaration that he stood retired voluntarily with effect from 01.08.2007. Respondents resisted the OA on the grounds that the applicant did not have 20 years of minimum service as, according to them, Rule 1802 (b) required such qualifying years of service. This Tribunal however, rejected the contention of the respondents and held that the applicant was deemed to have voluntarily retired from service with effect from 01.08.2007 (Annexure A-3 refers). When the Department implemented the order of the Tribunal, it took into account the total qualifying service of 17 years as against 20 years and 6 months, according to the applicant. Hence the applicant sent Annexure A-4 representation dated 29.07.2008. Annexures A-5 and A-6 are their expeditors. As there is no response, the applicant has moved this Tribunal.

2. Respondents have contested the OA. According to them, the Personnel Branch had sought a clarification from the CPO that under Rule 68 (i) of the Railway Service (Pension) Rules, 1993, those employees whose qualifying service as on the date of intended retirement under Clause (k) Para 1802 to 1804 of Code, with or without permission shall be increased by maximum of 5 years subject to minimum of 33 years of service whereas such a sub-para (k) is not available in Para 1802 to 1804 of the Code. The clarification was awaited when the reply was filed and it was later on as late as 31.12.2009 that it was clarified that in terms of Rule 68 (i) of the Railway Service (Pension) Rules, 1993, those employees who retired voluntarily under Rule 1802 (c) of IREC are not eligible for addition of 5 years of qualifying service.

3. Counsel for applicant pointed out that there is no sub para (k) attached to Rule 1802 to 1805. Rule 68 of the Pension Rules, no doubt contains

the term Clause (k) of Rule 1802 to 1804 of the Code. However, in the relevant rule there is no provision of Clause (k). Obviously, this is a typographical error. Para 1802 contains sub para (a) and (b) and so is the case with Para 1803 as well as 1804. As evidently there is no provision of Rule 1802 (k), the view taken by the respondents that the weight age of 5 years is not available when a person retires voluntarily has to be negated. In other words, the weightage of 5 years is available invariably to every one, except to those who are retired prematurely by the Railways in public interest.

4. In view of the above, OA is allowed. Respondents are directed to re-work out the qualifying service of the applicant and also re-schedule the extent of pension / family pension admissible. No costs.

Dated, the 14th January, 2010.



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

VS