

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.21/03

Monday this the 20th day of October 2003

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

P.V.Mathukutty
S/o. late P.J.Varghese,
(Retd. Chargeman A,
Locomotive Carriage & Wagon Workshop,
South Central Railway,
Hubli - 7.
Residing at : "BLESS DEN",
H.No.18/660, Thottungal,
Palakkad-14.

Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by
the Secretary to the Government of India,
Ministry of Railways, New Delhi.
2. The General Manager,
South Central Railway,
Secunderabad,
Andhra Pradesh.
3. The Chief Personnel Officer,
South Central Railway,
Secunderabad,
Andhra Pradesh.
4. The Chief Workshop Manager,
Locomotive, Carriage & Wagon Workshop,
South Central Railway, Hubli.

Respondents

(By Advocate Mr.P.Haridas)

This application having been heard on 20th October 2003
the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

This application is filed by the applicant aggrieved by
the order dated 10.08.01 (Annexure A-13) of the 4th respondent
rejecting the claim of the applicant for pro-rata pensionary
benefits for the period he rendered service under the respondents

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up to 10.11.1985, on the date he got absorbed in Instrumentation Limited, Palakkad, a Government of India undertaking, severing his lien from the Railways.

2. The undisputed facts of the case are as follows : The applicant commenced his career as Apprentice/Trainee Mechanic in Hubli Division of South Central Railway on 15.11.1971. On completion of training he was absorbed in the post of Chargeman-B in the Locomotive, Carriage and Wagon Workshop, Hubli on 15.11.1976. Thereafter, he was promoted as a Chargeman-A in scale Rs.550-750 with effect from 2.6.1979. While so, in response to a notification which appeared in the Malayala Manorama daily dated 7.3.1982 issued by the Instrumentation Limited, Palakkad (A Government of India Enterprise) he applied for the post of Foreman through proper channel. The application was forwarded by the Workshop Personnel Manager. The applicant was selected and appointed as Technical Assistant in the Instrumentation Limited, Palakkad and having been relieved on 9.11.1982 by Assistant Chief Mechanical Engineer, Hubli by Annexure A-2 order, he joined the Instrumentation Limited, Palakkad on 10.11.1982 duly maintaining his lien in the Workshop for a period of two years. The lien was further extended for another year. Finally, the applicant got absorbed in the Instrumentation Limited severing his lien from 10.11.1985 and he continues his service with the Instrumentation Limited, Palakkad now. Since the period of training was not reckoned as service, the applicant was not granted any pension because minus the training period his service would be less than ten years. However, finding that in the case of one Shri.Somasundaran who

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under almost similar circumstances left the Department and joined the Central Excise Department and HAL thereafter was granted pro-rata pension reckoning the period of training. The applicant submitted Annexure A-6 dated 14.6.1999 followed it up with further representations. In reply to his representation the applicant was by the impugned order (Annexure A-13) informed that he was not entitled to any pro-rata pension because his service from 10.11.1982 to 9.11.1985 did not qualify for pension. That the period of training could not be counted in his case as service qualifying for pension because the instructions for counting of training period as qualifying service came into effect from 1983, that he did not make the payment towards Foreign Service and that his absorption in Instrumentation Limited, Palakkad was not in public interest. Aggrieved by that the applicant has filed this application. It is alleged in the application that none of the grounds mentioned in the order is sustainable. That the date on which the applicant ceased to be borne in the service of the Railways, namely, 9.11.1985, the rules permitted counting the period of training as qualifying service for pension and that in view of the instructions issued by the Railway Board even voluntary resignation to take up appointment in public sector undertaking forwarded through proper channel would entitle the person to pensionary benefits and that the claim of the applicant has been rejected without the due application of mind. The applicant therefore seeks to set aside Annexure A-13 order and for a declaration that applicant is entitled to be granted pro-rata pension and other retiral benefits with effect from 10.11.1985 with consequential arrears.

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3. The respondents seeks to justify the impugned order on the ground that the instruction regarding counting of training period as qualifying service having came into effect in the year 1983, the applicant who had been relieved from Railway service in the year 1982 is not entitled to the benefits, that the applicant having not been absorbed in the Instrumentation Limited in public interest but only on his own volition, he is not entitled to the pensionary benefits. Neither the applicant nor the Instrumentation Limited has made the contribution towards foreign service, the claim for counting the period as qualifying service for pension does not arise and that the case of Somasundaran referred to by the applicant in the application is not similar as the order of the Bangalore Bench was passed on the basis of the mistake in the service register of Somasundaran.

4. I have carefully scrutinised the entire pleadings placed on record and have heard the learned counsel on either side. Since it is admitted that the applicant had retained his lien with the Railways till 9.11.1985, although he was relieved from Railways on 9.11.1982. The contention of the respondents that the Annexure A-4 and Annexure A-5 orders which stipulate that the period of training would be reckoned as qualifying service for pension did not apply to the applicant is unsustainable, argued the learned counsel for the applicant. I am in complete agreement with the argument of the learned counsel because on account of the fact that the applicant ceased to be a Railway servant only on 9.11.1985, the date on which resignation was accepted and his lien discontinued. The Annexure A-4 order which was modified by Annexure A-5 order for treating the period of

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training as qualifying service for pensionary benefits in the case of Group C and Group D employees which came into effect from 20.11.1983 is undoubtedly applicable to the applicant who ceased to be a Railway servant only on 9.11.1985. Since the service from 14.11.1976 up to 9.11.1985 is more than ten years, the respondents therefore cannot contend that the applicant is not entitled to the pensionary benefits for the reasons that he did not have the sufficient length of service entitling him to receive pension. The contention that the absorption of the applicant in Instrumentation Limited, Palakkad not being in public interest but was on his volition, the applicant would not be entitled to the benefits in terms of Chapter V of MOPR 93 is also no more tenable, in view of what is contained in P.B. Circular No.79/78 (Annexure A-15). In paragraph 2 of Annexure A-15 it has been clarified as follows:

Thus, there still remained a distinction between the Railway Servants who got absorbed in the public interest and the permanent Railway servant getting absorbed on their own volition for the purpose of grant of pro-rate retirement benefits. The question of removing this distinction had been under the consideration of the Government for some time and it has now been decided in consultation with the Department of Personnel and Administrative Reforms, that there should be no distinction between the two types of deputationists getting absorbed in public enterprises, subject to the condition that the period of leave to be carried forward should be restricted to 120 days L.A.P. in the case of absorption of permanent railway employees who initially joined the enterprise of their own volition. This will apply to all cases of absorption of permanent Railway servants in public sector enterprises, who had earlier joined the concerned undertakings on their own volition, provided that in cases where such absorption took place on or after 8th November 1968 but prior to 2nd August 1972, the benefit of proportionate pension should be allowed only from 1st August 1976. In the case of Railway Servants governed by S.R.P.F. (Contributory) rules and who are otherwise covered by these orders also, these retirement benefits including special contribution to S.R.P.F.prorata may now be extended if the same has not been granted earlier in terms of Railway Ministry's

Letters No.F(E)III/70/PF-1/2 dated 11th February 1970 and 30th April 1971.

5. It is also pertinent to mention that P.B.Circular No.17/94 (Annexure A-16) at Chapter I Part C as paragraph 17 it has been stated as follows :

Retirement benefits to a railway servant who had applied on his own volition on the basis of his application in response to press advertisement for posts in Public Sector Undertakings and Autonomous bodies was also allowed the payment of retirement benefits as allowed to those who were permanently absorbed after deputation in public interest.

6. The only question therefore remaining is whether for non payment of Foreign Service Contribution either by the Instrumentation Limited, Palakkad or by the applicant, the applicant is to be disentitled to claim the pro-rata pensionary benefits. The learned counsel for the applicant states that the applicant is prepared to pay the Foreign Service Contribution for the period between 10.11.1982 to 10.11.1985 and therefore the respondents may be directed to intimate the applicant the quantum and also to process and pay to the applicant the pro-rata pensionary benefits without further delay. I am satisfied that the request is reasonable and on the applicant paying the Foreign Service Contribution for the said period, the respondents have to make available to the applicant the pensionary benefits for his service from 15.11.1971 to 10.11.1985.

7. In the result the application is disposed of with the following directions. (a) The respondents are directed to intimate the applicant within a period of two months the quantum of Foreign Service Contribution payable by the applicant or Instrumentation Limited, Palakkad for the period between 10.11.1982 to 10.11.1985. (b) The applicant shall on receipt of

the above intimation remit the amount in the office of the 4th respondent or at any place as directed by the 4th respondent within three weeks from the date of receipt of the intimation.

(c) On receipt of the payment mentioned at paragraph B, the respondents shall issue orders quantifying the pensionary benefits due to the applicant counting his service from 15.11.1971 to 9.11.1985 and make available to the applicant the arrears resulting therefrom within a period of two months from the date on which payment of Foreign Service Contribution is made by the applicant. No order as to costs.

(Dated the 20th day of October 2003)



A.V. HARIDASAN
VICE CHAIRMAN

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