

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
T. A. No.

294

1990

DATE OF DECISION 11.10.90

M.P.G. Nair

Applicant (s)

Mr. K. Ramakumar

Advocate for the Applicant (s)

Versus

UOI rep. by GM, C.Rly, Bombay and others Respondent (s)

Mr. M. C. Cherian

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr.

S. P. Mukerji, Vice Chairman

The Hon'ble Mr.

N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

A retired Railway employee has filed this application under section 19 of the Administrative Tribunals Act, 1985.

His complaint is that his war service from 2.12.42 to 14.5.46 was not taken into consideration by the respondents in computing and granting his pensionary benefits while fixing his pension after the retirement.

2. The case of the applicant is that after his retirement from the military service on 16.2.48 he was absorbed in the Railway Service as a Commercial Clerk in the Central Railway. He retired as Chief Tranship Clerk

2

..

on 24.8.1979. While he was in Railway service the respondents have taken into consideration his past service from 2.12.42 to 14.5.46 and fixed his seniority and granted confirmation in the Railway service. All service benefits were also given to him on that basis. But after his retirement when his pension and gratuity were fixed this war service was not counted. There is no reason for the refusal to count this war service. Hence he has filed repeated representations. Ultimately when the representations did not produce any favourable result the applicant approached this Tribunal with the prayer that a direction may be issued to the respondents to grant his pension and gratuity and all other consequential benefits counting his period of war service from 2.12.42 to 14.5.46.

3. The respondents have filed a detailed counter affidavit. They have not denied the statement of the applicant that his seniority was fixed after taking into consideration his war service from 2.12.42 to 14.5.46. They have also not denied the case of the applicant that he is entitled to the above mentioned war service also for counting his pensionary benefits but they submitted that for want of details regarding the war service of the applicant they are helpless. They admitted that even when he was in service they had tried their best to get the details of the war service

of the applicant from the concerned military department but they failed. The applicant was informed of this fact. He was also called upon to produce necessary documents in support of his claim. But the applicant did not produce any document till now. Nevertheless the respondents have taken sympathetic consideration and referred the matter to the Divisional Accounts Officer.

4. The applicant filed a rejoinder and contended that all the available documents relating to his war service were produced by him before the respondents when the question of seniority and confirmation in the Railways service was taken up. Along with the counter affidavit he has also produced Annexure-G certificate dated 21.9.78 issued by the Divisional Supdt., Central Railway, Sholapur. The certificate is extracted below:

"Shri M.P.G. Nair presently working as Head Parcel Clerk at Gulbarga on Solapur Division of Central Railway, is an Ex-serviceman with War Service from 2.12.1942 to 14.5.46 and has been absorbed against one of the War reserved vacancy on the then G.I.P. Railway on and from 16.2.1948.

This certificate has been issued at the request of the employee in connection with the appointment of his daughter in the Army Medical Service."

5. Having heard the matter and after careful perusal of the documents, we are of the view that the applicant's case that he has in his credit war service for a period from 2.12.42 to 14.5.46 is genuine. This is clear from Annexure-G certificate issued by the Divisional Supdt. Central Railway, Sholapur in 1978. This certificate

5

cannot be considered as a bogus one. There is no case for the respondents that this can not be accepted in support of the claim of the applicant. After the production of this certificate the respondents have not filed any additional counter affidavit denying the validity of the certificate. Hence we have to accept the *and ~~fact~~ has having been y* certificate issued after verification of the relevant records of the military authorities.

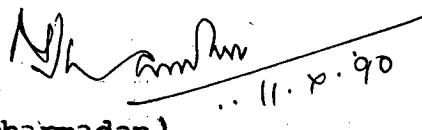
6. The applicant was given seniority and confirmation in the Railway Service after counting his war service referred to above. This has been admitted by the respondents. When the respondents have given the benefit of the war service in granting confirmation/promotion and other service benefits while he was in service, there is no legal justification to deny the same benefit in the matter of fixing pensionary benefits like pension, gratuity etc. It is pertinent to note in this connection Annexure-C, a letter dated 8.11.1988 written by the Deputy Railway Manager, Central Railway, Sholapur to the Divisional Accounts Officer, Sholapur recommending the concurrence for granting the period of war service claimed by the applicant in computing the pensionary benefits to be given to the applicant. This letter was not favourably responded by the DAO, Sholapur so far. However, from these facts it is clear that the applicant *after y* is eligible for pensionary benefits ^{after y} counting his war

service from the period 2.12.42 to 14.5.46.

7. On the facts and circumstances, the only impediment which stands in the way of the applicant in getting his war service also counted with the Railway service for fixing the pensionary benefits is the lack of information as to whether he had received any pensionary benefits from the military authorities. The applicant submitted that when he was called upon to produce certificate in this behalf by the respondents as per Annexure-A, he produced an affidavit duly executed before a Notary Public with Annexure-B covering letter. He also submits that no pension or gratuity has been sanctioned or paid to him by the Army authorities. But no such affidavit has been produced before us as stated in the application. However, this is a matter which requires to be established before the respondents by the applicant for getting the pensionary benefits as claimed by him in this application.

8. Having regard to the facts and circumstances of this case after carefully considering the matter, we are of the view that the applicant's prayer, that ^a direction to the respondents as prayed for in the application, is to be granted. Accordingly, we direct the respondents, to grant the applicant pension and gratuity and all other consequential benefits due to him by counting the period of his war service from 2.12.42 to 14.5.46, provided the

applicant furnishes the affidavit duly attested by the Notary Public or other relevant documents to satisfy the respondents that no pension or gratuity has been sanctioned or paid to him or received by him from the Military authorities in respect of his war service for the period mentioned above. The applicant is directed to furnish this affidavit or documents with relevant details before the second respondent within a period of one month from today. If he furnishes such details the respondents shall compute the pensionary benefits counting his war service and disburse the same to him with all arrears within a period of three months thereafter. Accordingly the application is disposed of as above. There will be no order as to costs.


(N. Dharmadan)

Judicial Member


(S. P. Mukerji)

Vice Chairman

kmm