

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

1. Original Application No. 213 of 1992

Abdul Shakur

Applicant

versus

Union of India through G.M.

N.E.Railway Gorakhpur & another

Respondents.

AND

2.OA. No. 214 of 1992

Mohan

Applicant

versus

Union of India through G.M.

N.E. Railway Gorakhpur & another

Respondents.

HON. MR. S.N. PRASAD, JUDL. MEMBER.

As the common questions of law and fact are involved in both the above Original Applications, they are being disposed of together by this common judgment.

2. The applicants have approached this Tribunal under section 19 of the Administrative Tribunal's Act, 1985 against their alleged forced retirement at the age of 58 years and also for directing the respondents to pay full amount of salary and emoluments of two years to them deeming their age of superannuation as sixty years.

3. Briefly stated the facts of the cases are that the applicant of O.A. NO. 213 of 1992 was appointed in class IV service by Avadh Rohelkhand Company on 1.10.1946 and subsequently his services were transferred and absorbed in Govt. of India.

His date of birth is 1.10.1924 and as per extant Railway rules ^{prevailing at that time} ^{in several} the class IV ^{by} who

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had rendered their services upto 30.11.62 i.e. prior to absorption by the Govt. of India, were entitled to serve upto the age of 60 years. In this connection reliance has been placed on Rule 2046 (e) of the Railway Rules, which reads as under:

"(e) Railway servant in Class IV service or post who prior to 1st December, 1962 were entitled to serve upto the age of sixty years including the new entrants to those categories shall continue to serve upto the age of sixty years."

It has further been stated that against the above illegal order he approached the Prescribed Authority under the Payment of Wages Act, who rejected the claim of the applicant vide order dated 18.2.92; and now the applicant has filed the present Original Application.

4. Briefly stated, the facts of the case of O.A. No. 214/92 "Mohan vs. Union of India," interalia, are that Shri Mohan was appointed in Railway service as a Peon under D.M.E. Western Railway at Mau (Ratlam) w.e.f. 2.12.1946, and his date of birth is 28.11.1922; and he was retired from railway service on 30.11.80 under 58 years age limit. The contention of the applicant is that he was an appointee of 1946 and as such he was entitled to be retired at the age

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of 60 years, but the Railway Administration illegally retired him w.e.f. 30.11.1980 while he would have been retired from service from 30.11.1982 i.e. two years after. The other contentions of the applicant ~~in~~ O.A. no. 214/92 are almost identical with that of allegations of the applicant of O.A. no. 213/92 Abdul Shakoora ~~as mentioned above~~

5. The respondents in their counter reply have resisted the claim of the applicant with the contentions, interalia, that the applicants have correctly been retired at the age of 58 years being their dates of birth as 1.10.1924 in the case of applicant ~~in~~ O.A. no. 213/92 and 28.11.1922 in the case of applicant ~~in~~ O.A. no. 214/92, according to their Service certificate and record. It has further been contended that the applicants have correctly been retired as per provisions of ~~rule~~ (para) 20~~66~~ and in terms of Railway Board letter No. E-(P&A) I-72/RT/2/17/9/1976 circulated by the General Manager(P), Gorakhpur on 13.11.76 (copy of which are Annexures C-1 and C-2 respectively to the Counter Reply). It has further been contended that the applicants ~~is~~ not not entitled for payment of two years as their claims have already been rejected under the Payment of Wages Act, and in the above circumstances, the applications of the applicants are liable to be dismissed.

6. I have heard the learned counsel for the parties and have thoroughly gone through the record of the cases.

7. The learned counsel for applicants of both the aforesaid cases have drawn my attention to the provisions under para 2046(e) of Rule 71 which provide that the Railway servants in class IV service or post who prior to 1st December, 1962 were entitled to serve upto the age of 60 years including the new entrants to these categories shall continue to serve upto the age of 60 years ; and have argued that as per above provisions, the applicants should have been allowed upto the superannuation age of 60 years and should not have been retired earlier deeming their age of superannuation as 58 years only because when they joined their services in their respective Railway Companies, as referred to above, the age of superannuation of the employees of such categories was 60 years, but the applicants have been arbitrarily and malafidely retired at the age of 58 years.

8. The learned counsel for the respondents, in both the aforesaid cases have drawn my attention to the provisions contained in para 2046(a); and have argued that the applicants were to retire at the age of superannuation of 58 years and they have rightly and legally been retired on completion of age of 58 years; and there is no illegality and invalidity therein ; and have further drawn my attention to the copy of Railway Board's letter No.E(P&A)/1-72/RT/2 dated 17.9.76 addressed to the General Manager, All India Railways and others which makes a reference of the judgment of the Hon'ble Supreme Court in Pitchumani's case (which is Annexure ~~E~~ to Annexure ~~C-1~~) ; and have further argued that it has clearly been specified therein that all other former Provincial Government & Company and Ex - State employees will retire at the age of 58 years under clause (a) of the rule 2046- ~~or (ii)~~ irrespective of whether they are governed by the pre absorption terms and conditions or by Indian Government

Railway rules; and as such the applications of the applicants be dismissed.

9. This is noteworthy that a careful perusal of Annexure 1 to C.A. which is a copy of Railway Board's letter dated 17.9.76 as reverred to above makes clear mention that all other former Provincial Government, Company and Ex-State Employees will retire at the age of 58 years under Clause (a) of Rule 2070-~~2070~~(i) irrespective of whether they are governed by the pre absorption terms and conditions or by Indian Government Railway rules. This is also noteworthy that from the perusal of record, it becomes obvious that L.C. No. 440/85 which was filed by the aforesaid applicant Shri Abdul Shakoor of O.A 213/92 was dismissed as per judgment and order dated 3.10.86 passed by the Presiding Officer, Central Labour Court, Kanpur, and later on the claim of the aforesaid Shri Abdul Shakur was dismissed by the Prescribed Authority under Payment of Wagdes Act. and the Assistant Commissioner, Lucknow in P.W. case No. 423 of 1988 as per his judgment and order dated 18.2.92.

10. Thus, from the foregoing discussions and after considering all the view points and all aspects of the matter, I find that the application of the applicant Abdul Shakur in O.A No. 213/92 and the application of the applicant Shri Mohan in O.A. No. 214/92 are devoid of merit and are hereby dismissed. No order as to costs.

LUCKNOW:DATED 20.7.93

JUDL. MEMBER. 20.7.93

Shakeel/