

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW.

Original Application No.427 of 1992

Karim Uzzaman Khan :::::: Petitioner

Vs.

Union of India &
Others. :::::: Respondents.

CORAM:

HON'BLE MR.JUSTICE R.K. VARMA, V.C.
HON'BLE MR. V. K. SETH, A. M.

(By Hon. Mr. Justice R.K. Varma, V.C.)

By this petition Under Section 19 of the Administrative Tribunals Act 1985, the petitioner has sought quashing of the order of the respondents whereby the petitioner has been retired, and a direction to the respondents to treat the petitioner to have been in service till the age of 60 years and to pay the petitioner all consequential benefits. The petitioner has also prayed for a direction to the respondents to prepare his leave account taking the leave due on 1-1-69 as 180 days and accordingly to pay to the petitioner the nonpaid amount of leave encashment for the remaining 148 days with interest.

2. The facts giving rise to this petition briefly, are as under:-

The petitioner has been a ministerial employee of N.E. Railway and was retired as Office Supdt.II of Commercial Department of the office of the Divisional Railway Manager, N.E.Railway, Lucknow on 30-6-88.

3. The petitioner's initial appointment was made on 30-8-48 by the erstwhile Oudh Tirhut Railway, which was subsequently amalgamated with N.E. Railway as its constituent unit on 14-4-52. The petitioner was continued in service till 30-6-88 when he attained the age of 58 years and was retired.

4. The petitioner has submitted that the age of superannuation for the ministerial staff, to which the petitioner belonged was 60 years and not 58 years. In support of his submission the petitioner placed reliance on Annexure-3 to the petition which contains the unamended para 2046 of Railway Establishment Code, relevant portion of which reads as under:-

"2046. (F.R.56). (1) Except as otherwise provided in the other clauses of this rule the date of compulsory retirement of a railway servant, other than a ministerial servant, is the date on which he attains the age of 55 years. He may be retained in service after the date of compulsory retirement with the sanction of the competent authority on public grounds, which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances.

(2) (a) A ministerial servant, who is not governed by sub-clause (b), may be required to retire at the age of 55 years, but should ordinarily be retained in service, if he continues efficient up to the age of 60 years. He must not be retained after that age except in very special circumstances, which must be recorded in writing, and with the sanction of the competent authority.

Note:- The ministerial staff in the offices of the Railway Board, the Chief Controller of Standardization and the Chief Mining Engineer, coming under the above sub-clause shall be required to retire at the age of 56 years.

(b) A ministerial servant-

(i) who has entered Government service on or after the 1st April 1938, or

(ii) who being in Government service on the 31st March 1938 did not hold a lien or a suspended lien on a permanent post on that date,

shall ordinarily be required to retire at the age of 55 years. He must not be retained after that age except on public grounds which must be recorded in writing, and with the sanction of the competent authority and he must not be retained after the age of 60 years except in very special circumstances."

5. The petitioner was initially appointed on 30-8-1948 in Oudh Tirhut Railway, which was subsequently amalgamated with N.E. Railway as its constituent unit on 14-4-52. As such the petitioner entered the Govt. service as a ministerial staff after 1-4-1938 and was in the category of Clause II (b) (i) of unamended paragraph 2046 of Railway Establishment Code. As per the provisions applicable to clause II(b) (i) of para 2046, the ministerial servant shall ordinarily be required to retire at the age of 55 years and he must not be retained after that age except on public grounds which must be recorded in writing and with the sanction of the competent authority and he must not be retained after the age of 60 years except in very special circumstances. In the circumstances there is no record in writing for retention of the petitioner on public grounds beyond

the age of 55 years. As such clause II (b) (i) of para 2046 of Railway Establishment Code is of no help to the petitioner.

6. The petitioner has been continued till the age of 58 years under the amended para 2046 of the Railway Establishment Code as it stood on 11-1-67 which the respondents have reproduced in para 2 of the counter as under:-

" 2046 (F.R.56):- (a) Except as otherwise provided in this Rule, every railway servant shall retire on the day he attains the age of fifty eight years.

(b) A ministerial railway servant who entered Government service on or before the 31st March, 1938 and held on that date -

(i) a lien or a suspended lien on a permanent post, or

(ii) A permanent post in a provisional Substantive capacity under clause (d) of Rule 2008 and continued to hold the same without interruption until he was confirmed in that post, shall be retained in service till the day he attains the age of sixty years.

For the purpose of this clause, the expression "Government service" includes service rendered in a former provincial Government and in ex-Company and ex-State Railways.

(c) A ministerial railway servant referred to in clause (b) may be

granted extension of service, under very special circumstances to be recorded in writing, after he attains the age of sixty with the sanction of the appropriate authority. *

7. According to the above provisions of the amended para 2046 of Railway Establishment Code, ~~the~~ a ministerial Railway Servant who entered Government service on or before 31-3-38 can alone be retained in service till the date he attains the age of 60 years, but the petitioner is a ministerial railway servant who entered the Government service after 31-3-1938 and not on or before 31-3-38 and as such he is not covered by the clause (b) of para 2046 of the Railway Establishment Code so as to be entitled for being retained in service till the age of 60 years.

8. The learned counsel for the petitioner has cited the decision of the Supreme Court in the case of Railway Board Vs. Pitchumani (AIR 1972 S.C. 508) in support of his submission that the employees of Ex-Companies, Railways, who had taken up service under the Indian Railway Administration have to be treated alike. In our opinion the case cited does not help the petitioner since the case of Pitchumani (Supra) deals with a discriminatory note which had the effect of sub-dividing the employees covered under clause (b) of para 2046 as stated above into 2 categories without there being a rational basis therefor.

9. The learned counsel for the petitioner also cited the decision of the Supreme Court in Navnitlal Mani Lal Bhat Vs. Union of India & Others (AIR 1973 S.C. 1167) which deals with a discriminatory treatment of Railway Servants & ought to be retired at the age of 55 years even though the amended provisions of clause (a) of para 2046 of Railway Establishment Code

granted extension of service, under very special circumstances to be recorded in writing, after he attains the age of sixty with the sanction of the appropriate authority. *

7. According to the above provisions of the amended para 2046 of Railway Establishment Code, ~~the~~ a ministerial Railway Servant who entered Government service on or before 31-3-38 can alone be retained in service till the date he attains the age of 60 years, but the petitioner is a ministerial railway servant who entered the Government service after 31-3-1938 and not on or before 31-3-38 and as such he is not covered by the clause (b) of para 2046 of the Railway Establishment Code so as to be entitled for being retained in service till the age of 60 years.

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which raised the age of retirement of Railway servants from 55 years to 58 years. This case is also of no help to the petitioner. The petitioner has also cited a decision of C.A.T., Allahabad Bench, in Victor Singh Vs. Union of India and Others, in O.A.No.255/90, decided on 25-6-1992. In that case the petitioner was retired at the age of 58 years on 31-8-90 who entered in Railway service as substitute cleaner in Class IV (Group 'D') in the year 1932. The facts of that case are not similar to the instant case so as to justify the ~~case~~ ^{stand} _{law} of the petitioner.

10. The learned counsel for the petitioner has also cited a decision of the Lucknow Bench of the High Court in Mohd. Habib Vs. Union of India dated 23-4-83 passed in W.P.No.963/78. But that case pertains to the age of retirement of Group 'D' (Class IV) employees and as such the said decision is of no help in the instant case which pertains to a ministerial employee belonging to Class III.

11. The learned counsel for the petitioner has placed reliance on Railway Board's letter NO.E(P&A) I-72/RT/2 dated 17-9-76 which the petitioner has filed with the petition. The relevant portion as stated in para 5 of the letter shows the position in regard to the age of retirement of all former provincial Govt., Ex-State & Ex-Companies of Railway employees both ministerial and non-ministerial. The relevant portion pertaining to the ministerial staff is as follows:-

*** MINISTERIAL.**

- 1) All former provincial Govt. Ex-State and Ex-Company employees who fulfil the conditions prescribed in clause (b) of Rule 2046-RII will retire at the age of 60 years irrespective of whether they are governed by the pre-absorption terms and conditions or Indian Government Railway Rules.
- 2) All other former Provincial Govt., Ex-Company and Ex-State employees will retire at the age of 58 years under clause (a) of Rule 2046-RII irrespective of whether they are governed by the pre-absorption terms and conditions by Indian Government Railway rules. *

The clause (i) which provides for the retirement at the age of 60 years, is made applicable to employees who fulfil~~s~~ the conditions prescribed under clause (b) of Rule 2046-RII of the Railway Establishment in Code, but~~/~~ the instant case the petitioner does not fulfil the conditions prescribed in clause (b) of para 2046 since he did not enter the government service on or before 31-3-1938.

11. In the circumstances discussed above, the petitioner is not entitled to claim that he should have been retired at the age of 60 years and not 58 years.

12. As regards the petitioner's entitlement of encashment of E.L. for a period of 240 days which he has claimed on the ground that he had to his credit E.L. exceeding 240 days when he retired, we find that the respondents have allowed leave encashment for a period of 92 days only on the basis of record regarding the leave of the petitioner due to him during the period 1-1-69 till the retirement of the petitioner on 30-6-88 and treating the E.L. due to the petitioner for the earlier period of his service of 20 years from the date of his appointment i.e. 13-8-48 to 31-12-68 as "zero" on the ground that the relevant record of leave for the said period was not available with the respondents.

13. The petitioner has averred in para IV(12) of the petition that he availed only ~~that~~ ¹⁵⁰ much of leave _{Rmv}

-8-

as would leave a balance E.L. due to his credit as on 31-12-68 was not less than 180 days. We find no reason why this averment of the petitioner be not believed when the respondents who was supposed to maintain the record of the leave of the petitioner, have not been able to trace out the same and have, therefore, taken a wrong stand of assessing the leave due to the petitioner for the said period of 20 years as "zero" on the ground of non-availability of record with them. In the circumstances we accept the averment of the petitioner and hold that the E.L. due to the credit of the petitioner on 31-12-68 was 180 days. Added to this, the E.L. of 92 days for the period 1-1-69 till the date of petitioner's retirement on 30-6-88 as stated by the respondents, the total E.L. due to the petitioner can be computed as 272 days as it stood on the date of his retirement. Since the petitioner claims full payment of leave encashment of 240 days, whereas he was paid encashment of 92 days only, it is held that the petitioner is entitled to get the amount of leave encashment for the balance period of 148 days as claimed by him.

14. Accordingly, the respondents are directed to pay to the petitioner a further amount of leave encashment for 148 days with interest at the rate of 18% per annum from the date of his retirement to the date of payment within a period of

two months from the date of communication of this order. Thus, the petition is only partly allowed with no order as to cost.

W. S.
MEMBER (ADMN.)

R. K. Dass
VICE-CHAIRMAN.

Dated: 3/12/1993, Lucknow.