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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

REGISTRATION T.A.NO.258 of 1986(Suit No.320 of 1985)

Phool Chand ... Plaintiff.

Vs.

Union of India and two others ... Defendants.

Hon.D.S.Misra,AM

Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma,JM)

This original suit has been received by transfer from the Court of VIth Additional Munsif Lucknow under Section 29 of the Administrative Tribunals Act XIII of 1985.,

2. The case of the plaintiff is that he was initially appointed as inferior railway servant on 20.5.1943 in the grade of Rs.14-1-17 on the establishment of Director, Railway Clearing Accounts, Delhi. The Clearing Accounts office was one of the offices of the Government of India (Ministry of Railways). The Northern Railway came into being on 14.4.1952 and the plaintiff was transferred to the Northern Railway w.e.f.5.9.1952. On the request of the plaintiff he was transferred as a Peon in the grade of Rs.200-250 from 29.4.1957 under Sr.Accounts Officer Northern Railway,Lucknow where he worked till 31.10.1983. According to the plaintiff, under his service agreement and conditions, he had to continue in service till the completion of 60 years but he was wrongly retired after completing the age of 58 years on 31.10.1983 despite his representations.. He accordingly filed this suit after giving a notice under Section 80 of the Code of Civil Procedure to the defendants for a declaration that he is entitled to retire after the completion of 60 years of age with all consequential benefits.

3. The suit has been contested on behalf of the defendants and in the written statement filed on their behalf it has been stated that the plaintiff's initial appointment was on non-pensionable post and he remained on that post till he opted for the pension in the year 1966. According to clause 6 of the service agreement executed by the plaintiff on 14.3.1962, he was ^{not} entitled to any pension. Rule 143 of the Indian Railway Establishment Code Volume II (hereinafter referred to as the Railway Code) relied upon by the plaintiff is not applicable to his case. Under the existing rules, the plaintiff was rightly retired after completion of 58 years of age and his claim to the contrary is against the law and rules and he is not entitled to any relief.

4. In the replication filed by the plaintiff, he reaffirmed the allegations made in the plaint. Admitting that the plaintiff's case is governed by Pension Rules 1950, he denied the other allegations made in the written statement filed by the defendants. It was also stated that the defendants are bound by the judgement of the Allahabad High Court in Writ Petition No.963 of 1978 Mohd. Habib Vs. Union of India which is a judgement in rem.

5. It is not in dispute in this case that the plaintiff had joined the service of the Ministry of Railways in 1943 as an inferior railway servant. The only question arising for determination in this case is as to what was the age of retirement of the plaintiff under the rules and the agreement of his service. Written arguments were submitted on behalf of the plaintiff in which reliance has been placed on rule 2046 of

the Railway Code Volume II and the decision of the Allahabad High Court in the case of Mohd. Habib Vs. Union of India in writ petition no.963 of 12971 decided on 1.4.1983. Clause (e) of rule 2046 of the Railway Code corresponding to Financial Rule 56 as amended ^{and cited} in the 1974 edition of the Railway Code runs as follows :-

"(e) Railway servants 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. "

6. Admittedly, the plaintiff was in service from before 1.12.1962. Placing reliance on this rule, their Lordships of the Lucknow Bench of the Allahabad High Court in writ petition no. 963 of 1978 had held in a case of class IV employee of the Railway Department who had entered in service on 23.3.1943, that his age of retirement was 60 years and the order passed to retire him at the age of 58 years was violative of clause (e) of rule 2046. The said order was accordingly quashed and the petitioner was allowed to have the benefit of service upto his attaining the age of 60 years. The contention of the plaintiff is that on the same principle the plaintiff was entitled to continue in service upto 60 years of age and the order passed by the defendants retiring him at the age of 58 years is illegal.

7. The contention of the defendants, however, is that clause (e) of rule 2046 is not of general application but it protected and ensured the rights and benefits of only such railway servants who prior to 1. 12.1962

were entitled to serve upto the age of 60 years. It is, therefore for the plaintiff to prove first that he was entitled to serve upto the age of 60 years prior to Dec. 1962 and that being done, under the protection granted by this clause, the defendants could not retire him earlier. The plaintiff has not filed any document to support his claim regarding his age and he simply wants that an inference should be drawn in his favour from the fact that he was an inferior railway servant and the inferior railway servants engaged prior to 1962 were entitled to serve till their attaining the age of 60 years. It has now to be seen whether this contention is tenable and the material on record justifies such inference. Eight documents were filed on behalf of the defendants in this case. The first document marked 'A' is the copy of service agreement dated 14.3.1962 for class III staff entered into between the plaintiff and the Railway Department. Clause 6 of this document shows that the plaintiff's service was not pensionable. Document marked 'B' dated 28.6.1966 is an option given by the plaintiff for liberalised railway pension. The extract of his service record marked 'C' shows that an entry about this option of the plaintiff as on 28.6.66 was made in his service record and his service was made pensionable. Prior to that his service was not pensionable : Rule 9 of the Pensionable Inferior Railway Servants (Gratuity, Pension and Retirement) Rules provides that a railway servant shall retire when he has attained the age of 60 years. On this basis, it was contended on behalf of the plaintiff that he is entitled to continue in service upto the age of 60 years. Rule 1 of these rules provides that these pension rules were applied to pension-

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able inferior railway servants specified in schedule I. Rule 2 of these rules provides that nothing in these rules shall be deemed to derogate from any rules or orders inforce not inconsistent with these rules. In para 5 of the plaint, the plaintiff has alleged that he was entitled to invalid pension vide rule 2514 and no option could be required from him to elect new Liberalised Pension Rule 1950. In para 7 of his replication, the plaintiff had stated that he is governed by Pension Rules 1950. The option paper marked 'B' cited above shows that the plaintiff opted for Railway Liberalised Pension Rules in 1966. We are, therefore, of the view that rule 9 of the Pensionable Inferior Railway Servants (Gratuity, Pension and Retirement) Rules does not apply to him and on its basis his age of retirement cannot be held to be 60 years.

8. Rule 2046 of the Railway Code has been amended by various circular orders issued by the Railway Board according to which class IV railway servants who entered railway service on or after 1.8.1940 were required to be retired on attaining the age of 55 years with the exception that this provision was not to apply to such class IV employees who were taken from Ex. State Railways and such employees of the RDSO as are governed by rule 9 of the Pensionable Railway Servants (Gratuity, Pension and Retirement)Rules (see Railway Board's letter no F (P)58/PN-1/7 dated 10.7.1958). This amply clarifies the position that rule 9 of the aforesaid Pension Rules is not applicable to the plaintiff who had opted for liberalised pension rules in 1966.

9. Document marked 'D' filed by the defendants also states about the same amendments in rule 2046 of the Railway Code. The amendment made on 6.12.1962 provided that the age of compulsory retirement for those categories of class IV railway employees who were at that time entitled to serve upto the age of 60 years, ^{was} were allowed to continue upto 60 years. It was further mentioned in this document that there was no class IV staff employed on the railway who was entitled to serve upto the age of 60 years. Document marked 'F' also speaks about certain clarifications regarding retirement age of class IV employees and shows that the age of retirement of class IV employees is only 58 years. The other documents filed by the defendants show that the representations made by the plaintiff ~~was~~ duly considered and he was informed that the rule of retirement at the age of 60 years is not applicable to him and the aforesaid judgment delivered by the Lucknow Bench of the Allahabad High Court is also not applicable to his case. After a careful consideration of the whole matter we have come to the conclusion that the plaintiff has failed to prove that at any time before his retirement he was entitled to serve the railway administration upto the age of 60 years. The various rules and the judgment of the Lucknow Bench relied upon by him have, therefore, no application to his case and he was rightly retired at the age of 58 years. There is no force in his claim and the same is liable to be dismissed.

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10. The suit is accordingly dismissed without any order as to costs.

15/7/87

MEMBER (A)

22/7/87

MEMBER (J)

Dated : July 22, 1987
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