

(17)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Transfer Application No. 259/86

Kashiram Bhaurao Surve

... Applicant

V/s.

Union of India & ors.

... Respondents.

Coram: Hon'ble Shri P.S. Chaudhuri, Member (A)

Hon'ble Shri T.S. Oberoi, Member (J)

Appearance:

Mr. G.K. Masand, advocate
for the applicant.

Mr. N.K. Srinivasan, advocate
for the respondents.

JUDGEMENT

Dated: 13.9.1991

¶ Per Shri P.S. Chaudhuri, Member(A) ¶

This application has come to the Tribunal by way of transfer under Section 29 of the Administrative Tribunals Act, 1985 in terms of the Bombay High Court's order dated 4.7.1986 on Writ Petition No. 326/79 which was filed before it on 16.2.1979. The petitioner (applicant) is working as Record Sorter on Western Railway and his surviving prayer is that the respondents be directed to allow him to continue in service till the end of February, 1981 when he would be completing 60 years of age instead of being retired on 30.11.1978.

2. The applicant (petitioner) was originally appointed on 24.11.1939 as a Watchman on permanent basis on the then Bombay, Baroda and Central India Railway Company (for short, BB & CI Rly.Co.) which Railway Company was taken over by the Government of India with effect from 1.1.1942. In due course, the

applicant was promoted as Naik, which post was redesignated as Senior Rakshak. He was declared medically unfit for the post of Senior Rakshak and was absorbed in the alternative post of Peon on 24.2.1960. In due course he was promoted first as Daftary and thereafter as Record Sorter in the scale of pay of Rs. 210 - 270 (R) with effect from 11.3.1973. Being aggrieved at his retirement with effect from 30.11.1978, he filed the present writ petition on 9.2.1979.

3. The respondents have opposed the writ petition by filing their affidavit in reply. We have heard Mr. G.K. Masand, learned counsel for the applicant and Mr. N.K. Srinivasan, learned counsel for the respondents.

4. The two questions which arise for decision in this case are what is the age of superannuation of the applicant according to the rules and instructions and what is the date on which he will attain this age.

5. The applicant's recorded date of birth has also been questioned by him in this application and so before we address ourselves to these questions, it will first be necessary to take a view regarding the applicant's recorded date of birth. The applicant's submission regarding his recorded date of birth was that at the time of his employment on 24.11.1939 his date of birth was erroneously recorded as 1.7.1920 instead of 10.2.1921. On coming to know about the error he made a representation on 27.4.1978. While his representation

was under consideration, he was retired on superannuation with effect from 30.6.1978 on the basis of the recorded date of birth of 1.7.1920. However, by order dated 21.9.1978 the respondents held that the Chief Medical Officer who examined the applicant for appointment to the post of a Watchman certified that he was 19 years of age on 23.11.1939. However, in the service record prepared for the applicant his date of birth was recorded as 1.7.1920 probably because the month and date of his birth were not known correctly. However, he having been medically examined on first appointment on 23.11.1939 and medically assessed as being 19 years of age, he should have been deemed to have completed 19 years of age on 22.11.1939 and accordingly his date of birth ought to have been recorded as 23.11.1920. Accordingly, the respondents rectified the error in the applicant's date of birth and ordered that it now be deemed ^{to} be 23.11.1920 for all intents and purposes. The applicant's retirement was, accordingly, set aside and he continued in service till 30.11.1978. It was the applicant's contention that the respondents had failed to deal with his request that his date of birth be recorded as 10.2.1921. Mr. Srinivasan submitted that the applicant's submissions regarding a further change in his recorded date of birth were wholly misconceived because in his Service Sheet the applicant himself had signed on 24.11.1939 to the effect that the date of birth shown therein was correct. Of course, this date of birth was based on the medical assessment of his age at the time of appointment being 19 years. In view

of this clear entry in the record we have no hesitation in upholding the action of the respondents that the applicant's recorded date of birth be deemed to be 23.11.1920.

6. We now move on to the question as to what is the age of superannuation of the applicant according to the rules. The applicant's submission is that he is a Group 'D' (formerly known as Class IV) employee who is required to be classified as ministerial staff. Although Mr. Srinivasan contended that a Class IV employee cannot be categorised as 'ministerial staff', we must reject the respondent's submission on this point. To resolve this dispute we have to look at the Indian Railway Establishment Code, Volume I. It is not disputed that the applicant was working as Record Sorter in the pay scale Rs. 210 - 270 (R). Rule 107 of the 1985 Edition of this Code states that a post carrying a pay or a scale of pay the maximum of which is Rs. 290 or less (Revised Scale) shall be classified as Group 'D'. So, there can be no doubt that the applicant is a Group 'D' employee. Rule 103 (31) of this code defines 'Ministerial servant' as meaning "a railway servant of Group 'C' whose duties are entirely clerical and other class of railway servants specially defined as such by general or special order of a competent authority." (emphasis supplied). In other words ministerial servants are not restricted to Group 'C' employees. Other classes of railway servants can also be classified as ministerial servants provided they are specially defined as such by general or special order of a competent authority.

So, we have to see whether there is any such order in respect of Record Sorters, which is the post in which the applicant was working. The Railway Board had considered the question of classifying Railway Servants as ministerial staff for the purpose of age of retirement in terms of Rule 2046 (2)(a) of the Indian Railway Establishment Code, Volume II and by their letter dated 1.8.1951 conveyed their decision regarding which were the categories of staff which may be dealt with as ministerial for the purpose of this Rule. Record Keepers/Sorters were one of the categories of staff included in the list of such categories of staff. Against this background we have no difficulty in holding that the applicant has to be dealt with as both a Group 'D' (Class IV) employee and as a ministerial staff for the purpose of interpreting the rules and instructions governing his age of superannuation.

7. The age of superannuation of Railway employees is governed by Rule 2046 of the Indian Railway Establishment Code, Volume II, the relevant portion of which reads as follows :-

- 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)


(d)

(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.'

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We have now to see how this affects the applicant both as a ministerial railway servant and as a Group 'D' (Class IV) employee.

8. As a ministerial railway servant the applicant's case has to be dealt with under Rule 2046 (b). He will be entitled to the benefit of superannuation at the age of 60 years under this rule only if he entered Government service on or before 31.3.1938. Mr. Masand contends that the applicant was entitled to this benefit and cited The Railway Board and another v. A. Pitchumani, AIR 1972 SC 508, in support of his contention. But this submission must be rejected at the very ^h threshold as that case can be readily distinguished. In it, the applicant joined service on 16.8.1927, i.e. before 31.3.1938, and the case dealt with the manner in which the said rule was applicable to him. But the ^{present} applicant was appointed, of course in a substantive capacity, only on 24.11.1939 and so he does not come within the ambit of this clause. Hence Pitchumani's case is of no avail to the applicant and we must hold that as a ministerial



railway servant he is not entitled to the benefit of Rule 2046 (b).

9. As a Group 'D' (Class IV) employee the applicant's case has to be dealt with under Rule 2046(e) which we have reproduced earlier. Mr. Masand submitted that this had been clarified in the respondents' letter dated 29.12.1976 which reads as :

A doubt has been raised regarding the age of retirement of class IV staff with reference to para 2046 (FR - 55(e) which reads as under:-

" 2046 (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."

It is clarified that this para is to be read with reference to Board's letter No. F (P)58/PN-1/7 dated 10th April 1958, in the Compendium of Rulings appendix XXX (page 179/c) Accordingly Class IV Railway servants and labourers including workshop employees who were permanent railway employees on 31st July 1940 will get the benefit of retention in service upto the age of 60 years. Class IV Railway servants and labourers including workshop employees who entered Railway service on or after 1st August 1940 or who were temporary Railway servants on that date will be required to retire on attaining the age of 58 years.

The word 'New entrants' used in 2046(e) refers to Class IV Railway servants taken over from the Ex. States Railways, who will be governed by their pre-absorption terms and conditions and are eligible to retire on attaining certain other specified age. That means the class IV staff of the Ex. States Railways will be required to retire on attaining the age of 58 years unless their pre-absorption terms and conditions specify any higher age.

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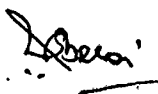
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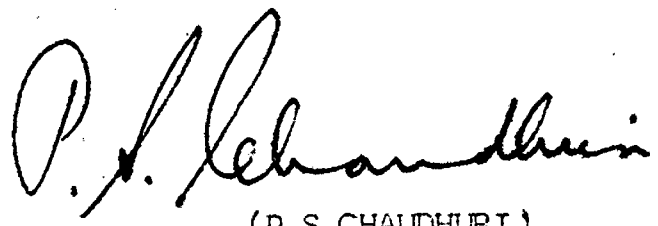
We have already held that the applicant is a Group 'D' (Class IV) railway servant. It is not disputed that the applicant was appointed in a substantive capacity on 24.11.1939 i.e. he was a permanent railway employee on 31.7.1940. It is also not disputed that he was an employee of B.B. & C.I. Rly. Co. i.e. he was not taken over from one of the ex-States Railways. So we have to hold that ^{the} applicant comes squarely within the ambit of this classification dated 29.12.1976, and so the age of superannuation applicable to the applicant is 60 years.

10. As we have already held that the applicant's recorded date of birth has correctly been deemed to be 23.11.1920, it follows that the correct date of his superannuation is 30.11.1980.

11. In this view of the matter, we are of the opinion that this transferred application must partly succeed.

12. We accordingly direct the respondents to treat the applicant as having been in continuous service till 30.11.1980 and to fix his pay and pensionary benefits accordingly and to pay him any arrears due after adjusting any amounts that would already have been paid to him. We further direct that this be done within a period of four months from the date of receipt of this order. In the circumstances of the case, there will be no order as to costs.


(T.S. OBEROI)
MEMBER (J)


(P.S. CHAUDHURI)
MEMBER (A)

13-9-1990