

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH**

O.A.NO.445/2005

Dated the 9th May, 2007.

CORAM:

HON'BLE MR.JUSTICE P.K.SINHA, VICE CHAIRMAN

Raj Kumar Shukla, son of Late Jai Govind Shukla,
Resident of Mansarovar, Gokulpath,
North Patel Nagar, P.O.Keshari Nagar,
District – Patna(Bihar).

Applicant

By Advocate : Shri M.P.Dixit

Vs.

1. The Union of India, through the
General Manager, N.E.Railway, Gorakhpur.
2. The F.A. & C.A.O., N.E.Railway,
Gorakhpur.
3. Dy.Chief Accounts Officer(G), N.E.Railway,
Gorakhpur.

Respondents

By Advocate : Shri Mukund Jee, Standing Counsel

ORDER

JUSTICE P.K.SINHA,V.C.

Admitted case of the applicant is that he had worked as Clerk, Class-II in the Railway from 4.09.1954 to 31.7.1964 having been confirmed in that post subsequently. While officiating as Junior Accountant, he applied for the post of Accounts/Audit Officer in the Bihar State Electricity Board ("BSEB" for short) through proper channel and, having been selected for the post, he tendered his resignation from his service in Railway which was accepted by the respondents with

effect from 31.07.1964 and the very next day he joined his duties in the BSEB from where also he retired in the afternoon of 30.6.1988. He then requested the authorities in the BSEB for adding his past services in the Railway for pensionary benefits which prayer when was rejected, the applicant preferred a writ petition before the Patna High Court which also was dismissed in limine by order dated 24.2.1994.

The claim of the applicant is that, nevertheless, he is entitled to get pro rata pensionary benefits from the Railway for services rendered there for a period of 9 years and 9 months, which under the law will be counted to be a service of 10 years for purposes of pensionary benefits, the minimum required service(for pension) under the Railway Services (Pension) Rules,1993 (referred to 'Pension Rules',in short). Thereafter, for getting this relief of pro rata pensionary benefit with effect from 1.8.1964, the applicant has filed this application , also praying for the arrears with interest, and for compensation.

The respondents in their written statement have claimed, while admitting the period of service as claimed by the applicant in the Railway, that Railway Pension Rules, 1950 came into effect from 16.11.1957 and every serving employee was given option to either opt to be governed under these rules or to continue to be governed under prevailing State Railway Provident Fund Rules("SRPF" for short). As contended by the respondents, the applicant opted to continue under SRPF rules, vide option given on 24.03.1958(Annexure-I). The argument is that, therefore, the applicant is not entitled to pension for his services rendered under the Railway. It has been contended that the balance of Provident Fund assets including employee's



contribution, Government contribution and interest thereupon, aggregating Rs.3800/- was transferred to the Controller of P.F. Accounts(BSEB) after the applicant had resigned. However, BSEB did not accept that and then, on receipt of request of the applicant, the aforesaid amount was paid to, and accepted by, the applicant, for which a receipt was granted which is at Annexure 2 to the written statement. It has been claimed that the applicant never made any representation for getting pensionary benefits.

In the rejoinder to it, attention of the Tribunal has been drawn towards Rule 41(2) of the Railway Pension Rules,1993("the Pension Rules"- in short) which provides that under certain circumstances, which also existed in the case of the applicant, past services would not be forfeited on resignation. The applicant has submitted that subsequently the Railway had granted opportunities to its employees including retired employees to shift back to the pension scheme after returning the amount received as SRPF which the applicant is also ready to do. Certain cases, decided by the Tribunal, in that connection, have been referred to.

The applicant has referred to Rule 69 of the Pension Rules, of which sub-rule (2)(b) provides that minimum qualifying period for getting pension is 10 years, though the pension would be proportionate.

Rule 41 of the Pension Rules provides for forfeiture of service on resignation. Sub-rule (2) of Rule 41 runs as follows:-

“ 41. Forfeiture of Service on Resignation -



.....

(2) A resignation shall not lead to forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent under the Government where service qualifies for pension."

Different documents have been brought on record to show that in the applicant's case all the 3 conditions were satisfied, i.e., the resignation was submitted to take up, with proper permission, another appointment; service under BSEB qualified for pension at that time; and that the BSEB was State' within the meaning of Art.12 of the Constitution of India. These points were, in the course of arguments, also admitted by the learned counsel of the respondents.

However, the applicant has admitted that he had retired from service of the BSEB in the year 1988. The Pension Rules,1993 which have been relied upon to seek the relief by the learned counsel, was not applicable in the case of the applicant which will be manifest from the provisions under Rule 108 of the Pension Rules.

This runs as follows:-

"108. Repeal and saving--

(1) On the commencement of these rules, every rule,(including those contained in volume II of the Indian Railway Establishent Code,Fifth Reprint), regulation or order including circulars(hereinafter referred to in this rule as old rules) in force immediately before such commencement shall, in so far as it provides for any of the matters contained in these rules, cease to

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operate.

(2) Notwithstanding such cesser of operation -

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(c) any case which pertains to the authorisation of pension to a railway servant who had retired before the commencement of these rules and is pending before such commencement shall be disposed of in accordance with the provisions of the old rules as if these rules had not been made;"

However, in the case of the applicant no such matter was even pending at the commencement of the Pension Rules, rather he had resigned long back, hence the Rules those were in force at the time of his resignation would alone apply in his case. Therefore, the provisions of volume II of the Indian Railway Establishment Code, Fifth Reprint would apply in the case of the applicant.

Under Rule 241(GSR 358), it has been provided that except for compensation gratuity, an officer's service did not qualify till he had completed 16 years of service (in the case of Class IV officers who held a lien or a suspended lien on a permanent pensionable post on 17th April, 1950 and were in service on 1st September, 1960) and in all other cases, the qualifying service was 18 years. Under Chapter XXV Rule 2501 (C.S.R.424) pension for "superior service" was divided into four classes including Compensation pensions, Invalid pensions, Superannuation Pensions and Retiring pension, whereas pensions for "Inferior service" were regulated by Rules 2542 and 2543 (C.S.R.481 and 483) and Appendix XLI (The Pensionable Inferior Railway Servants (Gratuity, Pension and Retirement) Rules). In the inferior service the Rules



as mentioned under Appendix XLI regulated the grant of pension which provided that superannuation pension may be granted if the qualified service on discharge or retirement was not less than 20 years whereas, retiring pension was granted after retirement from Railway service after a qualifying service of 30 years.

Though under Chapter XXIV, which deals with conditions of qualifying service for pension, Rule 2433 gives out provisions somewhat akin to the provisions under Rule 41(2) of the Pension Rules, but in IREC volume II, Fifth Reprint ,in the chapters that deal with the Pension Rules(starting from Chapter XXIII, up to XXVIII),it nowhere provides for grant of pro rata pension.

Therefore, the various decisions on the point as relied upon by the learned counsel for reverting back from SRPF rules to Pension Rules, would hardly help the case of the applicant. Those decisions are on the premises that those employees who were allowed to be so reverted back had the requisite service under the prevailing Rules enabling them a claim to pension.

In the result, this application is dismissed. No costs.



(P.K.SINHA)
VICE CHAIRMAN

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