

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 93/96

Date of Decision: 15th Feb-99

R.S.Peswani & Ors.

.. Applicant

Shri R.S.Tulaskar

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar

.. Advocate for
Respondent(s)

CORAM:

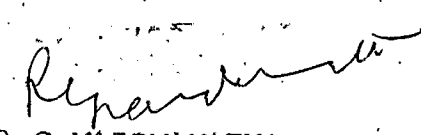
The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
The Hon'ble Shri D.S.Baweja, Member(A).

(1) To be referred to the Reporter or not ?

Yes

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?

No


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.93/96

Pronounced, THIS THE *15th* DAY OF *February* 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

1. R.S.Peswani,
D-13, Natraj Co-op. Hsg. Society,
Nav Pada,
Thane - 400 602.
2. Jagdish Prasad Tandon,
D-4, Natraj Co-op. Hsg. Society,
Nav Pada,
Thane - 400 602.
3. Mirza Shahenshah Raza,
E/103, 1st Floor,
Tanwar Nagar,
Bombay Pune Road,
Kausa (Mumbra)
Dist. Thane.

... Applicant.

(By Advocate Shri R.S.Tulaskar)

V/s.

1. Union of India,
through the General Manager,
Central Railway,
Bombay V.T.
2. Railway Board,
Ministry of Railways,
Rail Bhavan,
New Delhi.

... Respondents.

(By Advocate Shri V.S.Masurkar)

: ORDER :

(Per Shri Justice R.G.Vaidyanatha,Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard the learned counsels appearing on both sides.

2. All the three applicants had joined Railway Service as Law Assistants on different dates. The first applicant had joined service on 14.9.1965 and then retired from Railway Service as Senior Commercial Manager (Marketing and

...2.



Sales) on 30.6.1990. He was aged about 33 years when he joined service. The applicant No.2 joined Railway Service as Law Assistant in May, 1964 and retired as Deputy Chief Claims Officer on 31.7.1992. He was aged about 30 years at the time he joined the Railway Service. The third applicant was aged about 29 years when he joined Railway Service as Law Assistant on 1.7.1964. He retired as Divisional Commercial Manager, Jhansi on 30.6.1993.

According to the applicants, they were Law Graduates and had put in more than 5 years at the Bar, which was the minimum qualification as per advertisement in Railway Gazette No.27 of 1963/Employment Notice No.3/63-64. That as per Rule 2423A of the Indian Railway Establishment Code (for short, IREC) Volume II, an official is entitled to add additional period for qualifying service at the time of superannuation under certain circumstances. The applicants, therefore, say that by virtue of that rule, the applicants are entitled to add minimum 5 years experience at the Bar towards their qualifying service for the purpose of getting pensionary benefits. In spite of number of letters, the Railway Administration has not given them the benefit of this additional service for the purpose of retirement benefits. No reply is given by the respondents to the representations given by the respondents, hence the applicants have approached this Tribunal praying for a declaration that they are entitled to the benefit of extra period as qualifying service as mentioned in Rule 2423A of the IREC and on that basis their pensionary benefits has to be refixed and the respondents may be directed to fix the pension and pay the arrears with interest at 21% p.a.

3. The respondents in their reply have asserted that for Law Assistants Rule 2423A is not applicable. That joint application filed by the applicants is not maintainable. That the claim is barred by limitation, delay and laches. That the applicants are also estopped from claiming the benefits now.



The applicants are not entitled to get the benefit of professional experience at the Bar for the purposes of qualifying service for pension. Then it is stated that the applicants are governed by Rule 45 of the Railway Servants (Pension) Rules, 1993 and unless the Recruitment Rules contain such a clause of getting benefit of professional experience as qualifying service for the purpose of Pension the applicants are not entitled for that benefit. Hence it is prayed that the application be dismissed with costs.

4. The first question for consideration is whether the application is barred by limitation. The applicants have filed MP 69/96 for condonation of delay. They have explained how they have been making representations from time to time and there is no reply from the respondents. They also further say that other Tribunals have given Judgments that Law Assistants are entitled to extra qualifying service regarding their professional experience under Rule 2423A. After considering the contentions on both sides and perusing the allegations in MP 69/96, we feel that the applicants have made out sufficient cause for condonation of delay. The learned counsel for the applicant relied on ATR 1988(2) C.A.T. 518 (A.K.Khanna and Others Vs. Union of India & Ors.), where a Division Bench of the Principal Bench of this Tribunal has taken a view that benefit of earlier Judgment should be extended to other persons similarly placed. We may also mention that in 1995 SCC (L&S) 1273 (M.R.Gupta Vs. Union of India & Ors.), the Supreme Court has observed that in the case of fixation of pay it is a continuing cause of action and there will be no bar of limitation, but still the Supreme Court observed that limitation may apply to the arrears of amount claimed. Similarly, in the present case the applicants want proper fixation of pension by taking into consideration the previous



service. Therefore, for the purpose of fixation of proper pension there cannot be any limitation and it is a continuing cause of action as per the law declared by the Supreme Court. But, however, for the purpose of granting arrears we feel that the arrears should be restricted for 3 years prior to the date of the Original Application.

5. A grievance was made on behalf of the respondents that joint application is not maintainable since the applicants joined service on different dates and retired on different dates with different designations and at different places.

In our view, joint application can be filed when all the parties have a common cause or a common right to agitate before the Tribunal. All the applicants have one common cause in this application viz. whether as Legal Assistants they are entitled to the benefit of additional qualifying service under Rule 2423A or not. Since applicants are making a common cause on this aspect the joint application filed is perfectly maintainable.

6. As far as merits are concerned, there cannot be any dispute at all. We need not go to first principles to find out whether Law Assistants are entitled to that benefit or not. In fact, at the time of arguments, the applicants' counsel tendered a Xerox copy of the advertisement in "Times of India" dt. 30.6.1963 pertaining to the selection of Law Assistants where there is a specific condition that one must be a Law Graduate with 5 years experience at the Bar. Further, this point is no longer res-integra and covered by the decisions of Benches of this Tribunal and also by the Judgment of the Supreme Court.



In OA 181/91 in the case of Vijay Raghavan Narayan Vs. Union of India & Ors., the Allahabad Bench of this Tribunal has held that Law Assistant is entitled to the benefit of additional qualifying service under Rule 2423A of the IREC (see the copy of the Judgment which is at page 19 of the paper book).

Then we have an unreported Judgment of the Hyderabad Bench of this Tribunal dt. 11.9.1996 in O.A. 603/96 in the case filed by one M.V.R. Somayajulu V/s. Union of India & Anr. who is a batchmate of the applicants, who was also a Law Assistant and that Bench has taken a view that Law Assistants are entitled to extra qualifying service under Rule 2423A. The Bench has also rejected the argument of the Railway Administration about application of Rule 45 of the Railway Servants (Pension) Rules, 1993 on the ground that the 1993 Rules cannot apply to the candidate who was appointed long prior to 1993.

Then we come to the law declared by the Apex Court in an unreported Judgment dt. 15.7.1996 in Special Leave Petition No.14390/96, where the Supreme Court has held that under Rule 2423A, the Law Assistants are entitled to the benefits of the additional qualifying service. In fact, the Judgment of the Supreme Court is in the case filed by D.Francis Paul & Anr. in the Hyderabad Bench of this Tribunal. We have already referred to Somayajulu's case decided by the Hyderabad Bench of this Tribunal where there is a reference to an earlier decision of that Tribunal in OA 365/94 dt. 6.12.1995 which pertains to the case filed by Francis Paul. It was this order of Hyderabad Bench which was challenged before the Supreme Court in D.Francis Paul's case and the Supreme Court confirmed that decision of the Hyderabad



Bench that Law Assistants are entitled to extra qualifying service under Rule 2423A. Then the Railway Administration pressed before the Supreme Court about some amendment in 1976. The Supreme Court rejected that argument holding that the 1976 amendment has to be prospective and cannot apply to the case of the officials who had joined service long back.

In view of the above discussion, we hold that the applicants are entitled to the benefit of qualifying service regarding their professional experience at the Bar subject to the limitations in Rule 2423A.

7. The argument of the respondents counsel about estoppel also does not appeal to us.

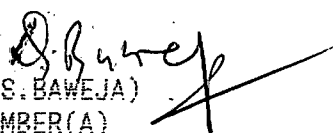
In view of the above discussions, the applicants are entitled to the fixation of pension as per this additional qualifying service, but of course, the arrears should be restricted only for 3 years prior to the date of application.

8. In the result, the application is allowed as follows :

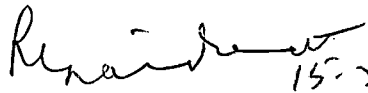
- (1) It is declared that Rule 2423A of the IREC applies to the Law Assistants and under that provision, the respondents are directed to take into consideration the professional experience of the applicants as members of the Bar to the extent it is allowed by the said rule and then re-fix the pension of the applicants notionally on the date they retired from service.
- (2) After re-fixing the pension on the date of retirement as aforesaid the respondents shall go on re-fixing the pension notionally as and when pension rates got increased from time to time.



- (3) After making the two exercises mentioned above about fixation on the date of retirement on notional basis and subsequent fixation notionally, arrears shall be granted to the applicants only for a period of three years prior to the date of filing of this application (dt. 28.12.1995) and then go on paying the future pension from the date of application till their life-time as per rules.
- (4) The Respondents are directed to comply with this order within a period of four months from the date of receipt of a copy of this order. If arrears are not paid within four months from the date of receipt of copy of this order, then the respondents are directed to pay interest at 6% ^{per annum} after the expiry of the said four months till the date of actual payment.
- (5) In the circumstances of the case, there will be no orders as to costs.


(D.S. BAWEJA)
MEMBER(A)

B.


(R.G. VAIDYANATHA)
VICE - CHAIRMAN

15.2.99

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Review Petition No.25/99
in
Original Application No.93/96.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

1. R.S.Peswani,
D-13, Natraj Co-op. Hsg. Society,
Nav Pada,
Thane - 400 602.

2. Jagdish Prasad Tandon,
D-4, Natraj Co-op. Hsg. Society,
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Thane - 400 602.

3. Mirza Shahenshah Raza,
E/103, 1st Floor,
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Bombay Pune Road,
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Dist. Thane.

...Petitioners.

Vs.

1. Union of India
through the General Manager,
Central Railway,
Bombay V.T.,

2. Railway Board,
Ministry of Railways,
Rail Bhavan,
New Delhi.

...Respondents.

: ORDER ON REVIEW PETITION BY CIRCULATION : Dt. 2.8.99.

This is a Review Petition filed by the applicants for reviewing our order dt. 15.2.1999. We have perused the contents of the Review Petition and the entire case papers.

2. By order dt. 15.2.1999 we have allowed the application of the Review Petitioners partly by granting refixation of pension, but arrears granted only for a period of three years prior to the

...2.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Review Petition No. 25/99
in
Original Application No. 93/99.

Coram: Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman.
Hon'ble Shri D.S. Bawéja, Member(A).

1. R.S. Peshwani,
D-13, Nafra, Co-op. Hsg. Society,
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 2. Jagdish Prasad Tandon,
D-4, Nafra, Co-op. Hsg. Society,
Navpada,
Thane - 400 602.
 3. Mrs. Sharmistha Raza,
E/103, 1st Floor,
Tawar Nagar,
Jambay Pura Road,
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Dist. Thane.
- ...Petitioners.

vs.

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- ...Respondents.

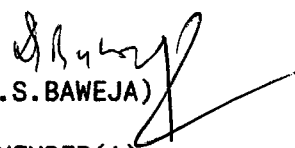
ORDER ON REVIEW PETITION BY CIRCULATION :

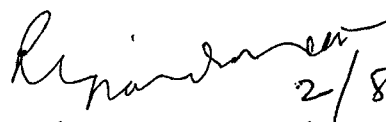
This is a Review Petition filed by the applicants for reviewing our order dt. 12.2.1999. We have perused the contents of the Review Petition and the entire case papers.

By order dt. 12.2.1999 we have allowed the application of the Review Petition partly by granting relaxation of pension, but arrears granted only for a period of three years prior to the

date of filing of this application. We have made specifically clear in our order that the previous arrears and other benefits cannot be granted. We have referred to the Judgments quoted by the applicants' counsel which is again repeated in the Review Petition and we have taken into consideration the observations of the Supreme Court in M.R.Gupta's case (1995 SCC (L&S) 1273) and applied the bar of limitation only to arrears and past benefits. We have only granted increase in higher pension and arrears only for the period of three years prior to the date of filing of the application. Now, the applicants want other retirement benefits and increase of pension from the date of superannuation which cannot be now granted by reviewing our order. We do not find any apparent error in our order. After hearing both sides and after considering the question of limitation, we have granted reliefs partly restricting the arrears and enhancement of pension only to three years prior to the date of filing of this O.A. No ground is made out for granting ^{Review} relief.

3. In the result, the Review Petition is rejected.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.

date of filing of this application. We have made specifically clear in our order that the previous arrears and other benefits cannot be granted. We have referred to the judgments quoted by the applicants' counsel which is again repeated in the Review Petition and we have taken into consideration the observations of the Supreme Court in M.R. Gupta's case (1995 SCC (L&S) 1273) and applied the bar of limitation only to arrears and past benefits. We have only granted increase in higher pension and arrears only for the period of three years prior to the date of filing of the application. Now, the applicants want other retirement benefits and increase of pension from the date of superannuation which cannot be now granted by reviewing our order. We do not find any apparent error in our order. After hearing both sides and after considering the question of limitation, we have granted reliefs partly restricting the arrears and enhancement of pension only to three years prior to the date of filing of this O.A. No ground is made out for granting relief.

In the result, the Review Petition is rejected.

(R.G. VAIDYANATHA)
VICE-CHAIRMAN

(D.S. BAWELA)
MEMBER(A)