

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 958/1999

DATED: Friday, this the 22nd Day of September, 2000

Shri Gopi Kishan Gupta Applicant,

(Applicant Shri R.S.Tulaskar, Advocate)

Versus

Union of India & Ors Respondents

(Respondents by Shri Suresh Kumar, Advocate)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

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

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

(3) Library.

B.N.B
(B.N. Bahadur)
Member (A)

sjk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. 958/1999

DATED: Friday, this the 22nd DAY OF SEPTEMBER, 2000.

CORAM:
HON'BLE SHRI B.N.BAHADUR, MEMBER (A)

Shri Gopi Kishan Gupta,
retired Senior Public Relations Officer
of Central Railway,
Mumbai, and

residing at 2-B/504, Greenland,
J.B.Nagar, Andheri (East),
Mumbai - 400 059.

Applicant

(By Shri R.S.Tulaskar, Advocate)

vs.

Union of India, through

1. The Chairman,
Railway Board,
Rail Bhawan,
New Delhi.
2. The General Manager,
Central Railway,
Head Quarters Office
Mumbai C.S.T.
Mumbai 400 001.
3. The Chief Personnel Officer,
Central Railway,
Chhatrapati Shivaji Terminus,
Mumbai.
4. Chief Public Relation Officer,
Central Railway,
Chhatrapati Shivaji Terminus,
Mumbai. Respondents

(By Shri Suresh Kumar, Advocate)

ORDER

[Per: B.N.Bahadur, Member (A)]

The Applicant in this case, Shri Gopi Kishan Gupta seeks the relief, in substance, for a direction to Respondents to recalculate the superannuation benefits payable to Applicant by



...2/-

adding to his qualifying service, the period of five years in accordance with provisions in I.R.E.C. Certain consequential benefits are also sought, as relief, as contained in para VIII of the Application.

2. The case made out by the Applicant is as follows:

Applicant was recruited as Court Inspector, where apart from the prescribed academic qualification, a minimum experience of five years at the Bar was an essential requirement. The Applicant possess these qualifications, including experience, and was selected by the Railway Service Commission (RSC) and joined service with effect from 19.5.1957. The Applicant contends that he had an excellent service record and retired on superannuation on 31.3.1986. His settlement of dues was done,
b/s with only actual years of service being counted.

3. The Applicant takes the ground that under Rule 2423 A contained in Vol.II of Indian Railway Establishment Code (IREC), he should be allowed an additional period (of 5 years), as stipulated, to be added to the qualifying service for computing pensionary benefits. Applicant discusses, in detail, the application of this Rule and has also cited a number of judgements in support of his contentions. The rulings are (1) judgement of Allahabad Bench of CAT D.A.181/91 in (Vijay Raghava Narayan vs UOI & Ors.) - copy at page 29 (2) judgement of Supreme Court in the case of D. Francis Paul [1996 Supreme Court Cases (L&S) 1359 (copy at page 37) (3) Judgement of this Bench of the Tribunal in D.A.93/96 R.S.Peswani & Ors vs. UOI (page 41) (4) judgement of Supreme Court in the case S.R.Bhanrale (1996) SCC L&S 1384 regarding limitation (6) judgement of Supreme Court in the case of G.K.Sharma etc. [1993 SCC L&S 544].

...3/-

28

4. The Respondents have filed a reply denying all allegations made, and take the main defence that the provisions of Rule 2423 (a) of IREC are applicable to those who joined service after 1st April, 1960 as provided in the Rule itself. The other parts of the Written Statement contain parawise replies.

5. It must be mentioned here, that a significant point has been raised in the Rejoinder of the Applicant and discussed in the Sur Rejoinder by Respondents. This relates to the relevance and importance in this case of Railway Board's Order R.B.E. No.343/87 dated 4.12.1987, a copy of which has been filed as Ex.R.I by Respondents (page 91 of paper Book). This Order will be discussed ahead.

6. I have heard learned Counsels on both sides. Learned Counsel for Applicant, Shri R.S.Tulaskar, argued the case in detail, taking me over the various facts and sequences of the case. He reiterated the points made in the Application and argued that the only defence taken by the Applicant related to the date of entry in service. He refuted the argument that the Applicant was not entitled to the benefits sought only because he entered service prior to 1.4.1960, and made the point that even the Railway Board's Order at page 91, referred to above, is in his favour.

7. On the point regarding Limitation, Counsel for Applicant took support from the case of *M.R.Gupta vs. UOI* [1995 SCC (L&S) 1273] and argued that applicant's was continuing cause of action. He also sought support from the case of *Bhanra* cited above at para 3. He also discussed the citations referred to above in some detail.

8. Arguing the case on behalf of Respondents, their Learned Counsel, Shri Suresh Kumar, attempted to meet the points raised by learned Counsel for Applicants in detail. He argued that in

128

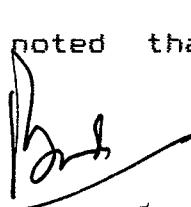
the cases referred, all applicants had joined service after April 1960 and hence these cases were not applicable to the case before us. Shri Suresh Kumar referred to the Circular dated 4.12.1987 referred to above argued that this was now the only point left for consideration. The intention of this Railway Board Order is clear, and it just cannot be envisaged that all cases of all ~~Retired~~ employees would be reopened, it was argued.

9. Learned Counsel for Respondents also strenuously made the point on limitation stating that the Applicant had come long years after his retirement. Even when Rule 2423 was amended he did not take action to challenge such an amendment and he now hit by delay and laches. Learned Counsel argued that Applicant was not protected by the ratio of the case of *M.R.Gupta* and took support from the judgement cited by Respondent in Written Statement (page 63) viz. *Ratam Chandra Samanta & Ors. vs. UOI JT 1993 SC 418 and Bhoop Singh vs. UOI & Ors.* (1992) 21 ATC 675.

10. In reargument the learned Counsel for Applicant made the point that the "date of effect" stipulated in R.B.E. 343 of 87 *AB* should be distinguished from the date of amendment.

11. I have carefully considered all the papers in the case and the case law cited. I have also considered the arguments made before me by learned Counsel on both sides.

12. It would be useful in this case to go straight away, first, to the judgement made by this Bench of the Tribunal on 15.2.1999 in O.A. 93/96 (copy at 41 of Paper Book). The basic issues are similar and we have advantage that in this case the Bench had discussed in detail, the position of Rules and case laws which are quite relevant to the case before us. It must, however, be noted that in this case as well as in all other cases cited, the



Applicants had joined service after 1.4.1960. Thus on this point we are unable to get direct assistance from any of these cases. It is only in the present case that the Applicant had admittedly joined before 1.4.1960. Since in none of the Case Laws cited is there any case of an official who had joined earlier to 1.4.1960, this aspect will need to be gone into in the present case. Rule 2423A and R.B.E.343/87 are important, Rule 2423A clearly stipulates that the benefit of this addition of years of service as laid down is only available to those officers who were appointed on or after 1st April, 1960. Thus, the benefit cannot be provided on a mere reading of this Rule alone. The interpretation that is really required in the present case is the interpretation of R.B.E. No.343/87 dated 4.12.1987, which was depended upon by both sides, as discussed above.

13. This Order of the Railway Board reads as under:
" R.B.E. No.343/87
Subject: Added years of service under Rule 2423-A R-II amendment to.

No.F(E)III-87-PNI/21 dated 4-12-1987

Attention is invited to Rule 2423-A/R-II which, as it stands, provides for addition to qualifying service in the case of a Railway servant appointed to a service or post after 31st March, 1960. Normally the claims for pensionary benefits are regulated by the provisions of Railway Pension Rules as in force at the time when a Railway servant retires or is retired etc. The Government has been considering the removal of this incongruity. The President has now been pleased to decide that the benefit of added years of service under Rule 2423-A/R-II will be admissible to all those who retire from service or post after 31st March, 1960 and who are otherwise eligible under Rule 2423-A/RIL. The provisions of Rule 2423-A/R-II and Para 423 (2) of Manual of Railway Pension Rules may be deemed to have modified accordingly.

2. Necessary amendments to the provisions will be issued in due course.

3. These orders take effect from 28-10-1987."



The intention of this Order is clear and that is to provide benefit to retiring employees by Rules that are in force at the time of retirement of such employees. A reading of the Orders shows that this the crucial point that comes in is with reference to the date of applicability. We note that the date of Order is 4.12.87 and it is stated that the Orders will take effect from 28.10.1987. The query thus to be answered squarely is whether these Orders can be said to take effect in a manner that they cover those Officers also who retired before 28.10.1987. On an overall reading it is clear that this is not the intention of the Orders, otherwise there was little point in laying down a specific date of effect. Truly, as argued by learned Counsel for Respondents that it was not intended that the cases of retired officers would also be required to be opened, even if they retire prior to 28.10.1987. This is clearly not the intention of the Orders of the Railway Board referred to above. We cannot go beyond the intention of the Govt. which clearly consciously lays down a cut-off date. This principle has been settled by the Hon'ble Supreme Court lately also. If the intention of the order was to give benefit to all living and retired persons, this would have been clearly stipulated. In fact, it would be open to the Railway Administration to enhance the scope of the benefits given in this aspect even in future. But it is in their prerogative to take a decision, and no directions can be given by judicial determination. In the present case the Applicant has admittedly retired on 31.3.1986, which is prior to 28.10.1987.

14. Thus in view of above discussion, it cannot be concluded that the Applicant is eligible to the benefits accorded by R.B.E. No. 343/87 dated 4.12.1987. It may be unfortunate that this determination of certain date of effect happens to be such that

the benefit cannot accrue to the present Applicant and those similarly-placed, but it is not something on which relief can be provided by judicial determination.

15. In view of above discussions this O.A. cannot be allowed, and is hereby dismissed with no orders as to costs.

B.N.Bahadur

(B.N.Bahadur)

Member (A)

22/9/2000

sj*