

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 301/99

22.8.2008
Date of Decision :

P.M.Gharade Applicant.

Shri K.B.Talreja Advocate for the
Applicant.

VERSUS

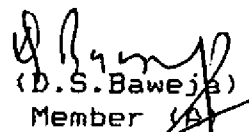
Union of India & Others, Respondents.

Shri R.R.Shetty Advocate for the
Respondents.

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal ?
- (iii) Library ✓


(D.S.Baweja)
Member (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.301/99

Dated this the 22nd day of August 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

P.M.Gharade,
Ex.Head Booking Clerk,
Chembur, Central Railway,
Mumbai CST.

... Applicant

By Advocate Shri K.B.Talreja

V/S.

1. Union of India
through the General Manager,
Central Railway, Mumbai CSTM.

2. The Divisional Railway Manager,
Mumbai CST, Mumbai.

... Respondents

By Advocate Shri R.R.Shetty

O R D E R

(Per : Shri D.S.Baweja, Member (A))

The applicant was appointed in Commercial Department of Central Railway on 19.11.1975. The applicant was issued a chargesheet. The penalty of removal imposed by the disciplinary authority was modified to that of compulsory retirement by the appellate authority as per the order dated 15.10.1990 with full pensionary benefits due. Since after passing of the order dated 15.10.1990, the respondents did not pay the retiral benefits

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including pension, the applicant agitated the matter before the Tribunal through OA.NO.1254/95. This OA. was disposed of as per the order dated 26.3.1996 with following directions :-

" 5. In the facts and circumstances of the case, I dispose of the present O.A. with the following directions :-

(1) As regards commutation, the Railways will take the requisite action within four weeks from the date of receipt of copy of the order and thereafter pay the amount due to the applicant.

(2) As regards pension, they will release full pension with dearness relief and other retiral benefits such as interim relief due to him as per rules from 23.8.1990 upto the date the commutation takes effect and thereafter make adjustment for commutation.

(3) Railways are liable to pay interest at the rate of 12% p.a. on the delayed payment till the date of payment in respect of all retiral benefits (except commutation) with effect from 15.10.1990 which is the date of the order reducing the penalty of removal from service to that of compulsory retirement.

(4) No costs."

2. The applicant has filed the present OA. on 24.3.1999 contending that respondents have not complied with the directions in the order dated 26.3.1996. The applicant has stated that pension allowed is treated as provisional under the category of invalid pension and date of commencement is shown as 23.5.1990 and not 15.10.1990, i.e. date of compulsory retirement. Therefore, the pension of the applicant has not been correctly fixed. The applicant has added more issues in the present OA. :- (a) The applicant has not been allowed the post retirement



complimentary passes. (b) Inspite of deducting one month's pay, the respondents have not extended benefit of medical facilities as admissible to retired Railway pensioners and (c) non payment of packing allowance/Transfer allowance and settlement passes.

3. The applicant has sought the following reliefs :-

(a) to direct respondents to fix correct pension and pensionary benefits.

(b) to direct respondents to issue post retirement complimentary passes, settlement pass, packing and transfer allowances.

(c) to direct respondents to allow the applicant to avail medical facilities as per rules.

4. The respondents in the written statement have contended that the pension has been correctly allowed based on the qualifying service and the order dated 26.3.1996 in OA.NO.1254/95 has been fully complied with. In view of this, the contempt application filed by the applicant was dismissed. The respondents have also explained that the applicant had completed only 14 years 6 months of qualifying service and proportionate pension came to be below the minimum pension and therefore minimum of the pension of Rs.375/- has been allowed. Invalid pension and provisional pension have been mentioned in the

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Pension Pay Order due to some irregularity in feeding the data to the computer and these errors have been since corrected in the revised Pension Pay Order (PPO) issued in pursuance of 5th Pay Commission recommendations. In any way, the respondents aver that there entries in PPO do not affect the pension amount. The pension has been allowed from 23.9.1990, i.e. the date of original punishment order as the appellate order will relate back to this date. As regards the issue of post retirement complimentary passes and medical facilities, the respondents submit that the same are not admissible as the applicant has qualifying service of less than 20 years. Retirement pass, packing allowance and transfer allowance are to be claimed within one year of retirement but this has not been done. With these submissions, the respondents plead that the applicant is not entitled for any of the reliefs and OA. deserves to be dismissed.

5. The applicant has filed rejoinder reply. The applicant while contesting the stand of the respondents has stated that applicant is entitled for addition to his qualifying service in terms of Rule 45 of Railway Service pension Rules, 1993 because the applicant was appointed at the age of 31 years 6 months 18 days with the recruitment age of 25 years, the applicant is entitled for addition of 5 years of service. Thus his qualifying service is to be taken as 20 years and the pension is to be fixed based on 20 years of qualifying service. By counting the qualifying service of 20 years, the applicant is also entitled

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for the post retirement complimentary passes in view of what is held in the case of Dr. Baliar Singh vs. Union of India, OA.NO.530/96 decided on 21.11.1996 by this Bench of the Tribunal. As regards the delay in claiming the transfer and packing allowances and retirement pass, the applicant submits that he could not ask for the same as the respondents had not paid the pension and the retiral benefits for a period of 6 years.

6. Heard the arguments of Shri K.B.Talreja and Shri R.R.Shetty, the learned counsel for the applicant and respondents respectively.

7. The applicant has prayed the relief of correct fixation of the pension but he has not made any supporting averments in the OA. as to how the pension is incorrectly fixed and what pension he is entitled to. Only after on the respondents pointing out in the written statement that the applicant had qualifying service of only 14 years 6 months based on the date of joining on 19.11.1975 and date of compulsory retirement of 23.5.1990, the applicant has rebutted to this submission in the rejoinder reply. The applicant has come out with altogether new ground that the applicant is entitled to addition to his qualifying service since he was appointed in the Railway at the age of 31 years 6 months and 18 days against the maximum age of 25 years prescribed. Though this ground is not taken in the OA., but the same is being considered on merits. The applicant has

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not furnished any supporting documentary evidence as to the post on which he was appointed and the recruitment rules which governed the same. The applicant has also not ^ybought out whether at any time since his appointment he had raised this issue or thereafter after the imposition of the punishment of compulsory retirement till the filing of the rejoinder reply. Thus the claim of the applicant is barred by limitation and suffers from delay and laches. On merits, the applicant has only placed reliance on the Rule 45 of Railway Service (Pension) Rules, 1993. On going through this Rule, I find that reliance on the same by the applicant is misplaced. Firstly, the Rule applies in the case of normal superannuation. The applicant was imposed the punishment of compulsory retirement and did not superannuate on the due date and therefore this Rule does not help the applicant's case. Further, as per provisions in this Rule, addition to qualifying service of maximum of 5 years for pensionary benefits is permissible if the same had been stipulated in the relevant recruitment rules at that time. As indicated earlier, the applicant has not furnished any details. He has also not averred that recruitment rules had stipulated the benefit of Rule 45 for addition to the service. Just on making statement that he was recruited at the age of more than 31 years, the applicant claims benefit of addition to qualifying service. In the absence of any relevant material, the applicant's claim for benefits of Rule 45 cannot be gone into merits. In the light of these observations, the claim of addition to service is not only stale and barred by limitation but is also without any merit.

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9. As regards the claim of entitlement of post retirement complementary passes, the respondents have submitted that the applicant is not eligible for the same as he has less than 20 years of service. The applicant prefers this claim on the assumption that by addition of 5 years to his service due to age at the time of recruitment being more than 25 years, he will have 20 years of qualifying service. He has relief upon the order dated 21.11.1996 in OA.NO.530/96, Dr.Baliar Singh vs. Union of India. This claim of the applicant is not sustainable. Firstly, I have recorded findings that addition to qualifying service as claimed by the applicant under Rule 45 cannot be allowed. Thus the applicant has less than 20 years of service. Secondly, the view taken in the case of Dr.Baliar Singh is no longer holding as the same has been quashed by the Hon'ble Supreme Court as per the judgement in the case of Union of India vs. Dr.S.Baliar Singh, 1998 SCC (L&S) 522. The Hon'ble Supreme Court has held that as per rules laid down in 1986 Pass Rules, the 20 years of service for eligibility of post retirement passes has to be actual service in Railway and not the qualifying service by counting past service.

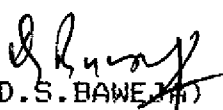
10. Since the applicant does not have 20 years of qualifying service at the time of compulsory retirement, the relief of extending benefits of medical facilities also does not survive in view of the findings recorded in para 8 above.

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11. In respect of the reliefs payment of transfer and packing allowance and settlement pass, the respondents have contested the same stating that the applicant did not ask for the same within the admissible period of one year. The applicant has however rebutted this contending that since the applicant was waiting for payment of the pensionary and settlement benefits, he could not ask for these benefits. I am unable to be convinced by the defence of the applicant. These benefits are allowed for settlement after the retirement and it was applicant's choice to wait for payment of settlement dues which was altogether a different issue. If the benefits of transfer and packing allowance are time barred as per the extant rules, no direction can be given to the respondents to allow these benefits after a period of 9 years. This relief therefore cannot be allowed and deserves rejection.

12. In the result of the above, the OA. is devoid of merits and is dismissed accordingly. No order as to costs.


(D.S. BAWEJA)
MEMBER (A)

mrj.