

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA 421/2000

MUMBAI this the ^{1st August} ~~th day of July~~, 2001

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

K.B.Gosain
Ex-Inspector of Works
Western Railway

Presently Residing at
701, United Towers
Chincholi Road
Malad (W)
Mumbai - 400 064.

C/o G.S.Walia,
Advocate, High Court
16, Maharashtra Bhawan
Bora Masjid Street, Behind Handloom
House, Fore, Mumbai - 400 001.

...Applicant

(By Advocate Shri G.S.Walia)

V E R S U S

1. Union of India : through
General Manager
Western Railway
Headquarters Office
Churchgate
Mumbai - 400 020.
2. Chief Engineer
Survey & Construction
Western Railway
Churchgate
Mumbai - 400 020.
3. Chief Administration Officer
Survey & Construction
Western Railway
Churchgate
Mumbai - 400 020.

...Respondents

(By Advocate Shri V.S.Masurkar)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI,

Following are the reliefs claimed in this OA
filed by Shri K.B.Gosain, under Section 19 of the
Administrative Tribunals Act, 1985 :-

i) declaration that the applicant is entitled for pensionary/retiral benefits since he has completed 22 years 2 months qualifying service in the Railway Administration, notwithstanding the fact that he resigned from the post.

ii) declaration that the word "Resignation" in the present context has to be construed and understood as retirement for the purpose of pensionary and retiral and the applicant is entitled to all such benefits, which are due to the applicant and at par with those persons who retire after putting in the same period of service, with all consequential benefits from the date of his resignation i.e. 7-9-1976.

(iii) declaration that employees who resign after 20 years of qualifying service are also entitled for ex gratia pension.

(iv) quashing and setting aside para 2 of the said letter dated 27-1-1998 passed by the Railway Board, to the extent that the employee who resigns are not entitled for ex-gratia payment.

(v) further reliefs deemed fit as well as cost.

2. Heard Shri G.S.Walia, learned counsel for the applicant as well as Shri V.S.Masurkar, learned counsel for the respondents.

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3. The applicant who originally joined as Works Mistry on 7-8-1954, became a permanent employee of the Railways wherein he was promoted as Inspector of Works, Sr. Grade in the scale of Rs. 550-750/- in 1971. He was transferred in 1976 from Bombay to Baroda, where he resigned from service w.e.f. 6-9-1976. In March 1977, he was paid his Provident Fund, amount less Rs. 2227.30 held back (still not paid). He did not get any retiral benefits, though he had completed 22 years of qualifying service at par with those who retired after completing the same period. He has been discriminated on the ground that he had resigned. 'Resignation' should not have come in the way of his getting the benefit which was given to others also as he was a permanent employee, and as he had laid down office after completing the requisite qualifying service. Denial of the above benefit was clearly a case of violation of Articles 14 and 16 of the Constitution. Further, following the acceptance of the Vth Pay Commission, a Scheme for grant of ex-gratia payment to employees who have put in more than twenty years, was announced by the Railways in their letter dated 27-1-1998, but this also discriminated against those who have resigned vis-a-vis those who have retired. This was also improper, as the main ingredient for the Scheme was the completion of twenty years and not resignation or retirement. Resignation is an act of free will by the employee unlike removal or dismissal, which were acts of punishment. Therefore, equating those who resigned with those who were removed or dismissed was

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unconstitutional and arbitrary. The applicant further points out that as he was challenging the rules themselves there was no question of any limitation.

4. Respondents contest the above pleas fervently. According to them, the application was pre-mature, ~~the~~ applicant's not having exhausted departmental remedies ; was not maintainable on account of non-joinder of parties, Engineering Chief Electrical and Railway Board not having been impleaded as respondents and suffered from laches and delay as the application related to matters of 1976 which cannot be agitated in 2000. They seek to rely on the decisions in the cases of P.S.Sadasivaswami Vs. State of Tamilnadu (AIR 1974 SC. 2271), Ratan Chandra Samantha Vs. UOI (1994 (26) ATC 228), S.S.Rathore Vs. State of Madhya Pradesh (SCALE 1989 (2) 510), Bhoop Singh Vs. UOI (AIR 1992 SC 1414), L.Chandrakumar Vs. UOI (JT 1997 (3) 589) and Narayan Singh Solanki Vs. UOI & Ors. (JT 2000 (7) SC 560) ^{which} ~~are~~ covered the instant case squarely.

5. Railway Board's letter dated 27-1-1998 extending the benefits of ex-gratia pension to SRPF (C) beneficiaries who retired between 1-4-57 to 31-12-1985, subject to the condition that he/she should have rendered atleast 20 years of continuous service prior to their superannuation is not applicable in the case of the applicant as he had resigned on his own, on 6-9-76. The applicant's is not a case of retirement on superannuation, but one of resignation. Railway Board's letter dated 23-1-1967

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had also shown that those who resigned from service with less than 30 years of service before superannuation were not eligible for ex-gratia benefits. Further, Railway Board's letter dated 13-11-1998 had clarified that persons like the present applicant are not to be extended the grant of ex-gratia benefits. In fact in a similar case Hyderabad Bench of the Tribunal had upheld the right of the Government to make reasonable distinction while introducing welfare schemes like ex-gratia payments. The same covers the instant case squarely and the applicant cannot agitate against it. The respondents also state that the applicant who had resigned w.e.f. 6-9-1976, has been given the benefits due to him which he had accepted as full and final settlement of his dues and, therefore, he cannot open an event after lapse of 24 years. The applicant having resigned from the job on his own, he cannot be considered as equivalent to those who had voluntarily retired after completion of the requisite period. The respondents also rely upon the judgements in the case of Krishan Kumar Vs. UOI (1991 SCC (L&S) 210), Union of India Vs. A.J.Fabian (AIR 1997 SC 1921) and Union of India Vs. Kailash (1998 (9) SC 721). In view of the above the respondents state that the applicant's case should fail.

6. During the oral submissions, Shri Walia points out that the eligibility for pension will have to be reckoned with the period of qualifying service and not with the act of retirement or resignation as the Department has wrongly chosen to do. The applicant's having completed more than 22 years of

qualifying service, his resignation should be taken as equivalent to retirement under Voluntary Scheme and he should be entitled for all the benefits like pension and ex-gratia payment. The Department was trying to bring in an artificial interpretation to the whole scheme by discriminating against those, like the applicant who have resigned vis-a-vis those have retired. This was clearly a case of violation of principles of equality as enshrined in Articles 14 & 16 of the Constitution and which rightly called for the interference by the Tribunal to render justice to the applicant, according to Shri Walia.

7. Shri V.S.Masurkar, learned counsel for the respondents has, during the oral submissions reiterated his pleas as given in his written submissions and observed that the applicant has not made out any case for Tribunal's intervention and the same, therefore, should be dismissed. According to him the pension scheme and the ex-gratia payment scheme are purely the matters of policy to be decided by the Government and it was not for the Tribunal to interfere with the same.

8. **I** have carefully considered the matter and perused the documents brought on record. To our mind there are two points to be decided, first relating to the pension scheme and second to the ex-gratia payment scheme. **I** find that the applicant who has resigned from service on 7-9-1976 after putting in 22 years of service is claiming the benefit of pension on the plea that his resignation from the

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Department should be considered as retirement on completion of qualifying period and not as resignation. According to him, 'resignation' after the completion of the requisite period was synonymous with retirement. On this aspect the decision of the Hon'ble Supreme Court in the case of Narayan Singh Solanki Vs. UOI & Ors. in Civil Appeal No. 11730/96 decided on 25-4-2000 (supra) clearly goes against the applicant. In the said case, the appellant having resigned from service and accepted his Provident Fund in the year 1963 and remain/silent for nearly 28 years coming up with a demand for change in option for the year 1992 did not deserved to be entertained, as he was guilty of laches and not entitled to change his option for pension. The request of the applicant in this case for availing himself of the pension scheme is on all ^{grounds with the above} and the same, therefore, fails on laches.

9. With regard to the applicant's claim in relation to ex-gratia payment, respondents also raised the plea that the same is pre-mature on the one hand and that it is hit by limitation on the other. These are apparently contradictory stands to take. The same, therefore, cannot be endorsed. Even otherwise, since in this application one of the ^{challenges} ~~changes~~ is directed at the vires of the conditions governing ex-gratia payment scheme, ^{it} would not be proper to dismiss it only on the ground of limitation. That being the case. The decision cited by the learned counsel for the respondents in the above connection are not relevant and are, therefore, not being specifically referred to. The other preliminary

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objection relating to the non-joinder of parties also does not merit ^{any} endorsement as the organisation which is successor in office to Engineering in Chief (Electrical) VRSC has been impleaded as the respondents. This objection also is rejected. At the same time on the merits we are afraid, the applicant has no case. ^I observe that Railway Board's Scheme contained in their letter No. F (E) III/97/PH.1/Ex.Gr./5 dated 27-1-1998 on the grant of ex-gratia payment to surviving SRPF (C) retirees of the period 1-4-1957 to 31-12-1985 provides for payment @ Rs. 600 per month w.e.f. 1-11-1997 to the concerned persons ^{Subject} ~~stop~~ to their having rendered at least 20 years of continuous service prior to their superannuation. The ex-gratia payment, the Circular goes on to say, is not payable to (a) those who were dismissed/removed from service and (b) those who resigned from service with less than 30 years of service before superannuation. This prescription is absolute and there is no relaxation. The applicant states that the above Circular was equating him with those who have removed/dismissed from service by way of punishment while he was a individual who has discharged his work satisfactorily for over two decades and resigned on his own. The conditions in the scheme are, therefore, discriminatory and hostile, pleads the applicant. Having considered the issue, ^I ~~am~~ unable to agree with the above contentions. Applicant's view that the main ingredient in the Scheme was rendering the 20 years of service and not the fact of resignation/removal or retirement is fallacious. The Circular and the Scheme will have to be read and adopted in full and ^{or} in parts, according to

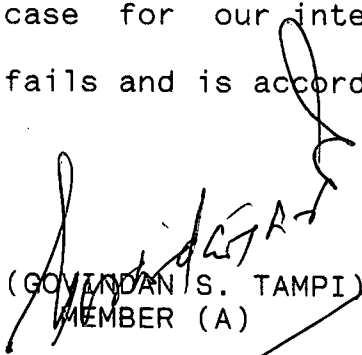
the choice of the individual concerned. The ex-gratia payment scheme is a welfare measure adopted by the Railways to be granted @ of Rs. 600/- per month to SRPF (C) beneficiaries who have retired between April 1957 and December 1985, but after having served for more than 20 years. At the same time, the Scheme provides that it cannot be granted to those who have removed/dismissed or who have resigned. The applicant who has resigned from the organisation on his own after serving 22 years belongs to the category^{ies} of individuals which has been specifically excluded from the purview of the Scheme. The applicant's version that this amounts to hostile discrimination has no legs to stand on, as the Government while laying down the welfare measure has every right to make reasonable classification in respect of the beneficiaries of the Scheme. This is the view adopted by the Hyderabad Bench of the Tribunal in OA 1537/99 in Mallkiah Vs. Railway Board, decided on 26-7-2000 on an almost identical matter, with which we are in respectful agreement. ^I have no doubt that the respondents in the instant application also have only adopted classification and the same cannot be assailed.

10. ^I also observe that the decision¹ of the Hon'ble Larger Bench of the Supreme Court in the Case of Krishna Kumar Vs. UOI & Ors. (Supra) and a batch of other Writ Petitions as well as in the case of UOI Vs. A.J.Fabian (Supra) and UOI Vs. Kailash (Supra) deal with identical matters as above where the entitlement to pension scheme has been dis-allowed in

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the case of Railway employees, similarly placed as the applicant. The ratio of the above decisions would squarely apply to the instant case as well.

11. In view of the forgoing, ^{I am} convinced that the applicant has not at all made any justifiable case for our intervention. The same therefore, fails and is accordingly dismissed. No costs.


(GOVINDAN S. TAMPI)
MEMBER (A)

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