

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 624 OF 2001.

Dated this Thursday the 31st day of October, 2002.

Dr. Shriram Parshuram Pednekar, Applicant.

Shri Ramesh Ramamurthy alongwith Advocate for
Shri Sai Ramamurthy, Applicant.

VERSUS

Union of India & Others, Respondents.

Shri Suresh Kumar, Advocate for
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, 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.

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B.N.B
(B. N. BAHADUR)
MEMBER (A).

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Dated this Thursday the 31st day of October 2002. 120

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

Dr. Shriram Parshuram Pednekar,
Chief Medical Officer,
Central Railway,
C.S.T., Mumbai - 400 001.
Residing at - 17, Prakash Society,
Daulat Nagar, Santacruz (W),
Mumbai - 400 054.

... Applicant.

(By Advocate Shri Ramesh Ramamurthy
for Shri Sai Ramamurthy)

VERSUS

1. Union of India through
The General Manager,
Central Railway,
C.S.T., Mumbai - 400 001.

2. The Chairman,
Railway Board,
Ministry of Railways,
Rail Bhavan,
New Delhi - 110 001.

3. The Director (Finance),
Railway Board,
Ministry of Railways,
Rail Bhavan,
New Delhi - 110 001.

... Respondents.

(By Advocate Shri Suresh Kumar)

O R D E R

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case seeks reliefs from the
Tribunal as follows :

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- "(a) that this Hon'ble Tribunal be pleased to hold and declare that the action of the Respondents in denying to the Applicant the benefit of amended Rule 2423 A is illegal, arbitrary, violative of Articles 14 and 16 of the Constitution of India and liable to be quashed and set aside.
- (b) that this Hon'ble Tribunal be pleased to hold and declare that the Applicant is entitled to the benefits added years of service under amended Rule 2423-A without forgoing his past service prior to his becoming DMO.
- (c) that this Hon'ble Tribunal be pleased to hold and declare that the requirement of an employee to forgo his past service to get the benefit of Rule 2423 A is an illegal condition and cannot be insisted upon.
- (d) that this Hon'ble Tribunal be pleased to quash and set aside the decision conveyed under letter dated 12.3.2001 sent under letter dated 25.5.2001 (Annexure 'A-1')."

In other words, the Applicant wants, in substance, that he be provided benefits of amended rule 2423-A and be held to be entitled to benefits of added years of service without forgoing his past service prior to his becoming DMO. Orders conveying denial are, therefore, challenged (impugned order dated 12.03.2001, page 24 of the Paper Book) and conveyed by letter dated 25.05.2001.

2. The facts of the case, as brought forth by the Applicant are, in brief, as follows :

That he retired on superannuation at the age of 58 years as Chief Medical Officer from the Central Railway on 30.04.1974. He had opted for pension scheme from 1959-60 and from the date of



...3

superannuation he has been paid pension. He states that he had acquired his M.B.B.S. degree in June 1940 and had completed Master of Surgery (M.S. course) and was awarded degree in 1950. He applied for the post of D.M.O. and was selected and appointed D.M.O. in January, 1952 and finally promoted C.M.O. of Central Railway in 1970.

3. The Applicant then comes on to the provision of Rule 2423-A of Indian Railway Establishment Code (I.R.E.C. in short) of counting of maximum of 5 years of qualifying service under the circumstances described in that rule. He then goes on to recount that the Rule 2423-A was amended in December, 1987 and made applicable to all persons who retired after 31.03.1960 (Annexure A-4). It is his contention that because of this amendment the Applicant has become entitled to counting up to five years of service as qualifying service for pensionary benefits. Further facts are then ennumerated in respect of others in the O.A. Certain grounds are taken by Applicant in the O.A., which amongst others, were argued by his Learned Counsel.

4. The Respondents have filed a Written Statement of Reply where the facts are first ennumerated in a chronological fashion at para 4 and the stand is taken that the Rule 2423-A of I.R.E.C. is not applicable to the Applicant as he joined service prior to 01.04.1960. Moreover, Note-2 to this Rule, which is stated, reads as under :

"NOTE-2 : The decision to grant concession under this rule shall be taken by the Railway Board at the time of recruitment in consultation with Union Public Service."

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It is contended that no decision was taken by Railway Board in such manner as admitted by Applicant in para 4(f) of the O.A.

5. A stand is also taken that Applicant is not entitled to any benefit under the amended Rule either. The rule was amended on 15.10.1976 when Applicant was not in service. Again the rule was amended in 1987 with effect from 28.10.1987 which Rule also is not applicable to the Applicant. Respondents then go on to explain from sub-para (m) on page 127 onwards and describe this position. The ground of delay and laches and the argument that the case is badly hit by limitation is then taken at length.

6. I have heard the Learned Counsel on both sides, namely - Shri Ramesh Ramamurthy for the Applicant and Shri Suresh Kumar for the Respondents.

7. Shri Ramamurthy reiterated the facts in the case, and argued at length as to how he is covered by the amended rule 2423-A. It is contended that Applicant has worked for only 31 years and 6 months and that he had made representations, copies of which are placed at Annexures A-5, A-6, and A-9. Learned Counsel sought the support from the case reported at AIR 1994 SC 592 (Union of India & Another V/s. S. Dharmalingam). He also referred to the judgement of the Hon'ble Supreme Court made in the matter of V. Kasturi V/s. Managing Director, State Bank of India, Bombay & Another reported at AIR 1999 SC 81 and on this case made the point that admittedly arrears can come to the present Applicant from 1987 i.e. the date of amendment but the benefit will have to be provided.



8. Arguing the case on behalf of Respondents, their Learned Counsel, Shri Suresh Kumar, contended that the Applicant was already in service when he had acquired higher qualification by obtaining Study Leave, etc., from Government service. It was argued that the Applicant had retired well before 1987 at which time the amendment came, and that, what he was seeking is really a double benefit. Learned Counsel also referred to Dharmalingam's case cited above and made the point that at the end of para 3 of the said judgement the proviso to the effect that the concession will be admissible only if the Recruitment Rules in respect of the said service or post contained a specific provision that the service or post is one which carries the benefit of this rule. It was argued that the Applicant was hit by this proviso. The point of limitation, delay and laches was reiterated. Learned Counsel for Respondents sought to depend on the ruling of Calcutta High Court in the matter of Union of India & Others V/s. Dr. Parimal Kanti Mukherjee reported at 2001 (2) ATJ 527. He also cited the case decided by this Tribunal on 26.09.2000, namely O.A. No. 958/99 i.e. G. K. Gupta's case. While concluding Shri Suresh Kumar depended on the communication made to all General Managers of Indian Railway by the Railway Board dated 16.06.1993 on the subject of benefit of added years of service under Rule 2423-A.

9. It must be seen that this is a matter where the benefit has been sought in respect of a certain amendment to a Rule. Therefore, the question before the Tribunal is limited in the sense that it will need to be seen whether in the facts and



circumstances of the case the Rule is applicable to the Applicant. It is not a case where any particular interpretation is sought to be made subject to judicial review or a case where the vires of any rule is being challenged. In regard to the ratio of the case of S. Dharmalingam depended upon by the Applicant, it has been seen that Rule 30 of the C.C.S.(Pension) Rules is undoubtedly similar to Rule 2423-A of I.R.E.C. However, there is substance in the contention taken by the Learned Counsel for Respondents that the proviso as quoted at the end of para 3 of the judgement will make it incumbent to examine the case with reference to Rule 2423-A/amendment, as indeed has been sought by the Applicant. Now, indeed, the matter has been clarified by the circular of 16.06.1993 by the Railways themselves.

10. In the case of Union of India V/s. Dr. P. K. Mukherjee, support has been sought in regard to the aspect about cut-off date from the judgement of Hon'ble Apex Court in the matter of U.O.I. V/s. P. N. Menon reported in A.I.R. 1994 SC 2221. This will be relevant in the present case also. In the judgement of the Calcutta High Court in Mukherjee case (supra) certain other ratios decided by Hon'ble Apex Court have also been discussed.

11. In view of the above position, we are not convinced that there is a case for interference in the matter to provide the relief as sought in the O.A. The O.A. is, therefore, dismissed with no order as to costs.



(B. N. BAHADUR)
MEMBER (A).