

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH : MUMBAI

ORIGINAL APPLICATION NO. 90/2001

Date of Decision: 12.10.2001

Dr. H.A. Nagpal.

Applicant

Shri S. Natarajan.

Advocate for Applicant

Versus

Union of India & 3 others

Respondents

Shri V.S. Masurkar.      Advocate for Respondents

CORAM:    HON'BLE SMT. SHANTA SHAstry.    ... 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 ✓

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(SMT. SHANTA SHAstry)  
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 90/2001

THIS THE 12TH DAY OF OCTOBER, 2001

CORAM: SMT. SHANTA SHAstry

MEMBER (A)

Dr. H.A. Nagpal,  
Residing at 579, Ramnagar Soociety,  
5th Road, Khar (W),  
Mumbai-400 052.

... Applicant

By Advocate Shri S. Natarajan.

Versus

1. Union of India through  
Chairman, Railway Board,  
Rail Bhavan,  
New Delhi-110 001.
2. The General Manager,  
Western Railway,  
Churchgate, Mumbai-400 020.
3. The Financial Advisor &  
Chief Accounts Officer (Pension),  
Western Railway, Churchgate,  
Mumbai-400 020.
4. The Senior Manager,  
Canara Bank, Khar (West),  
Mumbai-400 052. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R

The applicant is aggrieved by the letter dated 02.01.2001 as well as the letter dated 17.11.1997 whereby his pension has been reduced from Rs.3018/- to Rs.2607/- and recovery has been ordered.

2. The applicant was initially appointed as an Assistant Medical Officer with effect from 13.11.1965. He took voluntary retirement from service from 1.10.1993

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i.e. seven months before superannuation as Deputy Chief Medical Officer. The applicant was given the benefit of Rule 2423-A of the Indian Railway Establishment Code (IREC for short) Volume II. According to which, an officer appointed to a service or post on or after first April, 1960, may add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding 1/4th of the length of his service or the actual period by which his age at the time of recruitment exceeds 25 years or a period of five years whichever is less, if the service or post is one (a) for which post graduate or specialist qualification or experience in scientific, technological or professional fields is essential and (b) to which candidates of more than twenty five years of age are normally recruited, provided the actual qualifying service at the time the employee quits service is not less than 10 years. The decision to grant the concession under this rule was to be taken by the Railway Board at the time of recruitment in consultation with the Union Public Service Commission.

3. The category of Assistant Medical Officer is one such post for which this concession of added years of service is available in terms of the Railway Board letter dated 16.6.93. This order became effective retrospective from 01.12.1991. Accordingly, the applicant was given the benefit. Thereafter, it was found by the CIU Committee that the applicant was given

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wrong weightage of 4 1/2 years. The applicant was sent a notice on 23.7.1997 that he was not entitled for the weightage of 4 1/2 years and the over payment would be recovered soon from him.

4. The applicant represented immediately on 4.8.1997 pointing out that he was entitled to the same and it was rightly given to him. However, the applicant was again informed on 28.8.1997 that in accordance with the Railway Board's letter dated 9.11.1977, though he was given 4 1/2 years added service, according to the letter dated 9.10.1996 of the Railway Board, the condition for criteria and pension were wrong.

5. According to the applicant pension can be reduced after 2 years of retirement only if there is a clerical error. In his case, there was no clerical error. Before granting him the benefit of 4 1/2 years of weightage in qualifying service, the General manager had written to the FA & CAO seeking concurrence of calculation of qualifying service of the applicant vide letter dated 08.10.1993. In this letter, it was clearly brought out that the applicant had retired voluntarily and whether he would still be entitled to the weightage of five years of qualifying service. The FA & CAO had concurred <sup>in</sup> him the same vide letter dated 18.10.1993. It is only thereafter the applicant was given the benefit of the weightage in qualifying service and therefore, it cannot be held that there was any clerical error, it was

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of the weightage in qualifying service and therefore, it cannot be held that there was any clerical error, it was a conscious decision taken.

6. The applicant had approached this Tribunal in OA No.1101/97 on the same issue earlier. The Tribunal, however, vide its judgment and order dated 08.4.2000 allowed the OA partly with a direction to the respondents not to effect the recoveries and obtain the concurrence of the Railway Board in view of the proviso to Rule 90 (1) of the Railway Service Pension Rules, 1993. Accordingly, the matter was put up to the Railway Board and the Railway Board has held that there has been a clerical error and the applicant is not entitled to the weightage of 4 1/2 years in qualifying service for pension. The applicant also challenged the letter dated 02.01.2001 by which instructions were sent to the applicant's bank to reduce the quantum of pension payable and to recover the amount paid for the past more than seven years.

7. The stand of the respondents is very clear in the matter. According to them as per the direction of the Tribunal, the concurrence of the Railway Board, who is the competent authority has been obtained and therefore, the respondents are justified in reducing the pension of the applicant and ordered to recover the over payments made during the past seven years. Therefore, this matter cannot be gone into again.

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8. The learned counsel for the applicant has also argued vehemently that the principles of natural justice were not followed. He was not given any notice regarding reduction in his pension and recovery to be made from the dearness relief on pension. It is sent directly to his bank. The applicant has relied on a judgment of the Principal Bench in OA No.1481/88 in the case of G.B.K. Jain Vs. Union of India & Others 1992 (20) ATC 576. It was held in this case that downward revision of pension is barred except in case of clerical error. The applicant's case therein for pension was initially determined by taking into account 33 years of qualifying service. However, while revising the pension in accordance with the recommendation of the IVth Central Pay Commission, more than five years service was treated as non-qualifying and consequentially. The applicant's pension, commutation value of pension and DCRG were unilaterally revised by the Government. The Tribunal held this to be invalid.

9. According to the present applicant since before fixing his pension the authorities had taken a proper precaution of seeking clarification from the FA & CAO, it cannot now be held that there was a clerical error and therefore, the applicant is entitled to continue his pension as fixed initially and he should not be made to refund the over payment, if any, on account of that.

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10. The respondents, however submit that such benefit of weightage in qualifying service is available only if a person retires on superannuation and not otherwise. Since the applicant had taken voluntary retirement and had not retired on superannuation, he could not be entitled to the same.

11. I have heard both the sides and have perused the pleadings. No doubt this Tribunal had considered this issue previously in OA No.1101/97. The applicant had argued therein that the provisions i.e. Rule 90 of Railway Service (Pension) Rules 1993 and Rule 90 of CCS (Pension) Rules, 1972 are similar and the authority applies with full force and deserves to be followed. However, the Tribunal had refrained from recording any opinion on that point to be decided at the appropriate stage. Therefore, even though the applicant had filed the OA with the same prayer, the legal issue had remained to be finally decided. It is true that in Rule 2423-A of the IREC Volume-II refers to adding of maximum period of five years to the service qualifying for superannuation pension. However, in this rule, nowhere is it mentioned specifically that benefit is to be given only on superannuation and not otherwise. More over, the decision to grant the concession is to be taken by the Railway Board at the time of recruitment in consultation with the UPSC as per para 2 of this rule and option once exercised is to be final and therefore, in this case, the applicant cannot be denied the benefit

of weightage of service on the mere ground that he retired on voluntary basis and not on superannuation. It is to be noted that whether the applicant retired voluntarily or on superannuation, he would be entitled to pension in both the cases. In the case of voluntary retirement, it would be pro-rata pension depending upon the number of qualifying years of service. So also in superannuation also it will depend upon the length of the qualifying service. Merely taking voluntary retirement would not deprive of the applicant of basic pension. This being so, the applicant cannot be denied the benefit of weightage in qualifying service as made available under Rule 2423-A of the IREC Volume II. I agree with the applicant that this cannot be treated as a clerical error. It is more of an error of interpretation of policy. Even though the Railway Board held it to be a clerical error, I find that giving of benefit to the applicant earlier was a conscious decision. Therefore, I hold that the applicant is entitled to the benefit of the weightage in service. Also, the pension cannot be reduced after a period of seven years of retirement of the applicant. The pension once finalised, cannot be changed and since in my considered opinion, there is no clerical error, the applicant's pension cannot be reduced now. In the facts and circumstances of the case, the OA succeeds and is allowed accordingly. I do not order any costs.

*Shanta Shastri*  
(SMT. SHANTA SHASTRY)  
MEMBER (A)

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