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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 154/90 198
T.A. No. ---

DATE OF DECISION 23-2-1993

Angelus Maria Nativadade Pinto Petitioner

Mr.D.V.Gangal Advocate for the Petitioner(s)

Versus

U.O.I. & Ors. Respondent

Mr.J.G.Savant Advocate for the Respondent(s)

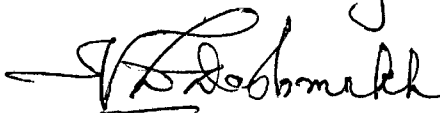
CORAM :

The Hon'ble Mr. M.Y.Priolkar, Member(A)

The Hon'ble Mr. V.D.Deshmukh, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? yes
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? no
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000


(V.D.DESHMUKH)
M(J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.154/90

Angelus Maria Nativadade Pinto
C/o.Jeevan Balkrishna,
Mhatre Chawl, Boiling Naka,
Virar, Dist. Thane.

.. Applicant

-vs-

1. Union of India
through
General Manager,
Central Railway,
Bombay V.T.
 2. Chief Workshop Manager,
Carriage & Wagon Workshop,
Central Railway,
Matunga,
Bombay - 400 019.
- .. Respondents

Coram: Hon'ble Shri M.Y.Priolkar, Member(A)
Hon'ble Shri V.D.Deshmukh, Member(J)

Appearances:

1. Mr.D.V.Gangal
Advocate for the
Applicant.
2. Mr.J.G.Savant
Counsel for the
Respondents.

ORAL JUDGMENT: Date:23-2-1993
(Per V.D.Deshmukh, Member(J))

The applicant was appointed in the service of the Central Railways on 5-2-1942. He submitted resignation/retirement notice and the same was accepted w.e.f. 21-6-1973. The applicant filed the present application claiming a declaration that he is entitled to pension, other pensionary benefits, family pension etc. and arrears thereof, minus extra benefits received under the State Railway Provident Fund Rules.

2. His claim is based on the contention that the Railway authorities did not offer the option as between the benefit of pension or of

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the provident fund during the period 1-1-1973 to 23-7-1974, and for the first time the railway authorities issued order dt. 23-7-1974 granting such option covering the period from 1-1-73. Ass per para 2(iii) of this order dt.1-1-73 the order ought to have been brought to the notice of the applicant, but the applicant contends that it was not brought to his notice. By the amendment, which was allowed, the applicant has also relied upon similar letter issued by the railway establishment on 28-12-1979 which according to the applicant was also not brought to his notice. The applicant contends that he filed the present application after he received the knowledge of letter dt. 23-7-1974. He had applied to the railway authorities for granting to him the benefit of pension and other consequential benefits but the application was rejected.

3. We find that so far as the question of intimation to the applicant of the above said two letters is concerned it is fully covered by our judgment in O.A.732/87 Shri Joseph John Gonsalves vs. Union of India dt. 28-2-90 and judgment in O.A. 824/89 V.D.Viadya vs. U.O.I. and Ors. decided on 26-4-1990. The latter judgment is also confirmed by the Supreme Court and the applicant shall be entitled to exercise the option for pension, pensionary benefits, family pension etc.

4. The application was opposed by the respondents on the ground that the letter which the applicant claims to be a retirement notice was in fact a letter of resignation. In our opinion it is not necessary to enter into that controversy

as even if it was to be taken as a letter of resignation we find that the applicant would be entitled to pension and other pensionary benefits.

This question has been decided in the judgment of this Tribunal in O.A. 20/90 decided on 3-7-90

Mrs. Evelyn Gracies vs. The Divisional Railway Manager, Bombay V.T. and others. The relevant

portion of the judgment which in our opinion

governs the present case is at para 7 :

"7. There is a dispute as to whether the husband of the applicant retired from service voluntarily or submitted his resignation. It was submitted by the counsel of the applicant that even assuming that a letter of resignation was given it has to be deemed as retirement for the purpose of grant of pensionary benefits, including the benefit under the OM dated 13.6.1988, as the husband of the applicant rendered more than 30 years of service on 21-5-1977, the date on which, according to the respondents, ~~he~~ ^{he} resigned from service. In support of the submission, counsel brought to our attention Rule 101 of the Manual of Railway Pension Rules, 1990 where the retirement benefits for a permanent railway servant are specified, and it is provided that the said benefits are admissible to all ^{except} ~~to all~~ permanent railway servants, /those who are removed or dismissed from service or resigned from it before completion of 30 years qualifying service (Emphasis added). It is not disputed that retirement benefits including family pension are being allowed to permanent railway servants even in the cases of those who resigned after completion of 30 years of qualifying service. From the aforesaid provision,

it is evident that for the purpose of pensionary benefits, really there is no distinction between a railway servant who retires from service or resigns after rendering 30 years qualifying service."

In view of the decision in the above said case it is obvious that if the applicant had completed 30 years of qualifying service before the resignation or retirement he was entitled to pension and all the other benefits.

5. The applicant in his amendment has clearly stated that the applicant had completed 30 years of qualifying service before the letter of resignation/retirement was accepted. The respondents have not disputed this position. We hold therefore that the applicant had completed the qualifying service of 30 years before he retired/resigned.

6. In view of the decisions in the cases of Joseph Gonsalves and V.D.Vaidya(supra) the applicant shall be entitled to the relief claimed. However, in the case of Joseph Gonsalves it was held that the applicant who was held to be entitled to pensionary benefits shall be entitled to arrears of pension limited to a period of one year before the date of filing the application. So far as the arrears of pension in the present case are concerned the same principle shall apply. In the result we pass the following order.


7. The application is allowed and it is declared that the applicant is entitled to pension and pensionary benefits family pension etc. and arrears thereof minus extra benefit received in State Railway Provident Fund Rules.

8. For the purposes of fixing the pension the effective date shall be 21-6-73, however the applicant shall be entitled to arrears of pension from 12-3-89.

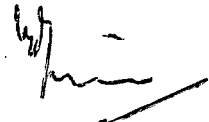
9. ~~Each~~ ^{Either} side shall not charge any interest while computing the amounts due to the applicant.

10. The arrears of pension as directed above shall be paid by the respondents to the applicant, and they shall start the payment of regular monthly pension to the applicant within three months from the date of receipt of the copy of this order.

11. No order as to costs.



(V.D.DESHMUKH)
Member(J)



(M.Y.PRIOLKAR)
Member(A)

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