

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1028/92

Date of Decision: 1-8-92

G.S.Krishnarao

.. Applicant

Shri D.V.Gangal

.. Advocate for
Applicant

-versus-

Union of India & Anr.

.. Respondent(s)

Shri V.S.Masurkar

.. Advocate for
Respondent(s)

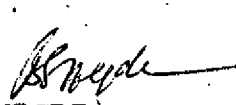
CORAM:

The Hon'ble Shri B.S.Hegde, Member(J),

The Hon'ble Shri M.R.Kolhatkar, Member(A).

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?


(B.S.HEGDE)
MEMBER(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1028/1992.

1st this the Friday day of August 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

G.S.Krishnarao,
New Swastik Apartment,
'A', 2nd Floor No.7A,
Besides Ganesh Cinema,
Charai,
Thane (W) - 400 601.

... Applicant.

(By Advocate Shri D.V.Gangal)

V/s.

1. The Union of India through
The General Manager,
South Central Railway,
Secunderabad (A.P.),
2. The Divisional Railway Manager,
South Central Railway,
Vijayawada (A.P.).

... Respondents.

(By Advocate Shri V.S.Masurkar).

O R D E R

(Per Shri B.S.Hegde, Member(J))

This application is filed by the applicant not against any order of the respondents. The only contention is that he was a confirmed clerk prior to 31.3.1938 and the said post was a Ministerial post. The applicant retired from service on 14.12.1971 and it is stated that his was a regular appointment against a permanent post. He was appointed with the General Manager/Agent of the then Madras & Southern Maratha Railway Company. As per the said company Rules he was to retire at the age of 58 years. The employees of the Indian Government Railway provided that the Clerks who were confirmed prior to 31.3.1938 shall have a right to serve till they attain the age of 60 years. However, the same benefit was not extended to the Clerks of the Company Railway.

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2. In this connection, the learned counsel for the applicant relies upon the decision of the Supreme Court in the case of Railway Board V/s. A.Pitchumani (A.I.R. 1972 S.C. 508) the Respondent had challenged the discrimination in the age of retirement as discriminatory before the Karnataka High Court. The Writ Petition was allowed. The Railway Board challenged that decision before the Supreme Court. The Supreme Court confirmed the decision of the Karnataka High Court. Thereupon, the Railway Board issued a Circular directing that all similarly situated employees be considered for grant of similar benefit. On that basis, his retirement in the year 1971 is illegal and he should have been allowed to continue in service up to the age of 60 years. He further contends that he has sent more than 40 representations right from 1971 onwards, but no reply has been received. In this petition, the applicant concedes that the application is barred by the law of limitation under section 21 of the A.T. Act. Though his claim is barred by limitation, since his case is clearly covered by the Circular of the Railway Board dt. 10.1.1972, the applicant should have been allowed to continue till 1973. Further he contends that there cannot be estoppel against law and the fundamental rights cannot be curtailed by Limitation Law. In this O.A. the applicant is only claiming monetary benefits and the respondents are duty bound to pay the amount to the applicant.

3. The respondents in their reply have negated the various contentions of the applicant and submitted that the application filed by the applicant is hopelessly barred by limitation and thus the O.A. is

not maintainable. Further it is stated that it is incorrect to state that the applicant has made representation to competent authority for re-imbusement of monetary benefits accrued to him from 1971 to 1973. It is submitted that the applicant retired in 1971 and he made his first representation only on 23.1.1992 after a lapse of nearly 20 years claiming for extension of service up to 60 years. The Railway Board's letter dt. 10.1.1972 envisages only 5 cases under Clause 5 which reads as follows :

"5. Persons who would be entitled to claim the benefit of the judgment of the Supreme Court in Pitchumani's case would fall under the following five categories :-

- a) Persons who have been wrongfully retired but have been directed to be reinstated by a Court of law because they have not yet completed 60 years of age.
- b) Persons who have been wrongfully retired from service but have not yet completed 60 years of age but whose writ petitions/other legal proceedings for quashing the order of retirement are still pending;
- c) Persons who have been wrongfully retired from service and have already completed 60 years but whose writ petitions/other legal proceedings for quashing the orders of retirement are still pending.
- d) Persons who have been wrongfully retired from service but are claiming to be reinstated by virtue of the judgment of the Supreme Court because they have not yet completed 60 years of age; and
- e) Persons who have been wrongfully retired but cannot claim to be reinstated in service because they have already completed 60 years of age, but all the same claim the benefit of the judgment."

Considering the various categories, one can say that the applicant would come under the category (e) and in the case of persons coming under category (e) para 5 payment

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of wages of pay and allowances may be made only for the period prior to their attaining the age of 60 years i.e. between the dates the then persons were wrongfully retired and the date of superannuation on attaining the age of 60 years which falls within the period of three years backwards from the date of their application, whether it is before or after the date of the Judgment of the Supreme Court. Since the applicant is not a party to any Writ Petition and there is no Judgment in his favour under Clause 5 and he is not a person who can claim the benefit of the Judgment by submitting any representation under clause (e) of the Board's letter dt. 10.1.1972, within time to enable him to get any benefit under the Judgment. In the aforesaid Circular it is also mentioned that the pay and allowances is also subject to the law of limitation and under clause 10 it is mentioned that the payment of various allowances may be made only prior to the date of their attaining 60 years. The Railway Board, further reiterated vide their letter dt. 30.3.1988 for not applying law of limitation is only with respect to the petitioners listed in Civil Appeal Nos. 1110, 1112 and 1114 of 1978 and the 20 persons mentioned in the Supreme Court Judgment dt. 23.7.1987. The applicant not being a party to the Civil Appeals specified in the Board's letter he cannot claim any benefit under the law of limitation specified therein. Since the applicant has not made any representation till 1992, though he had retired in 1971, he is not entitled for any benefits either under the law of limitation or under the letter dt. 10.1.1972.

4. The respondents have further submitted that

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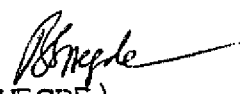
under Rule 2003 of Indian Railway Establishment Code Ministerial servant means a Railway Servant of a subordinate service whose duties are entirely clerical, and any other class of servants specifically defined as such by general or special order of a competent authority. It is true that the applicant has been promoted as a Junior Clerk on 16.2.1937 which is a Ministerial category and was further promoted as Assistant Station Master on 6.12.1947 which is a non-ministerial category and was confirmed as Assistant Station Master on 18.4.1950, thereby his lien in the Ministerial cadre was subsequently severed w.e.f. 18.4.1950. From the date of his entry into Assistant Station Master Cadre till his retirement on superannuation, he was Assistant Station Master on 14.12.1971 at Nellore. The Supreme decision in the Court's case in Pitchumani is applicable only in cases where ministerial staff have either been appointed or continued to remain in non-ministerial posts in an officiating capacity and had been retired from their non-ministerial posts on their attaining the age of 58 years. The applicant was ASM which is a non-ministerial category and he had no lien in the ministerial cadre as the same was cut off and he was confirmed in the cadre of ASM on 18.4.1950. The category of ASM is treated as Ministerial category is therefore baseless and contrary to the Rules.

5. Heard Shri D.V.Gangal, counsel for the applicant and Shri V.S.Masurkar, counsel for the respondents and have carefully considered the pleadings. Though the respondents have raised a preliminary objection that this Tribunal does not have jurisdiction to entertain the subject matter as the cause of action arose in the year 1971 i.e. after a lapse of 20 years and only matters in which cause of action has arisen after 1982

can only be entertained by this Tribunal. In support of his contention he relies upon the Judgment of the Constitution Bench in L.Chandrakumar V/s. Union of India, Bhoop Singh V/s. Union of India (A.I.R. 1992 S.C. 1414) and V.K.Mehra V/s. Union of India (A.I.R. 1986). Regarding representation, he relies upon the Judgment of the Supreme Court in S.S.Rathod which clarifies that repeated representation does not keep the limitation alive. As stated earlier the applicant has made representation only in the year 1992, whereby, the application is hopelessly barred by time. The learned counsel for the applicant contends that the point raised by the applicant has a continuous cause of action, hence the limitation should not be resorted to, though he has conceded in the application that the application is barred by law of limitation. The counsel for the applicant further contends that he could not file the petition earlier because he was not getting the pension, which was granted to him only in the year 1990 and thereafter he has filed this petition. In our view, the granting of pension to the applicant has nothing to do with the claiming of wages from back date i.e. from 1971 to 1973. Admittedly, there is enormous delay in filing this O.A. Apart from that, the applicant cannot take advantage of the benefits accrued in Pitchumani's case as per the directions of the Supreme Court. He does not come under any of the categories laid down by the Railway Board. Therefore, we are of the opinion, that even on merits the applicant has not made out any case, apart from that application is

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barred by time. In the result, the application is dismissed. There will be no order as to costs.


(B.S. HEGDE)
MEMBER (J),

B.

¶ Per Shri M.R. Kolhatkar, Member (A) ¶

6. I am inclined to agree with my learned brother Member (J) that the O.A. is liable to be dismissed.

However, I do so for my own reasons which follows.

7. I am inclined to hold that the O.A. is not extension in service and consequent barred by limitation, because it relates to increase in the monthly pension which ^{gives} a recurring cause of action in terms of well known Judgment of the Supreme Court in M.R. Gupta ¶ 1995 S.C.C. (L&S 1273) ¶ The contention of the counsel for the applicant is also that the prayer in the present O.A. is for the pension for the period from 1971-73 and since his prayer for grant of pension itself was granted in terms of the order of the CAT, Bangalore Bench in 1990, the O.A. came to be filed on 6.10.1992 shows that there are also satisfactory reasons for filing the O.A. when he did so. In any case, if the applicant is to be saddled with consequences of delay, the same would be reflected in the grant of relief of arrears rather than any denial of relief to him at the threshold.

8. The applicant was retired at the age of 58 years and he claims the relief of retiring at the age of 60 years on the ground of Rule 2046 of the Indian

Railway Establishment Code which reads as below :

"Rule 2046 (F.R. 56) : (a) Except as otherwise provided in this Rule, every Railway servant shall retire on the day he attains the age of fifty eight years.

(b) A ministerial railway servant who entered Government service on or before 31st March, 1938 and he held on that date :-

(i) a lien or a suspended lien on a permanent post, or

(ii) a permanent post in the provisional substantive capacity under clause (d) of Rule 2008 and continued to hold the same without interruption until he was confirmed in that posts,

shall be retained in service till the day he attains the age of sixty years.

For the purpose of this clause, the expression "Government Service" includes service rendered in a former Provincial Government and in ex-Company and ex-State Railways."

It ~~appears to me~~ that the applicant ~~was not eligible for~~ fulfills all conditions in this Rule except the condition relating to his being a Ministerial servant. According to the respondents, the applicant was promoted as Assistant Station Master on 6.12.1947 which is a Non-Ministerial category and he was confirmed in the same post on 18.4.1950, his lien in the Ministerial cadre is consequently severed from that date. He retired as Assistant Station Master on 14.12.1971. The question of grant of relief therefore, entirely turns on whether the applicant was holding a Ministerial post. According to Rule 2003 of IREC Vol. II "Ministerial servant means a Railway Servant of a subordinate service whose duties are entirely clerical and any other class of servants specially defined as such by general or special order of a competent authority." The applicant could not show to us that the post of ASM is defined as Ministerial. However, he relies on the fact that the duties of the applicant comprised purely clerical

work such as maintaining minute record of trains movement, shunting movement, operation instruments operations, line clear, Train on line, Line closed etc.
position/ The Assistant Station Master has to transmit such recorded information immediately to the rear station and to the station ahead and to the Section Controller on duty. Besides he has to maintain^a/number of registers, pass different, memos, receive different memos and take action thereon.

I am not persuaded^{however}/that the post of ASM belongs to Ministerial cadre. The counsel for the applicant would submit that the applicant was required to be given an option to revert to Ministerial cadre in terms of Railway Board's letter, dt. 10.1.1972 and 23.12.1972. I am not inclined to accept the reading of the applicant that such an option is required to be given. I am therefore, of the view, that the applicant being a confirmed ASM did not belong to Ministerial cadre and in terms of relevant rules and considering the ^{Judgment} ~~in~~ A.Pitchumani's case and the Railway Board's instructions in implementation of the Judgment he cannot be held to be entitled to remain in service up to 60 years of age. On this ground, the O.A. is liable to be dismissed.

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A).

O R D E R

The O.A. is dismissed with no orders as to costs.

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

B.S. Hegde
(B.S. HEGDE)
MEMBER (J).