

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD

O.A.No.806 of 1987.

Date of Judgment 25.4.90.

R.Vadivelu

.. Applicant

Versus

Chief Personnel Officer,
South Central Railway,
Secunderabad
& 2 others

.. Respondents

Counsel for the Applicant : Shri G.Ramachandra Reddy,
Advocate.

Counsel for the Respondents : Shri N.R.Devaraj,
SC for Railways.

CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl).

Hon'ble Shri R.Balasubramanian : Member(Admn).

[Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn)]

This is an application filed under section 19
of the Administrative Tribunals Act by Shri R.Vadivelu
against the Chief Personnel Officer, South Central
Railway, Secunderabad and 2 others.

2. The applicant was serving the Army between
11.12.41 and 5.10.46 when he was demobilised. After
discharge from the Army he joined the Supplies and
Disposals Department of the Govt. of India as L.D.C.
on 7.3.47. While working there he applied through
that department for a job in the Railways. He was
successful and was relieved by the Supplies and
Disposals Department on 6.6.49 and joined the Railway
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the next day i.e., on 7.6.49. After serving the Railways for over 29 years he retired on 31.3.79. The Railways have given him the pension taking into account only the service he had rendered to them. It is the applicant's claim that he was a war service candidate and on demobilisation he has joined another Govt. of India Department well within a period of one year and then joined the Railways with no delay at all after relief from the Supplies and Disposals Department. It is therefore his claim that his past war service should also be taken into account by which he will get full pensionary benefits counted on more than 33 years of service instead of the reduced pensionary benefits calculated on 29 years of service. He has prayed that the Tribunal direct the respondents to take into account the war service and recalculate the pension.

3. The respondents have opposed the prayer. They had given the service particulars in their counter which tally with the claim of the applicant. Vide their letter dated 15.10.77 the Railway Board required that an ex-serviceman re-employed in Railway service on eventual confirmation should exercise option either to continue the military pension or cease to draw the military pension and refund the gratuity with a view to count the previous military service and qualifying service. Such an option was required to be exercised within 3 months of the date of the order of substantive appointment. According to the respondent the

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applicant was confirmed as Senior Commercial Clerk on 2.1.62. Hence such an option from him in terms of a letter issued after 15 years of the date of his confirmation does not arise. Subsequently the Railway Board vide their letter dated 3.11.78 extended the similar option to those who did not exercise the option earlier, ^{within} ~~than~~ a period of 6 months from 3.11.78.

According to the respondents the applicant did not exercise any option. Another opportunity was given to exercise option vide their letter dated 10.5.82 in respect of those pensioners who were in service on 30.7.81. The applicant by this time was not in service having retired on 31.3.79.

4. It is the respondents contention that there is a break of 2 years 8 months and 2 days between the time he was discharged from the Army and his joining the Railways. Though the Railway administration is competent to condone this break they were not able to do so in the absence of an option required to be exercised by the applicant under para 431 of the Manual of Railway Pension Rules, 1950.

5. The short question before us is whether the applicant is entitled to get his past service to be counted for pension or not. The service particulars presented by the applicant have been admitted by the respondents at one place in the counter i.e., the first page whereas in page 4 of the counter they are

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not sure of his claim of having worked with the Supplies and Disposals Department from 7.3.47 to 6.6.49. They have stated that there is no entry in his S.R. to this effect. It is the responsibility of the Railway administration to satisfy themselves about this service. We find from page 5 of the material papers to the application that the Supplies and Disposals Department has given a certificate dated 13.4.83 stating that the applicant had been working in the Office of the Regional Commissioner (Disposals), Madras as L.D.C. from 7.3.47 to 6.6.49. If the Railway administration wants to verify this, it is for them to do so. The ^{main} ~~other~~ obstacle in their way to condone the break in service which would enable his past service to be counted is the absence of an option from him. From what is stated in the counter affidavit we find that the applicant could not have exercised his option in response to the Railway Board's letter dated 15.10.77 because he had been confirmed long before the issue of that letter. The second letter dated 3.11.78 which required an option to be exercised within a period of 6 months can be considered. The date of issue of the letter itself is 3.11.78 and knowing the delays in circulation it is hardly likely that the applicant could have availed of this opportunity to exercise option ^{before} ~~because~~ he retired in March, 1979 by which time there is ^{little} ~~every~~ possibility of his knowing about this letter. In matters like

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To

1. Chief Personnel Officer, S.C.Railway, Secunderabad.
2. Divisional Personal Officer, S.C.Railway, Guntakkal.
3. Divisional Railway Manager, S.C.Railway, Guntakkal.
4. One copy to MR.G.Ramachandra Reddy, Advocate, 1-10-78, Ashoknagar, Hyderabad-500020.
5. One copy to Mr.N.R.Devafaj, SC for Rlys, CAT, Hyderabad.
6. One copy to Hon'ble Mr.R.Balasubramanian, Member(A), CAT, HYD.
7. One spare copy.

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exercise of option it is equally the responsibility of the administration to give wide circulation to the contents of such letters and also make an effort to obtain the options particularly from those who are due to retire shortly. In this case the official retired well before the expiry of the 6 month time limit contained in the Railway Board's letter dated 3.11.78. It is seen from material paper 7 to the application that the applicant has returned the gratuity amount to enable the counting of the military service. This is one of the conditions required in the circular dated 15.10.77. It can therefore be taken equivalent to an option exercised by him. It is seen from material paper 6 to the application that on 4.2.84 the Sr. D.P.O. Guntakal has treated his military service as qualifying service for pensionary benefits.

6. We therefore feel that the applicant is deemed to have exercised his option for counting the military service. The respondents are directed to recalculate his pension taking into account his war service as well as the service with the Supplies and Disposals Department as qualifying service. The arrears of pension are also payable to the applicant. Action on this direction should be completed by the respondents within a period of 3 months from the date of receipt of this judgment. There is no order as to costs.

(J. NARASIMHA MURTHY)
Member(Judl).

Dated 25th April 90

R. Balasubramanian
(R. BALASUBRAMANIAN)
Member(Admn).

For Deputy Chairman D 190