

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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Hyderabad Bench.

O.A. No. 5 198 7.
~~ExxNo.~~

DATE OF DECISION 31-12-1987.

Mr. N.S. Padukone Petitioner

Mr. H.S. Gururaja Rao Advocate for the Petitioner(s)

Versus

(1) U.O.I. (2) Director, SVP N.P.A., Hyd. Respondent
& (3) Chairman, Rly. Board, New Delhi.

(1) Shri KV. Subbarao RR1 & 2 Advocate for the Respondent(s)
(2) Shri P. Venkatarama Reddy, SC. Rlys.

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. xx

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
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? No

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

K. Madhava Reddy
(K. MADHAVA REDDY)
Chairman.

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ORIGINAL APPLICATION NO.5 of 1987
(ORDERS OF THE TRIBUNAL)

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This is an application under Section 19 of the Administrative Tribunals Act, 1985 by an employee who retired after serving Sardar Vallabhai Patel National Police Academy (for short, National Police Academy) for a direction against the Union of India, the Director, Sardar Vallabhai Patel National Police Academy, Hyderabad and the Chairman, Railway Board, New Delhi ^{to} "count the service rendered by the applicant from 21.9.1948 to 30.7.1954 for the purpose of granting pensionary benefits to the applicant in accordance with the decision of the Central Government contained in O.M.No.3(80)Pen/A/79 dated 31.3.1982 with all consequential benefits."

2. The facts necessary to appreciate the contentions raised by the applicant fall within a brief compass. The applicant joined as Lower Division Clerk in the office of F.A. & C.A.O., Western Railway with effect from 21.9.1948 and functioned as such until 20.1.1950. He was transferred from that post to the post of Wireless Telecom. Maintainer in the Western Railway on 20.1.1950 and he functioned in that post upto 30.7.1954. He was

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promoted in June, 1950 as Wireless Telecom. Maintainer-I in the scale of Rs.100/180 in which post he served for about 5 years, 10 months and 10 days. While discharging his duties as Wireless Telecom. Maintainer-I in Western Railway, he applied through proper channel for the post of Police Wireless Inspector/Sub-Inspector (Engineering) under the erstwhile State Government of Bombay. Upon his selection he was appointed to the said post under the State Government which he joined on 5.8.1954. He was initially posted at Ahmedabad as Police Wireless Sub Inspector and Police Wireless Inspector. Consequent upon the reorganisation of the Composite State of Bombay, he was allotted to Karnataka State. While he was in the service of Karnataka State, he applied through proper channel for the post of Motor Transport-cum-Wireless Training Instructor in the then Central Police Training College, Government of India (the predecessor of the present S.V.P. National Police Academy. He was selected and appointed to the said post on 20.5.1964. The applicant retired from service on attaining the age of superannuation,

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on 31.1.1984. His request for treating his past service in the Railways and under the State Governments for the purpose of determining his pensionary benefits having been turned down, he has invoked the jurisdiction of this Tribunal.

3. Under O.M. No.3(80)pen/A/79 dated 31.3.1972 issued by the Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms, New Delhi, decision to extend the benefit of counting past service under the State or Central Governments for purpose of allowing pensionary benefits was communicated. It was also decided under the said O.M. that such benefit will be given only to those who applied through proper channel with proper permission of the administrative authority concerned. It was further decided that the benefit would also be extended to those who are required to resign from the post held by them before seeking new appointment merely for satisfying a technical requirement. The applicant satisfies all these conditions. While working with the Railways,

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- page four -

that is, in a post under the Union he applied through proper channel for a post under the then State Government of Bombay. Again while he was working under the State Government ~~when~~ applied through proper channel for a post under the Central Police Training College, a post under the Union Government. I see no valid reason why the same principle should not apply to service rendered under the Railways ^{and why that service} should not be counted for the purpose of pensionary benefits subject to the conditions stipulated in the O.M. dated 31.3.1982 when it applies to service rendered under the State Govt.

4. It is, however, contended on behalf of the respondents that the above O.M. does not apply to those that left Railway service. Such services are governed by Rule 428 of the Manual of Railway Pension. Under that Rule, those Railway servants who retired prior to 1957 and those who retired after 1957 are treated differently in as much as those who retired after 1957 are admitted to pension, while those who retired prior to 1957 are ~~not~~ entitled to Provident Fund. The applicant herein

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had left Railway Service prior to 1957; he had left Railway service on 30.7.1954 and joined the Bombay State Government service. The service rendered by him in the Railways cannot be counted for pension.

5. It is seen from the correspondence that followed his representation to count his service with the Western Railway for pensionary benefits vide the letter dated 6.8.1983 of the General Manager, Western Railway, that the Railway Board had, by its letter dated 23.2.1983, communicated the sanction of the President to count the period of Railway Service rendered by Smt.S.D.Shringarpure, prior to her re-appointment in service from 22.10.1964 for the purpose of pensionary benefits, subject to the condition that she refunds the settlement dues together with interest thereon at the rates prescribed under Provident Fund rules from 22.10.1964 to the date of actual refund and to treat the period of break in service as dies-non. The Administrative Officer of the SVP-National Police Academy, Hyderabad in his letter 4th February, 1986 addressed to the Under Secretary to the Government of India, Ministry of Home Affairs, New Delhi stated that the applicant

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who retired from government service (N.P.A.) on 31.1.1984 and the service rendered in the Western Railways, if added to his service, will help him in getting full pension. The Government was requested to look into the matter and expedite decision in the matter. The General Manager, Western Railway, however, in his letter dated 26.3.1984 informed the Director, SVP-National Police Academy, Hyderabad as follows : -

"The Railway Ministry vide their letter No.E(G)84 PN3-7 dated 15.3.1984 have clarified that the instructions issued under their letter no.F.(B).III-82-PN1/6 dated 13.11.1982 do not supersede the provision of note below clause (ii) of para 426 of the Manual of Pension Rules. The position therefore that the benefit of past service cannot be given in case of resignation from Railway Service prior to 1.4.1957, since the pension Scheme itself was introduced on the Railway from 16.11.87^{S7} with the option to those who were in service on or after 1.4.1957 to opt for the same.

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The Railway Ministry vide their letter dated 15.3.1984 have therefore advised that since Shri N.S.Padukone who had resigned from the Railway Service prior to 1.4.1957 was governed by the SRPF(C) Rules, the question of counting his Railway service for pensionary benefits does not arise, as his service did not qualify for pension."

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- page seven -

It is true that the OM relied upon by the applicant does not in terms apply to cases of Central Government employees who want their service under the Railway to be counted. But in my view whether the service is under the Railways or under the State Governments or the Central Government, on principle, it should not make any difference so far as giving the benefit of past service for purpose of pension is concerned; more so the benefit of past service in the Railway to an employee, for both the posts are under the Union. Under the O.M. dated 31.3.1982 of the Government of India, when service under the State Government could be counted for the purpose of pension, there is no valid reason why service under the Union in the Department of Railways should not count. The claim of the present applicant seems to be negatived mainly on the ground that he had retired prior to 1.4.1957, that is, prior to Railway Pension Rules came into force. The other ground seems to be that he had submitted his resignation from Railway Service. It is true that paragraph 428 of the Manual of Railway Pension Rules ~~is not for~~ makes a distinction between those who had retired prior to 1957 and those who had retired after

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1957. Although there is some basis for making this distinction inasmuch as Pension Rules were introduced only from 1957, there is no reason why the period prior to 1957 should not ^{be} ~~count~~ ^{ed} for pensionary benefits.

In fact, if the applicant were to re-rejoin the Railway service just as Smt. Shringarpure did, the applicant would have been asked to give his option either for coming under Provident Fund Scheme or for being governed by the Pension Rules. The fact that earlier he was governed by the Provident Fund Rules would not have stood in the way of a railway servant being granted pension, if he were to opt for the Pension Rules. In such an event the service rendered by him while he was governed by the Provident Fund rules would have been counted for the purpose of determining the pension due to him. The only pre condition for granting him pension was that he should refund the gratuity if any received by him. So, the ground that he had left the railway service prior to 1957 cannot be a valid ground for not counting his service with the Railways for the purpose of determining the pension he is entitled to when he has retired after holding a post under the Union. The further ground, namely, that he had

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- page nine -

resigned from the railway service also, in my opinion, cannot stand in the way of counting that service, when under the O.M. referred to, it is categorically declared that a person who is required to tender his resignation upon his being selected to another post under the Government of India only to satisfy a technical and administrative requirement would be entitled to the counting of his past service for the purpose of pensionary benefits. There is no reason why that benefit should not be extended to the applicant when he had tendered his resignation only to comply with such technical and administrative requirement. The objections raised by the respondents for counting the service rendered by him with the Western Railway and the State Governments of Bombay and Karnataka should, therefore, are unsustainable and untenable. Service rendered by the applicant in the Railways as well as the State Government shall be counted in determining the pensionary benefits due to him. The respondents shall accordingly recompute the pension, ~~sakexkexkexkexkexkexkex~~ to which the applicant is entitled, calculate the arrears due to him on that basis, and after deducting from that amount the amount of gratuity if any, paid to him, and

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the pension already paid and pay the balance due to the applicant within a period of three months from the date of receipt of this order.

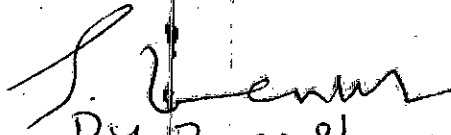
6. This application is accordingly allowed.

There will be no order as to costs.


(K. Madhava Reddy)
Chairman

31.12.87.

31st December, 1987


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P12
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