

(29)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

O.A.NO.365/94

Between:

Date of Order: 06.12.95.

D.Francis Paul

...Applicant.

And

1. The Secretary(Estt.),  
Railway Board,  
Rail Bhavan,
2. The General Manager,  
South Central Railway,  
Railnilayam,  
Secunderabad.

...Respondents.

Counsel for the applicant : Mr.K.Sudhakar Reddy

Counsel for the respondents : Mr.D.Gopal Rao

ORDER.

THE HON'BLE SHRI A.B.GORTHY : MEMBER (A)

contd...

28

-2-

O.A.365/94.

Dt. of Decision : 06-12-95.

ORDER

¶ As per Hon'ble Shri A.B. Gorthi, Member (Admn.) ¶

The applicant who was an advocate with 8 years experience at the bar joined the railways as Law Assistant on 24-04-1963. At that time he was aged about 32 years. Having served the railways for over 25 years he retired from service on 30-06-1989. His claim in this OA is that he is entitled to the addition of 5 years to his qualifying service in terms of Rule 2423-A of the Indian Railway Establishment Code, Volume-II (1973 Edition). The said rules reads as under:-

"2423-A (C.S.R.404-B):- An officer appointed to a service or post on or after 1st April, 1968 may add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds twenty-five years or a period of five years, whichever is the least, if the service or post is one:-

(a) for which post-graduate research 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 that this concession shall not be admissible to any such officer unless his actual qualifying service at the time he quits Government service is not less than ten years.

Provided further that any such officer who is recruited at the age of thirty-five years or more may, within a period of three months from the date of his appointment, elect to forego his rights to pension where under he shall be eligible to subscribe to the State Railway Provident Fund as a non-pensionable employee.

There is, however, a 'Note: below this proviso which reads thus:- (1) "The option once exercised shall be final" Sub-Rule(2) of Rule 2423-A reads thus:-

"The decision to grant this concession under this rule shall be taken by the Railway Board at the time of recruitment in consultation with the Union Public Service Commission."

2. The above Rule was amended, as can be seen from the Railway Ministry's letter No.F(E)III/76 PN1/12 dated 15-11-76, whereby an additional proviso was added to the rule as under:.

"Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service/post contain a specific provision that the service or post is one which carries the benefit of this rule.

(2) A Railway servant who is recruited at the age of thirty-five years or more, may, within a period of three months from the date of his appointment, elect to forego his right to pension, whereupon he shall be eligible to subscribe to the State Railway Provident Fund as a non-pensionable employee.

(3) The option referred to in Sub-Rule-(2), once exercised, shall be final".

3. That the applicant had the professional experience for a period about 8 years as an advocate before joining the railways is not disputed. The applicability of Rule 2423-A of Indian Railway Establishment Code, Volume-II is also not in dispute.

4. The learned counsel for the applicant urges that in terms of Rule 2423-A of IREC, Volume II as it stood prior to the amendment in 1976, the applicant is entitled to the addition of 5 years to his qualifying service. He contends that the amendment introduced in 1976 cannot be applicable to the applicant who was recruited in 1963. The language of the newly added provision makes it clear that it can have only effect from the date of its introduction. In the case of the Allahabad Bench of the Tribunal in OA.No. 181/91 (Vijaya Raghava Narayan Vs. Union of India & Others). In the said case the Tribunal took note of Rule 2423-A of IREC, Vol.II as it existed prior to its amendment in 1976 and held that the applicant therein who was initially recruited as a Law Inspector on 20-12-1960 and who retired on 31-12-1987 was entitled to the advantage under the afore-said rule 2423-A, IREC, Vol.II. The applicant in the instant case [redacted] is similarly situated to the applicant in OA.No.181/91 on the file of the Allahabad Bench of the Tribunal. Learned standing counsel for the respondents contended that in terms of Rule 2423-A, IREC, Vol.II as amended the benefit of addition to qualifying service would be given only in case the recruitment rules in respect of the said post contain a specific provision that the service or the post is one which carries the benefits of this rule. As no such provision was incorporated in the recruitment rules which existed at the time of recruitment of the applicant, the benefit

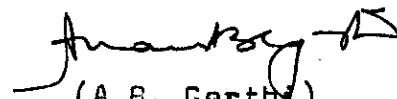
of the rule cannot be given to the applicant.

5. As regards the stand taken by the respondents, what I note is that the issue of giving <sup>the</sup> benefit of added years of service to specially qualified or experienced personnel came up for consideration before the III<sup>rd</sup> Pay Commission. The commission after examining Rule 30 of CCS(Pension) Rules which is in pari materia with rule 2423-A of IREC, Vol. II observed that "the existing provision for giving the benefit of added years of service to specially qualified or experienced personnel appointed to posts where these qualifications are necessary in the public interest is salutary and should continue". The commission however, recommended that a suitable provision should be incorporated in the relevant recruitment rules so that the benefit is automatically available to all the candidates who are recruited in accordance with the provisions of the rules and it should not then be necessary to take a decision at the time of recruitment. The commission also recommended that in the advertisement issued by the Union Public Service Commission for recruitment to such services and posts it should be mentioned that this benefit would also be available so that ~~xxx~~ candidates of better quality are attracted to the Government service.

6. Accepting the above recommendations of III<sup>rd</sup> Pay Commission the departments of government amended the relevant rules, such as CCS(Pension) Rules and Railway Pension Rules. Obviously, the amendment will have no retrospective application whatsoever. Those who were recruited prior to the amendment when obviously the recruitment rules would not have a provision as recommended by the III<sup>rd</sup> Pay commission cannot be denied the benefit of advantage as was then admissible under the then relevant rules.

7. In view of the above, the OA deserves to be allowed and it is accordingly allowed with a direction to the respondents to give the benefit of addition of five years to the qualifying service of the applicant and accordingly revise his pensionary benefits with effect from the date of his retirement and pay the same within a period of four months from the date of communication of this order.

8. No costs.

  
(A.B. Gorthi)  
Member(Admn.)

Dated : The 6th December 1995.  
(Dictated in Open Court)

  
DEPUTY REGISTRAR(J)

spr

To

1. The Secretary(Estt.), Railway Board,  
Rail Bhavan, New Delhi.
2. The General Manager,  
South Central Railway,  
Railnilayam, Secunderabad.
3. One copy to Mr.K.Sudhakar Reddy, Advocate, CAT, Hyderabad.
4. One copy to Mr.D.Gopal Rao, Addl.CGSC, CAT, Hyderabad.
5. One copy to Library, CAT, Hyderabad.
6. One spare copy.

YLKR

In the C.A.T, Hyd Bench.  
Hyderabad.

The Hon'ble Shri A.B. Gorthi  
M (A)

DT. ~~365~~ 6.12.95,

O.A. no. 365/95

O.A. Allowed.

No Spare Copy

Central Administrative Tribunal
DESPATCH
26 DEC 1995 NSY