

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 603/96.

Dt. of Decision : 11-9-96.

M.V.R.Semayajulu

.. Applicant.

Vs

1. The Secretary (Estt.),
Railway Board, Rail Bhavan,
New Delhi.
2. The General Manager,
Central Railway,
General Manager's Office,
Bombay VT.

.. Respondents.

Counsel for the Applicant : Mr. K.Sudhakar Reddy

Counsel for the Respondents : Mr. V.Rajeswara Rao, SC for Rlys.

CORAM:

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

ORDER

Oral Order (Pe Hon'ble Shri R.Rangarajan, Member (Admn.)

Heard Mr. K.Sudhakar Reddy, learned counsel for the applicant and Mr. V.Rajeswara Rao, learned counsel for the Respondents.

2. The applicant in this OA joined railway service as Law Assistant in Central Railway on 2-5-64 in terms of office order No.39/64. He finally retired from service as Law Officer/Sr.Commercial Manager on 31-5-94. The applicant submits that as per rule 2423-A (CSR 404-B) R-II, he is entitled for counting the period of his professional experience at the Bar prior to his appointment as Law Assistant for the purpose of adding to his railway service for getting the final settlement benefits such as pension, gratuity etc. This rule which was in existence at the time of his joining service reads as follows:-

"Addition to qualifying service in special circumstances:

(1) A railway servant appointed to a service or post on or 1st April, 1960 shall be eligible to 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 of the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever is less, if the service or post to which the Railway Servant is appointed 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 candidate of more than twenty-five years of age are normally recruited."

3. The applicant submitted representation to the respondent authorities for addition of his qualifying service as per Rule-2423-A and to fix his pension accordingly. But it is stated that no reply

has been given to his representation. The applicant relies on the judgement of this Tribunal in OA.No.939/94 decided on 6-12-95 (T.A.Sastry Vs. The Secretary(Estt.),Railway Board and Other) and OA.No.365/94 decided on 6-12-95(D.Francis Paul Vs. The Secretary(Estt.),Railway Board and Other) to state that his case is covered by these judgements. It is further submitted that the SLP filed in OA.No.365/94 was also dismissed by the Supreme Court by an order dated 15-7-96.

4. This OA is filed praying for a direction to the respondents to take into account the period of his professional experience at bar as an Advocate i.e., 8 years of qualifying service as per rule 2423-A of IREM for purpose of pension and to fix his pension accordingly and to pay arrears with immediate effect and all other pensionary benefits with interest.

5. The various contentions taken in OA.365/94 holds good in this case also. The main contention that the concession shall be admissible only if the recruitment rule in respect of the said service/post contain a specific provision that the service or the post is one which carries the benefits of this rule, as per the amended rule 1976 has been repelled by the Supreme Court for those who joined service earlier to that amendment. Hence even though this condition as per the amended rule has not been included when he was recruited in 1964 he is entitled for the benefits of the rule then in existence.

6. Fresh contention taken by the respondents in this OA are as follows:-

(1) The first contention is that the counting of certain period of service at the bar for purpose of qualifying service is not included in the appointment order when the applicant was posted 1964 and the applicant also kept quiet till his retirement. He prayed for the addition of service only after the retirement. Hence he cannot now ask for additional service as no such stipulation has been given in the appointment order. His present request is thus belated one and hence the OA has to be dismissed on that ground.

The para 2423-A of IREM was in existence right from 1960 onwards i.e., that para was in force in the year 1964 when the applicant joined as Law Assistant. Even though the content of the rule was not included in the appointment order it cannot be said that rule cannot be applied in his case as the appointment order does not indicate that rule. The rules which are in force for a particular service if in existence at the time of appointment is binding on the respondents even if such a rule is not quoted in the appointment order. Hence this contention of the respondents cannot be upheld.

(ii) The second contention of the respondents is that the necessary parties viz., the Railway Recruitment Board/^{Union of India,} the Railway Board and UPSC are not impleaded. The first respondent in this OA is Secretary Railway Board who represents the Union of India, Ministry of Railways, Railway Board. There is no need for Railway Recruitment Board to be impleaded as it is one of the subordinate offices of the Railway Board. The UPSC has got no role to play as the applicant joined in a non-gazetted post as Law Assistant in the year 1964 and that recruitment for Law Assistant is not made by UPSC.

(iii) The next contention of the respondents is that in terms of para 2423-A, only a candidate appointed as an Officer to a service is entitled for the benefit of that rule. The rule 2423-A reads as below:-

"(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 ever is the least, if the service or post is one."

The employees of the Government of India can be broadly divided into two categories viz., Gazetted ^{officer} and non-gazetted ^{officer}. The officer

in the rule denotes both the categories and it does not only denote those appointed in Group-A and B service. It also includes an employee appointed to Group-C service. The interpretation of the word officer in the rule by the respondents appears to be invidious. Such interpretation cannot be upheld. Hence, the rule 2423-A is equally applicable to both the employees joined in non-gazetted service as well as in gazetted service. Hence this contention also is over ruled.

(iv) The last contention is that the rule-45 of the Railway Service Pension Rules, 1993 extract at Annexure-R-2 is not fulfilled in this connection. One of the conditions specified in the above rule reads as below:-

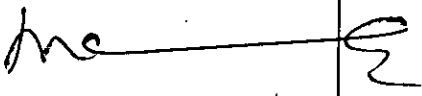
"Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision, that the service or post is one which carries the benefit of this rule."

The respondents contend that only if the recruitment rule contain the specific provision that the service/post is one which carried the benefit of rule 2423-A the employee is entitled for the benefit. In the present case the proviso is not incorporated. The Rule-45 Railway Service Pension Rules, 1993 came into force in the year 1993. The proviso as indicated above could not have been envisaged in the recruitment rule in 1964 when the applicant was appointed. Though the learned standing counsel submits that this rule is applicable to the applicant herein as he is retired after 31st March 1960 (i.e., he retired in 1994), this contention cannot be upheld as this rule was brought into force from 1993 onwards and the recruitment rule which was in force in 1964 cannot incorporate this proviso. The Rule-45 of the Railway/^{Service}Pension Rule, 1993 cannot be applied retrospectively from an earlier date, it is only prospective from the date of incorporation of that rule in the rule book. This will be applicable to those who joined service as Lab Assistant. Hence this after the date of incorporation of that proviso, contention also fail

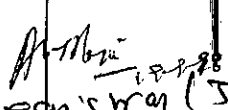
7. In view of what is stated above, the applicant has made out a case to get the relief as prayed for and hence the OA deserves to be allowed. Accordingly this OA is allowed with a direction to the respondents to give the benefit of extra service as per his entitlement to his qualifying service and on that basis revise his pensionary benefits w.e.f. the date of his retirement and pay consequential arrears within a period of four months from the date of communication of this order.

8. The applicant is not entitled for interest on the arrears if any, to be paid in pursuance of the above direction as interpretation of rule is involved and the issue is solved ^{now} ~~only~~ by this judgement.

9. 0 The OA is ~~is~~ ordered accordingly. No costs.


(R. Rangarajan)
Member (Admn.)

Dated : The 11th Sep. 1996.
(Dictated in Open Court)


Dy. Registrar (S).

sr

Copy to:-

1. The Secretary(Estt), Railway Board, Rail Bhavan, New Delhi.
2. The General Manager, Central Railway, General Managers Office Bombay VT.
3. One copy to Sri. K.Sudhakar Reddy, advocate, CAT, Hyd.
4. One copy to Sri. V.Rajeswara Rao, SC for Rlys, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

Rsm/-

3/10/96

DA-603/96

Typed By
Compared by

Checked By
Approved by

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED: 11/9/96

ORDER/JUDGEMENT
R.S./C.P./M.A. NO.

D.A. NO.

in

603/96

ADMITTED AND INTERIM DIRECTIONS IS
ALLOWED

DISPOSED OF WITH DIRECTIONS
DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

YLKR

No Spas

केन्द्रीय प्रशासिका
Central Admini
डिप्टी

-1

HYD