

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

....

Original Application No.135 of 2001

Jabalpur, this the 28th day of April, 2004

Hon'ble Shri M.P. Singh, Vice - Chairman
Hon'ble Shri A.S. Sanghvi, Member (Judicial)

Jasbeer Singh Anand s/o late Harbans Singh
Anand, aged about 58 years,
Ex-Mechanical Mistry,
Central Railway, Jabalpur
and R/o 49, Tagore Nagar,
Indrapuri Colony, Gwarighat Road,
Jabalpur (Madhya Pradesh)

...Applicant

(By Advocate: Shri S.K. Rao through Shri Varun Kumar)

-versus-

1. Union of India through
Secretary,
Ministry of Railways,
Rail Mantralaya, Rail Bhawan,
New Delhi.

2. General Manager,
Central Railways,
Central office,
Mumbai VT.

3. Chief Personnel officer
(Engineering), Central Railways,
Central office, Mumbai VT.

4. Executive Engineer (Construction),
Central Railway, Division Rail
Manager's office, Jabalpur (ME).

...Respondents

(By Advocate - Shri S.K. Jain through Sh. M.N. Banerjee)

O R D E R

By A.S. Sanghvi, Judicial Member -

The applicant - Jasbeer Singh Anand had served in the Army for a period of 6 years and 25 days between 03.03.1958 to 28.01.1964 but he was discharged from the Army on account of injuries received by him in a military operation and was sanctioned invalid pension. The applicant had thereafter succeeded in getting service with the Railways and served the Railways as a Mechanical Mistry from 5.12.1964 to 19.8.1980. It is his case that after

putting up 16 years of service with the Central Railways, due to long sickness he had opted for voluntary retirement from the service. It is his grievance that even though he had requested the Railway Authorities to give him the benefit of his earlier service with the Army and thereby consider his service with the Railways as qualifying service for pension, the Railways had not paid any heed to his request and no pension was sanctioned to him. Even after tendering his resignation from the service, he had represented his case to the Railway Authorities but since no pension was sanctioned, he has approached this Tribunal. He has prayed that the respondents be directed to count the service of 6 years and 25 days rendered by him in the Army along with 16 years of service rendered by him in the Railways for the purpose of sanction of the pensionary benefits on the basis of total service of 22 years and 25 days.

2. The respondents in their counter have contended inter-alia that the applicant had not sought voluntary retirement from the service but had resigned from the railway service w.e.f. 19.8.1980. He was as such not entitled to any pensionary benefits. It is also contended that the applicant was not entitled for voluntary retirement from the railway service as he had not completed the required qualifying service with the Railways to be eligible for voluntary retirement. According to them, the applicant had represented his case on 22.2.1997 i.e. after a lapse of 16 years of resigning from the service and as such the claim of the applicant for pension is barred by limitation as well as delay and laches. They have denied that the applicant was appointed under Ex-Military personnel quota and contended that at the time of recruitment of the applicant, there was no provision for recruiting ex-serviceman. According to them, the applicant is not entitled

to ask for counting the service rendered by him with Army as qualifying service for pension in the Railways. They have prayed for dismissal of the O.A. with costs.

3. We have heard the learned counsel for both the parties and duly considered the rival contentions.

4. It is an undisputed position that the applicant after having joined the Railways as Mechanical Mistry had resigned his service w.e.f. 19.8.1980. Though in the O.A. it is averred that he had opted for voluntary retirement, the record reveals that he had resigned from the service. Infact he could not have asked for voluntary retirement as he had not completed the required qualifying service of 25 years for obtaining the voluntary retirement from the Railway service. Since he had not taken the voluntary retirement from the service and was even not eligible for taking voluntary retirement on the date on which he tendered his resignation, it is quite obvious he could not have been sanctioned any pension.

5. The applicant's grievance is that he had not been permitted to consider the service of 6 years and 25 days put up by him with the Army prior to joining the Railways and the service put up with the Army is not considered as qualifying service by the Railway Authorities. The grievance of the applicant is quite misplaced and appears to have arisen out of non-understanding of the rules. The rules do not permit ^{taking} ~~taking~~ of the past service with the service rendered in the Railways if he has resigned from the Railway service. Resignation can be termed to be a ~~word~~ ^{word} 'retirement' only if the same had been tendered after putting up a qualifying service prescribed for voluntary retirement. In any case under the Railway Services (Pension) Rules, 1993 the counting of the past service rendered before employment in the Railways is permissible only if the railway employee has retired on superannuation and not opting for voluntary retirement.

retirement. Admittedly in the instant case the applicant has not retired from the railway service on attaining the age of superannuation and as such he cannot claim by way of right ^{of} ~~taking~~ of the past service rendered with the Army for qualifying service. The applicant as such is not entitled to claim pension on the basis of counting the past service rendered by him with the Army and hence, the O.A. deserves to be rejected. The Hon'ble Supreme Court while dealing with the question of minimum length of qualifying service requisite for eligibility for retirement, in the case of Union of India & Ors. vs. Rakesh Kumar, reported in (2001) 4 SCC 309, has laid down that resignation from service without putting up the minimum length of qualifying service requisite for eligibility for retirement disentitles the employee to pensionary benefits. It was a case under CCS(Pension) Rules and referring to the rule position relating to the qualifying service, the Hon'ble Supreme Court has observed as under:-

"Rule 3(q) of the CCS(Pension) Rules defines "qualifying service" and Rule 13 prescribes the point of commencement of qualifying service. Rule 49 nowhere provides that qualifying service for getting pension is ten years. On the contrary, there is a specific provision that if a government servant retires before completing qualifying service of ten years because of his attaining the age of compulsory retirement, he would not get pension but would get the amount of service gratuity. Rule 49 (2)(b) means only that in case a government servant retires on superannuation i.e. the age of compulsory retirement as per service conditions or in accordance with CCS (Pension) Rules, after completing ten years of qualifying service, he would get pension which is to be calculated and quantified as provided under Rule 49(2). It covers cases of retirement under Rules 35 and 36 i.e. voluntary retirement after 20 years of qualifying service, compulsory retirement after the prescribed age and such other cases as provided under the Rules. However, this has nothing to do with the quitting of service after tendering resignation. Moreover, Rule 26 of the CCS (Pension) Rules specifically provides that resignation from a service or post entails forfeiture of past service unless resignation is submitted to take up, with proper permission, another appointment under the Government where service qualifies. Hence, on the basis of Rule 49 a member of BSF who has resigned from his post after completing more than ten years of qualifying service but less than 20 years would not be eligible to get pensionary benefits. There is no other provision in the CCS (Pension) Rules

giving such benefit to such government servants."

The above observation has a direct application to the facts of the instant case as the Railway Services (Pension) Rules, 1952 also provides for forfeiture of past service in case of the resignation tendered by the employees. Hence, in the instant case also the applicant cannot claim benefit of counting of past service rendered with the Army so as to become entitled to claim pension on completing the qualifying service.

6. There is another question of delay and laches in moving the present O.A. Admittedly, the applicant had tendered his resignation in the year 1980 and has moved this O.A. claiming the pensionary benefits and counting of the past service rendered by him with the Army in the year 2001. No explanation is forthcoming from the applicant as to why he did not approach the Tribunal or any other forum for redressal of his so-called grievance. The delay in approaching the legal forum in time for redressal of his grievance clearly disentitles him from seeking any remedy from this Tribunal. No application for condoning the delay in filing this O.A. has been moved by the applicant. The application, therefore, deserves to be rejected on the ground of delay, laches and limitation *also.*

7. For the aforementioned reasons, we do not find any merit in this O.A. and we are of the considered opinion that the O.A. deserves to be rejected and the O.A. is, therefore, rejected with no order as to costs.

A.S.
(A.S. Sanghvi)
Member(Judicial)

M.P. Singh
(M.P. Singh)
Vice Chairman

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