

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 459 of 2001

Jabalpur, this the 14<sup>th</sup> day of June 2004

Hon'ble Mr. M.P. Singh, Vice Chairman  
Hon'ble Mr. Madan Mohan, Judicial Member

Kesar Bai widow of Bhagwandin Borasi  
Room Attendant, Central Railway, Itarsi  
residing at near Farid Baba Dargah,  
12-Banglow, Itarsi, Distt. Hoshangabad  
(M.P.)

APPLICANT

(By Advocate - Shri H.R. Bharti)

VERSUS

1. Union of India through General  
Manager, Central, Mumbai (CST).
2. The Divisional Railway Manager,  
Central Railway, Bhopal (M.P.)

RESPONDENTS

(By Advocate - Shri S.K. Jain & Shri H.B. Shrivastava)

ORDER

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the following main reliefs :-

"(1) her services be counted upto 17.02.95 the date when she was actually relieved of her duties.

(2) in consonance with the above request she be granted all permanent service benefits of pay, pension, P.F., leave salary, and half pay salary, and pension according to length of services and all other service benefits available to her in the eyes of the service law and natural justice with interest at 20% interest per annum for all payments award to be paid duly delayed by Central Railway Administration since not complied yet due their negligence and mistake!"

2. The brief facts of the case are that the applicant was working in the Central Railway as Waiting Room Attendant at Itarsi from 7.5.1971 to 17.2.1995. Even though she worked till 17.2.1995, ~~and then~~ retired by the Station Manager, Central Railway, Itarsi w.e.f. 17.2.95 on the basis of the letter of the DRM (Annexure-A-1), her services

for retiral benefits were treated only up to 30.9.1993. Thus, the applicant is deprived of all service benefits for full length of service and proper pension, for no fault of her, but due to mistake and negligence on the part of the respondents. Hence, this O.A.

3. The respondents in their reply have stated that the date of birth of the applicant has been taken from the first document submitted by her, along with her application given for appointment on compassionate grounds. In the said document her age was shown as 35 years on 24.5.1971 and the said date was supported by the medical certificate no.24425 dated 23.9.1971 issued by the Assistant Medical Officer, Central Railway, Bhusawal at her first appointment. The Doctor has shown her age 36 years on 23.9.1971, therefore, her date of birth comes to 23.9.1935. As such the applicant has completed 58 years of her age on 23.9.1993 and was to be retired from Railway Service on 30.9.1993, however, she had continued upto 17.2.1995. According to the respondents the present order of retirement age <sup>of 60 years</sup> came into effect from 13.5.1998 only and prior to that all employees retired from Railway services on attaining the age of 58 years. As the applicant has worked beyond the age of 58 years, the payment of wages drawn by her "from 1.10.1993 to 1.12.1995 (sic) and settlement dues can be recovered from the settlement dues and leave salary." As per the Railway Board's letter dated 7.7.1999 (Annexure-R-3) the retirement schedule cannot be allowed beyond the age of 58 years. Therefore, the applicant is bound to refund the payments drawn by her beyond 30.9.1993. The respondents have relied upon the judgment of the Hon'ble Supreme Court in the case of Radha Kishan Vs. Union of India & others, SLP(C) No. 3721 of 1997 (arising out of O.A. No. 6521/1995 decided on 26.11.96 of CAT Patna Bench), wherein their lordships have held that the employee is equally responsible for his stay in office beyond the age of superannuation and hence no illegality would be involved if such a person is refused the benefits

of pay and allowances for the period of over stay. The respondents have, therefore, contended that they are entitled to recover the following amounts from the applicant -

"(a) over payment of wages from 1.10.93 to 31.1.1995	- Rs. 38,330.00
(b) Over payment in DCRG (Rs. 14145 - 13345)	- Rs. 800.00
Total	- Rs. 39,130.00 "

The respondents have further stated that the applicant is entitled to leave salary of Rs. 10546/- and, therefore, after adjustment from her leave salary, the balance amount comes to Rs. 28,584/-, which will be deducted from the dearness relief on pension of the applicant through Bank.

4. Heard both the learned counsel of parties.

5. During the course of arguments, the learned counsel of the applicant has submitted that since the applicant had already worked upto January, 1995 and she has also been paid the salary for that period and now at this stage the respondents cannot be permitted to recover the salary drawn by her. He has also submitted that there was no misrepresentation of facts on the part of the applicant. Therefore, the respondents cannot be allowed to deduct the salary for the period beyond 30.9.1993 from the pensionary benefits to be paid to the applicant, as she was allowed to continue in service due to their own fault.

6. We find that the respondents have relied upon the letter dated 7.7.1999 with regard to recovery of pay and allowances for the period of over stay. We find that this circular has been issued in the year 1999 in pursuance of the judgment of the Hon'ble Supreme Court in the SLP which was filed in the year 1997. The circular dated 7.7.1999 specifically mentions that "these orders will take effect from the date of issue" and all the cases of erroneous retention which have not yet been decided will be decided in terms of these orders. The cases already decided otherwise need not be re-opened".

*NR*

We find that the judgment of the Hon'ble Supreme Court in SLP No.3721/1997 must have been given in the year 1997 or thereafter <sup>(copy of the order not filed by the respondents)</sup> whereas the applicant has been permitted to work only upto 17.2.1995. Therefore, the effect of the said judgment will be applicable prospectively. Therefore, the persons, who have retired, after the decision of the Hon'ble Supreme Court in aforesaid SLP, and till the date of issue of the letter dated 7.7.1999 their cases were not finalised, will be governed by the circular dated 7.7.1999. In the instant case the applicant has been permitted to work upto 17.2.1995 and has been deemed to have retired w.e.f.30.9.1993, therefore, her case does not come within the ambit of the aforesaid circular dated 7.7.1999. We also find that the applicant, who is a poor illiterate lady and was working as a Waiting Room Attendant, has not mis-represented the facts before the authorities, and her over stay in the service was entirely due to the fault of the respondents themselves for which she could not be held responsible and penalised at the time of her retirement, by making recovery from her pension.

6.1 In the letter dated 7.7.1999, on which a strong reliance has been placed by the respondents, as referred to above, also stipulates that -

"Hitherto, the period of erroneous retention in service beyond the prescribed date of retirement used to be regularised as re-employment."

Therefore, as the respondents themselves were treating the erroneous retention of service beyond the prescribed date of retirement as re-employment, the respondents should have regularised the period of over stay of the applicant by treating the same as re-employment. Instead they have kept the matter alive for four years to deny her the said benefit in terms of earlier instructions.

7. Since it is not in dispute that the applicant has over stayed in service for the period from 1.10.1993 to 17.2.1995, the decision of the Hon'ble Supreme Court in the

aforesaid SLP, as well as the subsequent instructions dated 7.7.1999 issued by the Railway Board are not applicable in the case of the applicant and her period of over-stay was required to be regularised in terms of the earlier instructions i.e. her over stay was to be treated as re-employment. In this view of the matter, the OA is liable to be allowed.

8. In the result, the OA is allowed. The respondents are directed to treat the period of over-stay of the applicant to 17.2.1995 beyond 30.9.1993 as re-employment and grant her all benefits including retiral benefits. The respondents are directed to comply with these directions within a period of three months from the date of communication of this order. As more than nine years have already elapsed, the respondents are directed to comply with the directions in the stipulated period as stated above, failing which they shall be liable to pay interest, on the amount payable to the applicant, at the rate of 10% per annum, from the due date to the actual date of payment; and the said amount of interest may be recovered, if considered necessary, from the officers responsible in delaying the implementation of this order. In the facts and circumstances of the case, the parties are directed to bear their own costs.

(Madan Mohan)  
Judicial Member

(M.P.Singh)  
Vice Chairman

rkv.

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....  
प्रतिलिपि अर्जेंडित:-  
(1) सचिव, उच्च न्यायालय कार एम्प्लोयमेंट, जबलपुर  
(2) आवेदक श्री/श्रीमती/शु.....के कारभार  
(3) प्रत्यक्षी श्री/श्रीमती/शु.....के कारभार  
(4) वजयपल, को.प्र.अ., जबलपुर न्यायपीठ  
सूचना एवं आवश्यक कार्यवाही हेतु

TC/peel  
ms  
17.6.04

MR T. Sharda  
SK Jain  
17.6.04