

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 13th day of November, 2006

ORIGINAL APPLICATION No 561/2006.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

Gurdev Singh Grewal,
s/o Shri Waryam Singh Grewal,
c/o B-5, 1st Floor,
Path No.4, Jamna Nagar,
Sodala, Jaipur.

..Applicant

(By Advocate: Shri Sunil Samadaria)

Versus

1. Union of India through
its General Manager,
Northern Western Railway,
Jaipur.
2. Chief Works Manager,
Ajmer Workshop,
North West Railway,
Ajmer.
3. Deputy Chief Mechanical Engineer,
Carriage and works,
North West Railway,
Ajmer.

.. Respondents

(By Advocate: Shri N.C.Goyal)

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ORDER

The applicant has filed this OA thereby praying for the following reliefs:

- “(i) To issue appropriate direction quashing and setting aside the letter dated 16.5.2001 and further direction to the respondents to release pro-rata pensionary benefits monthly and its arrears @ 12% interest p.a. for which applicant have been held to entitled in O.A. No.549/96.
- (ii) Any other order which this Hon’ble Court deems fit and proper may also be passed in favour of applicant.
- (iii) Award cost of application.”

2. The facts which are not in dispute and relevant for disposal of this case are that the applicant was absorbed in skilled category in Western Railway w.e.f. 10.5.1960. Later on he applied through proper channel for the post of Chargeman Gr.II (Machine shop) in Bokaro Steel Plant, Dhanbad. Consequent upon his selection he was relieved by the Dy. Chief Mechanical Engineer w.e.f. 4.3.1972. Since the respondents failed to make payment of retiral benefits admissible to the applicant despite several representations, he filed OA No. 549/96 in this Tribunal and this Tribunal vide judgment dated 7.2.2000 allowed the O.A. and directed the respondents to consider case of the applicant for grant of pro-rata pensionary benefits in accordance with extent instructions. The applicant was further held entitled to the arrears with interest at the rate of 12% p.a. Pursuant to the judgment rendered by this Tribunal, the respondents made payment of Rs. 30,817

vide cheque No.038944 dated 9.8.2000. Since details and calculations regarding this amount was not intimated to the applicant, the applicant vide Ann.A4 demanded the details of the said amount. The applicant has placed on record letter dated 16.5.2001 which is internal correspondence between the Dy. Chief Mechanical Engineer, Ajmer and Chief Personnel Officer, Churchgate, Mumbai. Since the respondents did not disclose details regarding payments made, the applicant again issued a notice for demand of justice dated 2.7.2003/7.7.2003 (Ann.A5) thereby stating that even in the letter dated 16.5.2001 no break-up of Rs. 30,817/- has been furnished. Consequently, the respondents vide letter dated 15.7.2003 again informed the applicant enclosing copy of the letter dated 9.5.2003 whereby giving details of the amount of commutation and DCRG payable to the applicant as well as the interest paid at the rate of 12% on the said amount. Since the applicant was not held entitled for pension, he filed OA No.306/2004 thereby praying that respondents may be directed to pay pension to the applicant. However, the said OA was dismissed as withdrawn vide order dated 28.4.2005 which thus reads:-

"Head the learned counsel for the applicant at length. Learned counsel for the applicant submits that in view of the stand taken by the respondents in the reply that the applicant has been paid DCRG and 100% commutation amount in lieu of pension, as such he is not entitled for monthly pension, he wants to withdraw this OA as according to him, applicant has never

62

exercised such option thereby forfeiting his right to draw pro-rate monthly pension/DCRG.

In view of the submissions made by the learned counsel for the applicant, the applicant is permitted to withdraw this OA instead of filing the Amended O.A. Accordingly, the OA is dismissed as withdrawn. It will be open for the applicant to file substantive OA, if so advised for the same cause of action and this order will not come in his way of course subject to just exceptions."

Now the applicant has filed the present OA praying for the aforesaid reliefs on the ground that since the applicant has completed 12 years of service and the applicant has never exercised option for 100% commutation of his pension, as such, the letter dated 16.5.2001 may be quashed and respondents may be directed to release the pro-rata pensionary benefits.

3. Notice of this application was given to the respondents. The fact that the applicant was absorbed in skilled category w.e.f. 10.5.1960 and he was released by the Railway w.e.f. 4.3.1972 as he was selected for the post of Chargeman Gr.II in Bokaro Steel Plant, Dhanbad is not disputed. The respondents have denied the contention raised by the applicant that vide internal correspondence dated 16.5.2001 (Ann.A1) the reason for not paying the pension to the applicant on the ground that he has not put in 12 years of service ~~and~~ stated ~~as~~ not true. It is further stated that vide Ann.A6 request of the applicant for grant of pro-rata pension has not been impliedly denied as letter Ann.A6 is the details of payment

which has been given to the applicant. According to respondents, the applicant was not only paid DCRG and 100% commutation of pension but he was also paid interest at the rate of 12% on it. According to respondents, when the applicant has already received 100% commutation of pension then he is not entitled to pro-rata pension. It is further stated that the respondents have already discharged their pension liability by paying in lump sum as a one time payment of pro-rata pension as per Railway Board letter dated 23.1.1987 and to do so there was no need for option of the applicant. Copy of the letter dated 23.1.1987 has been annexed with the reply as Ann.R1.

4. I have heard the learned counsel for the parties and gone through the material placed on record.

5. It is not disputed that the applicant was paid DCRG and lump-sum amount in lieu of pension and thus, he was extended the facility of 100% commutation of pension on absorption. The only question which requires consideration in this case is whether it was mandatory for the respondents to call option from the applicant before extending the facility of 100% commutation of pension. For that purpose, the learned counsel for the applicant has placed reliance on the relevant para of Rule 53 and 54 of Railway Services (Pension) Rules, 1993. In order to decide the matter

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in controversy, it will be useful to quote relevant portion of Rule 53 and 54 which, thus reads-

"53. Pension on Absorption in or under a corporation, company or body.

- (1) A railway servant who has been permitted to be absorbed in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government shall, if such absorption is declared by the Government to be in the public interest, be deemed to have retired from the service from the date his resignation is accepted and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined in accordance with the orders of the railways applicable to him.
.....
- (2)
- (3) Where there is a pension scheme in a body controlled or financed by the Central government in which a railway servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the railways in that body for pension or to receive pro-rata retirement benefit for the service rendered under the railways in accordance with the orders issued by the railways."

Relevant portion of Rule 54 is also extracted hereinbelow:

"54. Payment of lump sum amount to persons on absorption in or under a corporation, company or body.

Where a railway servant referred to in rule 53 elects the alternative of receiving the death-cum-retirement gratuity and a lump sum amount in lieu of pension, he shall, in addition to the death-cum retirement, be granted-

- (a) on an application made in this behalf, a lump sum amount not exceeding the commuted value of one-third of his pension as may be admissible to him in accordance with the provisions of Railway Service (Commutation of Pension) Rules, 1993; and
- (b) terminal benefits equal to the commuted value of the balance amount of Pension left after commuting one-third of pension to be worked out with reference to the Commutation Table in Appendix to the Railway service (Commutation of Pension) Rules, 1993 on

the date of his resignation subject to the condition that the railway servant surrenders his right of drawing two-third of his pension.

6. I have given due consideration to the submissions made by the learned counsel for the applicant. For the reasons stated hereinabove, I am of the view that the applicant had not made out any case for grant of relief. Rule 53(1), as reproduced above, stipulates that a railway servant who has been permitted to be absorbed in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government shall be deemed to have been retired from service from the date his resignation is accepted and such person shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, in accordance with the orders of the railways, applicable to him. The words 'elected' and 'deemed to have elected' as used in Rule 53(1), according to me, are in relation ^{to option} to which he is entitled to exercise in terms of sub-rule (3) of Rule 53, as reproduced above. That is to say, where on his absorption in case such person is absorbed in a body controlled or financed by the Central Government where the pension scheme is applicable, such person has to exercise option either to count service rendered under the railway in that body for pension or to opt to receive pro-rata retiral benefits for the services rendered under the Railway

in accordance with the orders issued by the railways. According to me, the provision of Rule 53 does not stipulate that it is the duty of the railway department to seek option from a person whether he opt for - (i) to draw pro-rata monthly pension and retirement gratuity as admissible under the relevant rules or (ii) pro-rata gratuity and lump-sum amount in lieu of pension. According to me, the words 'elected' or 'deemed to have elected' used in Rule 53(1) is in relation to the option which the applicant has to exercise in terms of sub-rule (3) i.e. whether he wants to count his past services and in that eventuality he will not be entitled for pensionary benefits or to receive pro-rata retirement benefits for the services rendered under the railways. The view which I have taken is further fortified by reading of rule 54, relevant portion of which has been extracted above, which stipulates that it is the railway servant referred to in Rule 53 who has to elect the alternative or receiving the death-cum-retirement gratuity and a lump-sum amount in lieu of pension, and it is not necessary for the railway authorities to call for option. This view is further fortified by the instructions issued by the Railway Board dated 23.1.1987(Ann.R1) which deals with settlement of pensionary terms in respect of employees transferred to autonomous organizations or public undertakings, relevant portion of which is reproduced hereinbelow:-

42

"Attention is invited to this Ministry's letter of even number dated 28.2.1986 on the subject mentioned above. The question of discharge of pensionary liability of the Railways to the newly established organization, transfer of Provident Fund balances and carry forward of leave in respect of the service of the Railway servants on the Railway before their transfer to the organization, has been examined and the following decision have been taken:

- i) The Railway will discharge its pensionary liability by paying in lump sum as a one time payment, the prorate pension/service gratuity/terminal gratuity and DCRG for the service upto the date of transfer of the Railway servants from Railways to the Autonomous Body/Undertakings on its conversion as such. Lump sum amount of the pro-rata pension will be determined with reference to the commutation table, laid down in the Commutation of Pension Rules, as amended from time to time.
- ii) ..."

7. From reading of the aforesaid instructions and the fact that rule does not mandate the respondent department to ask for option, I am of the view the claim of the applicant has been settled in terms of orders of the railways as applicable to the applicant. In this case the applicant has failed to exercise one of the following options:-

- (i) to draw pro-rata monthly pension, and retirement gratuity as admissible under the rules or
- (ii) pro-rata gratuity and lump sum amount in lieu of pension.

Thus, the respondents were within their right to settle claim of the applicant in terms of Railway Board orders whereby the applicant has been paid 100% commutation of pension on absorption and in that eventuality he is not entitled to receive pro-rata pension.

8. For the foregoing reasons, the OA is dismissed with no order as to costs.



(M.L. CHAUHAN)

Judicial Member

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