

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00395/2016

Monday, this the 24th day of September, 2018

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Pradeep A.S, aged 41 years
S/o Sivadasan
Ex.Assistant Loco Pilot
Southern Railway/Quilon
Residing at: Vijaya Nivas
Mulavana P.O.
Kundara, Kollam-691 503.

Applicant

[Advocate: Mr.T.C.Govindaswamy]

versus

1. Union of India, represented by
The General Manager,
Southern Railway, Headquarters Office
Park Town P.O.,Chennai-600 003.
2. The Senior Divisional Personnel Officer
Southern Railway, Thiruvananthapuram Division
Thiruvananthapuram-695 014
3. The Transport Commissioner
Transport Commissionerate
Kerala, 2nd floor, Trans Towers
Vazhuthacaud, Thycaud P.O.
Thiruvananthapuram-695 014.

Respondents

[Advocate: Mr.Sunil Jacob Jose for R1&2]
[Mr.M.Rajeev (GP) for R3]

The OA having been finally heard on 17th September, 2018, this Tribunal delivered the following order on 24th September, 2018:

ORDER

This OA is filed by Sri Pradeep A.S., Ex. Assistant Loco Pilot, Southern Railway, currently employed under the Transport Commissioner, Govt of Kerala, as Assistant Motor Vehicle Inspector, aggrieved by the refusal on the part of the Railway authorities to grant the benefit of pro-rata monthly pension and other terminal benefits. The reliefs sought in the OA are as follows:

(i) Declare that the non-feasance on the part of the 1st and 2nd respondents to grant the applicant pro-rata monthly pension and other terminal benefits is arbitrary, discriminatory, contrary to law and hence, violative of the constitutional guarantees enshrined under Articles 14 and 16;

(ii) Direct the respondents 1 & 2 to grant the applicant pro-rata monthly pension and other terminal benefits with interest on arrears of pension and other retirement benefits, to be calculated month after month as the pension fell due upto the date of full and final settlement of the same.

2. To narrate the facts in brief, the applicant had initially joined the Palakkad Division of Southern Railway on 27.12.1999 as Assistant Loco Pilot. He was later transferred to Trivandrum Division in 2005. While working in the Railways, the applicant was allowed by his employers to apply for the post of Assistant Motor Vehicle Inspector and was selected through an examination conducted by the Kerala Public Service Commission. On being appointed as per order dated 29.3.2012, the applicant submitted a request for technical resignation for joining the post under the Kerala State Government. He was relieved from the Railways as per order dated 12.4.2012 issued by the second respondent (Annexure A2) and the applicant joined the State Government Service as Assistant Motor Vehicle Inspector on 13.4.2012.

3. The applicant submits that by means of letter dated 11.2.2013, addressed to the second respondent, a copy of which is available at Annexure A3, the applicant had submitted a request for grant of pensionary benefits such as

monthly pension, gratuity, PF balance etc. Having received no reply, the applicant submitted another representation through his department and this was forwarded to second respondent by letter bearing No.K3/12357/TC/2015 dated 14.7.2015 of the Transport Commissioner, Kerala, (Annexure A4). As per Rule 53 of the Railway Services (Pension) Rules, 1993, read with Govt of India orders on the subject, the applicant is entitled to opt to receive monthly pension for the service rendered under them or to have the said service added to the service rendered under the State Government. The said Rule 53 has been reiterated by the Railways even after introduction of new Pension Scheme with effect from 1.1.2004 and a copies of Railway Board communication at Annexure A5 & A6 respectively refer to this.

4. The applicant submits that he had a service of 12 years and 6 months under the respondent Railways. He had applied to take up a position under the Kerala Government after obtaining a NOC from the Railways. His resignation was accepted by the Railways on 12.4.2012 and this is an admission of the fact that he had the required qualifying service for seeking pro-rata monthly pension and other retirement benefits.

5. Reply has been filed by respondents 1 & 2 as well as a separate reply statement by the 3rd respondent, Kerala Government. By way of the latter statement, the 3rd respondent submits that the benefits sought for by the applicant are due to be disbursed by the Railways who are respondents 1 & 2 and respondent No.3 has no further remarks to offer in the case. Respondents 1 & 2 in their reply statement submit that they are not in receipt of Annexure A3 representation while they do admit the receipt of Annexure A4 which is a further

representation, duly endorsed by the Transport Commissioner. Treating Annexure A4 representation as the very first representation made by the applicant, it is maintained by the respondents that the OA is barred by limitation as per Administrative Tribunals Act, 1985.

6. It is further submitted that as per para 53 of the Railway Service (Pension) Rules, 1993, a railway servant is expected to exercise his option whether he would prefer to count the service rendered under the Railways in the new organization for pension or to receive pro-rata payment from the Railways. In terms of Railway Board's letter No.F(P) 67 PN1/18 dated 21.9.1967 (copy not produced), this option is to be exercised within 6 months from the date of absorption. It is argued that the applicant has not adhered to this time limit. Thus the grant of pension counting the service rendered in the Railway is to be done by the 3rd respondent and not by the Railways. The crux of the arguments made by respondents 1 & 2 is reflected in para 7 of the reply statement wherein it is reiterated that the Railway Board's letter dated 21.9.1967 stands in the way of any option being exercised beyond 6 months from the date of absorption in the new organization for the Railways to consider pro-rata pension.

7. Sri T.C.Govindaswamy, learned counsel was heard on behalf of the applicant and Sri Sunil Jacob Jose, learned Standing Counsel for the Railway was heard for respondents 1 & 2. Sri Rajeev (GP) appearing for the State of Kerala was heard for respondent No.3 and all pleadings were examined. Railway Service (Pension) Rule 53 states as follows:

“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.

Explanation: Date of absorption shall be-

(i) In case a railway employee joins a corporation or company or body on immediate absorption basis, the date on which he actually joins that corporation or company or body;

(ii) In case a railway employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the railways the date from which his unqualified resignation is accepted by the railways.

(2) The provisions of sub-rule (1) shall also apply to a railway servant who is permitted to be absorbed in joint sector undertakings, wholly under the joint control of Central Government and State Governments/Union Territory Administrations or under the joint control of two or more State Governments or Union Territory Administrations.

(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.

Explanation: Body means autonomous body or statutory body.”

8. The facts relating to the length of service of the applicant mentioned in the OA are accepted by the respondents 1&2. Hence the question of eligibility for pro-rata pension as per Rules is admitted and not open to debate. The only reason put forward by the respondent Railway is that the applicant failed to exercise the option and state whether he would prefer to add his railway service to the service rendered under the present employer or to receive pro-rata pension from the erstwhile employer. The document at Annexure A6 clearly sets out guidelines on the subject of mobility of pensionable personnel between the Central Government/Central Autonomous Bodies and State Government. The first para of Annexure A6 is as follows:

“In terms of the instructions contained in para (iii) of this office letter of even number dated 26.9.2005, which is based on Department of Pension & Pensioners' Welfare (DOP&PW)'s O.M.No.28/30/2004-P&PW(B) dated 26.7.2005, all the employees who entered into Railway service/Central Government service or the service of an Autonomous Body set up by Central Government or or before 31.12.2003 and who were governed by the old pension scheme under the Railway Services (Pension) Rules, 1993/Central Civil Services (Pension) Rules, 1972 and who submit technical resignation or or after 1.1.2004 to take up a new appointment under State Government, will be eligible for grant of pro-rata pensionary benefits for the period of Railway/Central Government or Central Autonomous Body service, on the lines as provided in Rule 53 of the Railway Services (Pension) Rules, 1993 or Rule 37 of Central Civil Services (Pension) Rules, 1972, as the case may be, and related orders.”

9. The applicant's claim being decided thus, it is relatively a minor point that his request for the same has been delayed. Besides, the order of the Railways referred to in the Reply statement as contained in the Railway Board's letter dated 21.9.1967 could not be examined as the respondents were unable to present a copy of the same. The learned counsel for the applicant also called to his assistance the order of this Tribunal in OA 1097/2010 on the very same issue.

10. After examining all the facts, this Tribunal is of the view that the OA has merit on its side. This Tribunal directs the 1st & 2nd respondents to grant pro-rata monthly pension and other terminal benefits due to him. This will be strictly on pro-rata basis for his term of service. The same is to be disbursed to the applicant within 30 days of the receipt of copy of this order. No order as to costs.

(E.K.Bharat Bhushan)
Administrative Member

Annexures produced by the applicant:

- Annexure A1: Copy of 'No Objection Certificate' by the 2nd respondent under No.V/P.95/VI/Rg./PILOT dated 9.2.2011.
- Annexure A2: Copy of office order No.15/2012/Elc(OP) dated 12.4.2012 issued by the 2nd respondent.
- Annexure A3: Copy of letter dated 11.2.2013 addressed to the 2nd respondent.
- Annexure A4: Copy of letter bearing No.K3/12357/TC/2015 dated 14.7.2015 by the applicant to the 2nd respondent.
- Annexure A5: Copy of Railway Board order bearing RBE No.118/2010 dated 10.8.2010.
- Annexure A6: Copy of Railway Board order bearing No.F(E)III/2005/PN1/35 dated 7.7.2011.

Annexure produced by the respondents:

- Annexure R1: Copy of Office Memorandum No.28/30/2004-P&PW() dated 28th October, 2009 issued by the Department of Pension and Pensioners' Welfare, Ministry of Public Grievances and Pension, circulated as per Railway Board's letter No.F(E)III/2005/PN1/35 dated 4.11.2009 [RBE 196/2009].