

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 3124/2003
MA 2697/2003
MA 1836/2004

New Delhi, this the 14th day of March, 2005

Hon'ble Mr. S.K. Malhotra, Member (A)

1. Prabir Kumar Banerjee
S/o Late Shri Santosh Kumar Banerjee
Permanent resident of :
Village & P.O. Madarat, District 24 Parganas
(South), West Bengal.
2. Amit Banerjee
S/o Late Shri Santosh Banerjee
R/o Village & P.O. Madarat,
District 24 Parganas
(South), West Bengal.
3. Jogendra Narayan Mukherjee
S/o Late Uday Narayan Mukherjee
R/o Village & P.O. Madarat,
District 24 Parganas
(South), West Bengal.
4. Nripendra Bhushan Mukherjee
S/o Late Shri Bhishuti Bhusan Mukherjee
R/o Village & P.O. Madarat,
District 24 Parganas
(South), West Bengal.
5. Ashit Kumar DAs
Late Shri Binoy Das Bhusan,
R/o Village & P.O. Madarat,
District 24 Parganas
(South), West Bengal.
6. Sanat Kumar Mukherjee
Late Shri Deb Narayan Mukherjee
R/o Padma Pukar, P.O. Baruipur,
District 24 Parganas
(South), West Bengal.
7. Shyama Prasad Majumdar
R/o Village Malancha Mahinagar
District 24 Parganas
(South), West Bengal.
8. Manmatha Ranjan Das
Late Shri Sarat Chandra Das,
R/o 4, Jadu Srimani Lane, Kolkata

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9. Tarapada Seth,
S/o Late Shri Shashi Bushan Seth,
Permanent R/o PO & Village Fingapada,
Distt. 24 Parganas (South) West Bengal
10. Shibendra Nath Kulvi,
S/o Shri Ganesh Nath Kulavi,
R/O Vill. Tantra, P.O. Bhabla
Distt. 24 Parganas (South)
West Bengal
11. Sankar Kumar Ghosh,
Late Shri Satish Chandra Ghosh,
R/O 90, Dakshin Buxarah Road,
P.O. Buxarah, Howrah
12. Sailen Banerjee,
S/o Late Shri Dasarathi Banerjee,
R/o 32/1, Deshapran Sasmal Road,
Post-Kadamtala, Howrah
13. Sanat Mukherjee,
S/o Late Upendra Nath Mukherjee,
R/o 32, Biseswar Banerjee Lane,
Kadamtala, Howrah
14. Fatick Nandy,
S/o Late Shri Banku Behare Nandy
58/1/2/1, Gopal Banerjee Lane,
Ramkrishnapur, Howrah
15. Sukumar Mukherjee,
S/o Late Shri Nagendra Nath Mukherjee,
Permanent R/O 7, Bantra East Lane,
Kadamlata, Howrah
16. Nisar Ahmad,
S/o Late Shri Abdul Gaffuar,
R/o Jolapara Masjid Lane,
Post Howrah
17. Santi Ranjan Banerjee,
S/O Late Shri Basanta Kumar Banerjee,
R/o Rohara Kervlia, PO: Jodipada.
Distt. 24 Pargana, (South), West Bengal
At present all are at New Delhi
(By Advocate : Ms. Rachana Joshi Issar)

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Applicants

Versus

Union of India
Through The Chairman,
Railway Board
(By Advocate : Shri R.L. Dhawan)

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Respondent

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ORDER

By Hon'ble Shri S.K. Malhotra, Member (A) :

The applicants in this OA have made a prayer that the impugned order dated 1.5.2003 (Annexure P-1) by which their request for counting of the past service in the private sector company Martin Light Railways for pensionary benefits, has been rejected, may be quashed and set aside and the respondents be directed to grant and revise their pension and gratuity after counting the previous service rendered by them in the above Company.

2. The facts of the case in brief are that the applicants were the ministerial employees of the erstwhile Martin's Light Railways, a private sector company. This company ran under its managing agency, five organized Light Railways Companies, viz. Howrah-Amta Light Railway Ltd (HALR), Howarah-Seakhala Light Railway Company Ltd (HSLR), Arrah-asaram Light Railway Ltd. (ASLR), Fatwah-Islampur Light Railway Co. Ltd. (FILR) and Shahdara-Saharanpur Light Railway (SSLR). The applicants have been working in HALR and HSLR. Under the agreement, their services were transferable from one company to another. Martin's Light Railways closed down the operations of 4 companies including HALR and HSLR during the period 1970-71. As the employees were rendered jobless, the Govt decided to give appointment to the employees of these companies but the appointment was to be on the basis of fresh employment in the Indian Railways. However the emoluments drawn by them earlier were protected. It has been contended that the Govt. did not follow a uniform policy in regard to past service. While in case of employees of Mcleod & Company who served on the Kalighat -Falta Railways (KF Railways) who were similarly situated, were allowed to count their past service after about 13 years of their fresh appointment, this concession was not allowed in their case. They have thus been discriminated against. Similarly the benefit of past service was also given to Ganga-Bridge and DBK project employees. Besides, when the Fatwah-Islampur Light Railway Nationalisation Act, 1985 was passed, its employees were also allowed to count their past service. The applicants have been making several representations but to no avail. Ultimately they

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filed an OA No. 2780/2001 and the Tribunal vide its order dated 30.12.2002 directed the respondents to take a decision on the controversy involved. The respondents have now rejected their request vide order dated 1.5.2003 (Annexure P-1) which has been challenged by the applicant in the present OA.

3. The respondents have filed their counter reply in which they have raised preliminary objections. Their first objection relates to the jurisdiction of this bench of the Tribunal. According to the respondents the Railway Board's decision dated 1.5.2003 had been communicated vide letter dated 13.5.2003 to one of the applicants at serial no.4 in the OA in West Bengal (Annexure R-2). Similarly other applicants were also conveyed the decision at their address in W. Bengal. A view has been taken by this Tribunal vide order dated 21.1.1999 (Annexure R-1) to the effect that cause of action would arise where the consequence of the orders falls. It was argued that since the cause of action has arisen in West Bengal, the Principal Bench has no jurisdiction in the matter. This material fact has been suppressed by the applicants in the OA and they have intentionally not filed annexure R-2 along with the order dated 1.5.2003. The second objection is that the grievance of the applicant for allowing them the pension for the services rendered by them pertains to the period prior to 1970-71 when they were working in the Light Railways and as such this Tribunal has no jurisdiction to adjudicate the matter under Section 21(2) of Administrative Tribunals Act, 1985. According to the provision in this Section, the Tribunal has no jurisdiction to entertain the application if the grievance pertains to the period prior to 1.11.1982 i.e. 3 years preceding the date the above Act came into being. The third preliminary objection is that the applicants has been working at Eastern Railway and Metro Rail, Kolkatta from where they retired after attaining the age of superannuation. The General Manager, Eastern Railway and Metrol Rail, Kolkatta was the necessary party but he has not been impleaded in the array of respondents. The fourth objection relates to the limitation. The applicants had not raised any objection for not considering their past service when the appointment letter was issued to them in January, 1971 (Annexure P-6) in which it was clearly mentioned that they will be appointed as fresh entrants. They served in the Eastern

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Railway and Metro Rail for 14-27 years during which period also no representation was made by them to allow them the benefit of the past service rendered by them in HALR and HSLR. The first OA was filed by them only in 2001 i.e. more than three decades after the appointment letter was issued to them. The OA is, therefore, hopelessly time-barred and on this ground itself, it is liable to be dismissed.

4. On merits, it has been stated that consequent on the closure of the Martin Light Railways (MLR), the Govt. had decided not to take over the Light Railways. However to mitigate the hardship of the retrenched employees, a sympathetic view was taken by the Railway Board to appoint these employees as fresh entrants by offering them jobs in the categories in which they were found suitable. It was made clear that they will be considered for fresh "appointment" and not for "absorption". However their services in Indian Railways will be pensionable. These applicants have been working on Eastern Railways and Metro Rail, Kolkata and have since retired from service during the period 1985-1998 on attaining the age of superannuation and have been paid their retiral dues long back. The stand taken by the respondents is that the fresh offer of appointment given to them in January, 1971 (Annexure P-6) as per terms and conditions stipulated in the letter, which was accepted by the applicants, constituted a contract in law and having accepted the same, it is not open to the employees to challenge those terms and conditions at this distant date after about 30 years. It has further been stated that the entire issue was been deliberated upon by the Hon'ble Supreme Court in Civil appeal No. 5804 of 1994 against the order of the Tribunal, Patna Bench in OA No. 113/89. The grievance of the applicants in that OA was also the same i.e. they were stated to have been discriminated against the erstwhile staff of a similarly privately owned KF Light Railway, in which case the employees were allowed to count their entire past service for pensionary benefits which was denied to them. The Hon'ble Supreme Court in its order dated 9.9.1996 (Annexure P-12) had held that the employees of erstwhile Arrah Sasaram Light Railway (ASLR) (the applicants in that case) were not similarly placed as the employees of KF Railways. This conclusion was drawn based on the distinguishing fact that KF Railways was taken over on an outright purchase of assets without any

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liability, whereas ASLR was not taken over by the Railways when the company closed down in 1978.

5. I have heard Ms. Rachana Joshi Issac, the Ld. Counsel for applicant & Shri R.L. Dhawan, the Ld. Counsel for the respondents and have also gone through the pleadings available on record.

6. The main argument advanced by the learned counsel for the applicants was that the applicants in the OA are similarly placed as the employees of KF Railways, who were allowed to count their past service for the purpose of pensionary benefits. In this connection, she referred to the order dated 4.11.1969 (Annexure P-8) in which the Railway Board had taken a decision that the staff of ex-KF Railways who were appointed in Indian Railways in 1957, the past services rendered by them will be taken into account for the purpose of pensionary benefits. She also pointed out that the ex-employees of FILR, which was one of the companies under Martin Light Railways, were also allowed to count their past service for the purpose of pensionary benefits. There is thus no reason as to why the applicants should be discriminated against and denied the same benefit. In this connection she referred to the order of the Hon'ble Supreme Court in the Civil Petition 5804/1994 (Annexure P-4). In that case the petitioners had been working in ASL Railways and had sought parity with the employees of KF Railways. It was argued that in the case of ASL Railways also, there were some employees who had joined other companies, as happened in the case of KF Railways, which were later taken over by the Indian Railways and the past service of those employees was counted for pensionary benefits. This argument was, however, not accepted by the Hon'ble Supreme Court and it was held that employees in these two Companies were not similarly situated. She also stated that the services of the employees working in HALR and HSLR were transferable to other companies under Martin Light Railways. In this connection a reference was made to the service Agreement at Annexure P-3 in which it has been stated that the employee of one Railway company could be transferred to other companies. In support of her argument, she referred to a certificate dated 29.3.1984 (Annexure A-4 colly) from which it is observed that the services of the

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employee was transferred to FILR although he was earlier working in HA/HSLR. She contended that as in the case of KF Railways some of the employees had joined Ahmed-Katwa, Bakura Damodar River etc., which were later taken over as on-going companies by Indian Railways and their past service was counted, the applicants are also eligible to be extended the same benefit.

7. The above contention of the learned counsel for the applicant was vehemently opposed by the learned counsel for the respondents. He explained that KF Railways was not taken over as a going-concern but on the basis of outright purchase of assets without any liability. Some of the employees of KF Railways had joined Ahmed-Katwa, Bakura Damodar river, which were subsequently taken over as going-concern by the Indian Railways. Thus a peculiar situation had arisen. While those retrenched from KF Railways were taken as fresh entrants in the Indian Railways who could not count their past service but those who joined Ahmed-Katwa etc which was later taken over by Indian Railways, their past service was counted for pensionary benefits. To eliminate this discrimination, it was decided that the KF Railways staff who were earlier treated as fresh entrants should also be permitted to count their past service. Such a situation does not exist in the case of HALR and HSLR in which companies the applicants had been working. The learned counsel for the applicants has not been able to point out and establish that some of the employees working in HALR and HSLR had joined some other company under Martin Light Railways, which was later taken over as on going concern and had been allowed to count their past service. The case of the applicants cannot, therefore, be considered at par with the ex-employees of KF Railways.

8. After hearing the rival contentions of both sides, it is observed that the case of the applicants is not at all fours with the employees of the KF Railways. The controversy involved in this case has been dealt with at length in the judgement dated 9.9.1996 of the Hon'ble Supreme Court in the Civil Appeal no. 5804/1994. In the case of erstwhile employees of ASL Railways, it was held that they were not similarly situated as the employees of KF Railways and as such no discrimination could be established. Same is the case in so far as the applicants in the present OA are concerned. The facts


and circumstances of both the cases are distinguishable. It cannot be denied that KF Railways was taken over on the basis of outright purchase of assets without any liability. This is not so in the case of HALR and HSLR. The learned counsel for the applicant also could not establish during the course of discussions that some of the employees of HALR and HSLR had joined some other companies under the erstwhile Martine Light Railways, which were later taken over and the employees were allowed the benefit of counting their past service as had happened in the case of KF Railways. There are thus no similarities in both the cases. The applicants also cannot be allowed the benefit of concession allowed in case of Ganga-Bridge (GBP) and DBK Project employees and those in FILR as those Companies stood on different footings. While the employees of GBP/DBK were absorbed, FILR was nationalized. The services of the employees being transferable within the group of companies under the same management in private sector, cannot be a ground to extend the benefit. Apart from the above, it must be appreciated that there was no obligation on the part of the Government to give appointment to the applicants after the private sector company had been closed down. It was only a welfare measure to mitigate the hardship being faced by the retrenched employee that the Ministry of Railways (Railway Board) took a decision to appoint the employees of HALR and HSLR as fresh entrants and offer them jobs in the categories for which they were found suitable. They had accepted this appointment with open eyes and had not raised any objection during the last 30 years that they should be given the benefit of the past service rendered by them in a private sector company. It was only after this benefit was extended to some of the employees of the erstwhile KF Railways that they approached the Tribunal. As already explained above their case is not at par with the employees of KF Railways and as such the same benefit cannot be extended to them. The facts and circumstances of each case differ and the Government takes its decision on its merit. No precedent can either be binding or a straight jacket formula can be applied in all cases of this nature. Besides no legal right accrues to the employees to get such benefits.

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9. The point of limitation raised by the learned counsel for the respondents cannot be ignored. The Hon'ble Supreme Court in the case of UOI vs. Harnam Singh [1993 SCC (L&S) 375] has held that "the law of limitation may operate harshly but it has to be applied with all its rigors and the Courts/Tribunals can't come to the aid of those who sleep over their rights and allow the period of limitation to expire". In another case of Bhoop Singh vs. UOI [1992 (3) RSJ 307], the apex court has held that "judgement in another case does not give a fresh cause of action. Equitable relief cannot be given to those who are not vigilant and do not agitate their grievance within the time".

10. It also cannot be denied that the relief prayed in the present OA relates to the grant of pensionary benefits prior to period 1970-71 when the applicants were working in the private sector company. Section 21(2) of Administrative Tribunals Act, 1985 prohibits the Tribunal to admit an application in respect of the grievance pertaining to the period 3 years immediately preceding the date on which the jurisdiction, powers and the authority of the Tribunal becomes exercisable under the Act. In other words the Tribunal has no jurisdiction over a matter in which cause the cause of action had arisen prior to 1.11.1982 i.e. more than 3 years prior to establishment of the Central Administrative Tribunal. In this connection, the Ld. Counsel for the respondents cited a judgement of this Tribunal dated 23.8.2004 in OA No.2898/2003, in which case on this ground itself, the OA was dismissed.

11. Thus, viewed both on merit as well as the preliminary objections especially of limitation and jurisdiction of the Tribunal, the OA fails. It is accordingly dismissed without any order as to costs.


(S.K. Malhotra)
Member (A)

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