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**(1996) 07 SC CK 0109**

**In the Supreme Court Of India**

**Case No :** Special. Leave Petition. (Civil) No's. 14890 of 1996.

Secretary (Estt.) Railway Board and another

APPELLANT

Vs

D. Francis Paul, etc.

RESPONDENT

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**Date of Decision :** 15-07-1996

**Acts Referred:**

**Citation :** (1996) 5 AD 729 : AIR 1996 SC 2776 : (1996) 7 JT 706 : (1996) LabIC 2445 : (1996) 2 LLJ 1127 : (1996) 5 SCALE 8 : (1996) 10 SCC 134 : (1996) 3 SCR 578 Supp : (1996) 3 SLJ 19

**Hon'ble Judges :** K. Ramaswamy, J;G. B. Pattanaik, J

**Bench :** Division Bench

**Advocate :** R. Venugopal Reddy, A.D.N. Rao and Arvind Kumarr. Sharma, for the Appellant;

**Final Decision :** dismissed

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## Judgement

K. Ramaswamy, J.—Delay Condoned.

2. The two petitioners in these cases, were recruited as legal assistants after having put in more than 8 years practice at the Bar. One was recruited on April 24, 1963 and the other on July 3, 1964. After putting in qualifying service of 25 years, they retired from service on June 13, 1989 and March 31. 1.992 respectively. They relied upon Rule 2423A of the Railway Establishment Mannual II claiming addition of 5 years qualifying service for computation of their pension. The Tribunal in the impugned orders dated 6.12.1995 allowed the applications and directed computation thereof. The same are assailed in their applications.

3. Rule 2423A reads thus:

2423-A (C.S.R. 404-B): An Officer appointed to a service or post on or after Ist April, 1968 may add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth the length of his service or the actual period by which his age at the time of recruitment exceeds twenty-five years or a period of five years, whichever is the

least, if the service or post is one:

(a) for which post-graduate research or specialist qualification, or experience in scientific, technological or professional fields, is essential and

(b) to which candidates of more than twenty five years of age are normally recruited.

Provided that this concession shall not be admissible to any such officer unless his actual qualifying service at the time he quits Government Service is not less than ten years.

Provided further that any such officer who is recruited at the age of thirty-five years or more may, within a period of three months from the date of his appointment, elect to forego his rights to pension where under he shall be eligible to subscribe to the State Railway Provident Fund as a non-pensionable employee.

4. The amended rule reads thus:

The above Rule was amended as can be seen from the Railway Ministry's letter No. F (E) III/76 PNI 12 dated 15.11.76, whereby an additional proviso was added to the rule as Under:

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service/post contain a specific provision that the service or post is one which carries the benefit of this rule.

(2) A railway servant who is recruited at the age of thirty-five years or more, may within a period of three months from the date of his appointment, elect to forgo his right to pension, whereupon he shall be eligible to subscribe to the State Railway provident Fund as a non-pensionable employee.

(3) The option referred to in Sub-rule (2) once exercised, shall be final.

5. Relying upon this proviso by later amendment, it is contended that since no specific provision was made in the conditions of service at the time of appointment, the respondents are not entitled to the benefit of the rule. It is not in dispute that the rule came to be amended in November 15, 1976 long after their appointment. Under these circumstances, the amendment would be prospective. It is not in dispute that this amendment came to be made pursuant to recommendation made by the 3rd Pay Commission and on acceptance thereof the rule came to be amended. Under these circumstances, the amendment cannot have retrospective effect in respect of the persons already in service but would be prospective; it would be applicable only to those candidates appointed after the date of the amendment introducing the proviso.

6. The special leave petitions are accordingly dismissed.