
(2012) 01 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition No. 3162 of 2001

Shri. Abdul Mannan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 22

Citation : (2012) 3 ALLMR 824 : (2012) 3 BomCR 307 : (2012) 132 FLR 987 : (2012) 3 MhLj 206

Hon'ble Judges : P.B. Majmudar, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : M.W. Harsulkar, for the Appellant; R.S. Sundaram, Advocate for Respondent Nos. 1 and 2, for the Respondent

Judgement

P.B. Majmudar, J.—By this petition, the petitioner has challenged the order dated 29/06/2001 passed by the Central Administrative Tribunal, Mumbai Bench, Camp at Nagpur in Original Application No. 321/1998, by which the Tribunal W.P. 3162.2001 2 Judgment has dismissed the Original Application filed by the original applicant petitioner.

2. The petitioner is a retired Railway employee. The petitioner was appointed as a Apprentice Telecom Inspector on 23/12/1964 by respondent no.1 and was required to join the apprenticeship on 05/01/1965. He completed the said apprenticeship period of two years successfully on 23/02/1967. After completion of apprenticeship, he was required to be absorbed on the regular basis. It is the case of the petitioner that after completion of apprenticeship, due to no availability of vacancy, the petitioner was posted against working post on 10/04/1967 i.e. after 45 days. The petitioner subsequently made a representation on 15/10/1993 to the Chief Personnel Officer, requesting therein to update his service register and for taking into account the period of apprenticeship as qualifying service for the purpose of pensionary benefits. The petitioner also pointed out that his colleague namely, Shri R.C. Trigunayat, whose

case was similar to that of the petitioner, was also given the same benefits as sought by the petitioner. Since the Railway Department had not taken favourable decision, the petitioner filed Original Application before the Tribunal. The Tribunal came to the conclusion that since there was a gap of 45 days in giving the posting order to the petitioner after completing the apprenticeship, no relief can be given to the petitioner on the ground of discrimination and dismissed the Original Application.

3. Mr. M.W. Harsulkar, learned Counsel for the petitioner, has relied upon the Circular of Railway Board dated 17/04/1984, issued by the Government of India (Bharat Sarkar), Ministry of Transport (Pariwahan Mantralaya), Department of Railways (Rail Vibhag), Railway Board and submitted that since the petitioner has been appointed immediately within a short period after completion of apprenticeship, the period in question, should also be counted for the purpose of pensionary benefits. The circular reads as under :

In terms of rules 2410RII and page 407, (III) of Manual of Rly. Pension Rules, Service as an apprentice does not qualify for pensionary benefits.

The staff side of the National Council (JCM) had suggested that, the service rendered by an employee during training period before the regular appointment to the grade may be treated as qualifying service for pension. This demand was also raised by the staff side in the departmental Council (Rlys).

The request made by the staff side has been examined by the Govt. and it has been decided that in respect of group "C" and "D" employees who are required to undergo departmental training to join before they are put on regular appointment, training period upto one year may be treated as qualifying service for pension, if the training period is followed immediately by an appointment. This benefit will also be admissible to all Group "C" & "D" employee even if the officer concerned are not given the scale of pay of the post but only a nominal allowance.

These orders came into force with effect from 22/12/1983. This may be deemed to have amended provision of the above and necessary amendments to the rules will follow.

4. It is an admitted fact that the petitioner was in service in the year 1983 and, therefore, he is entitled to get benefits as per the aforesaid Circular.

5. The learned Counsel for the petitioner has also relied upon the provisions of Rule 22 of the CCS (Pension) Rules, 1972, wherein one of the subrules i.e. No.3, is for condonation of administrative delay in issuing posting order after training, for counting training period for pension, which reads as under :

(3) Condonation of administrative delay in issuing posting order after training, for counting training period for pension

1. Rule 22 of CCS (Pension) Rules, 1972 and Government of India's Instructions

issued on the subject from time to time provide that a period of training can be counted as qualifying service for the purpose of pensionary benefits if the training is immediately followed by appointment. Even if any interruption falls between the training period and regular appointment, that should not exceed the joining time admissible under the relevant rules.

2. But instances have come to notice where there has been administrative delay in giving appointment letters, etc., after the training period is over and the appointment takes more time than the joining time admissible under the relevant rules.

3. The question as to how the intervening period in such type of cases can be treated if it exceeds the joining time admissible and the delay on the part of the Government in giving appointment letters and as to whether that intervening period can be condoned, was referred to Department of Pension and Pensioners' Welfare who have advised that in cases where the delay is purely administrative, they have no objection to condoning the said period.

4. They have further advised that effort should be made to eliminate the administrative delays particularly where it is known in advance that the trainees have to be given final appointment letters, etc.

6. Per contra, Shri R.S. Sundaram, the learned Counsel for the respondent nos. 1 & 2 submitted that in case 45 days' gap is treated as an administrative delay, as there was no post available, it may be treated as waiting period and that training period should not be counted for pensionary benefits. The learned Counsel further submitted that so far as the CCS (Pension) Rules are concerned, they are not applicable to the petitioner. According to him, as per the order framed by the Railway Board dated 17/04/1984, the training period can be treated as qualifying service for pension, if the training period is followed immediately by an appointment. He further submitted that since there was a delay of 45 days, the petitioner cannot get the benefits of the said order as the appointment order is not followed immediately after completion of the training period. He further submitted that so far as the case of another employee viz. Shri Trigunayat is concerned, whose instance has been quoted by the petitioner, he was given same benefits, but the said employee was not of the same Division, where the petitioner was serving.

7. We have heard both the Counsel at length. We have also gone through the order passed by the Tribunal. It is required to be noted that after completion of the training period, the petitioner was given regular appointment within 45 days. It is required to be noted the letter dated 20/04/1995, issued by the Chief Personal Officer in respect of condonation of break in favour of the petitioner. In the said letter, it was pointed out that the petitioner was appointed as an Apprentice TCIII w.e.f. 23/12/1964 and he completed his apprenticeship successfully on 23/02/1967. In the said letter, it was also pointed out that since there was no post of TCIII to accommodate the petitioner against regular

working post, he was asked to wait for his regular posting orders. In the said letter, it was also pointed out that inadvertently apprenticeship of the petitioner has been terminated from 24/02/1967, but thereafter he was again recalled for posting and was posted under DSTE (IBRE) w.e.f. 11/04/1967 as TCIII on regular basis. It was also mentioned that the break in service was not due to termination of apprenticeship but for non availability of suitable vacancy to accommodate the petitioner against the working post. The Finance Department, however, considered the said aspect and pointed out that the case may be dealt with as per Railway Board's aforesaid Letter dated 17/04/1984.

8. In our view, no addition of the aforesaid training period to the petitioner's regular service has resulted into great injustice to the petitioner, as it is clear from the record that regular posting order was awaited and his apprenticeship was not terminated and his case was kept on waiting list for giving appointment order and, therefore, it was only an administrative delay. In view of the same, even if CCS (Pension) Rules are not applicable, so far as the Railway employees are concerned, the petitioner even gets the benefits as per the Railway Board's orders, which we have quoted above. Since it is not in dispute that the Railway Board's orders are applicable to the petitioner as he was in service at the relevant day, and has retired later on, in our view this petition is required to be allowed as there was an administrative delay, as there was delay of 45 days in giving the regular appointment to the petitioner. The petitioner is, therefore, entitled to get the benefit of training period for the purpose of fixation of service pension. It is also required to be noted that the other employee namely, Shri Trigunayat was given the same benefits.

9. The learned Counsel for respondent nos. 1 & 2, after taking instructions in this behalf, has stated that such benefits were given to other employee also. The learned Counsel for the Railway Administration, however, argued that the said employee belongs to other Division and not of the same Division where the petitioner was serving. According to him, therefore, he could not get detail facts of that employee. The petitioner also made reference of another employee namely Shri P. V. Desai, whose particulars are given at Page 96. Whether the said employees are of the same Division or other Division is of no importance as it is an admitted fact that they were the employees of Railway Administration and the petitioner cannot be discriminated in this behalf. It is pointed out by the petitioner that the said employees were also of the same batch of the petitioner and they also completed apprenticeship and were given subsequent appointed orders similarly like the petitioner. The Tribunal has failed to appreciate the case from the aforesaid angle and has committed an error in considering the Railway Board's orders. The Tribunal has also taken very casual approach in connection with the Original Application filed by the petitioner regarding discrimination.

10. Considering the aforesaid aspects, we pass the following order :

i. The order passed by the Central Administrative Tribunal, Mumbai Bench, Camp at Nagpur, on 29th June, 2001 is set aside.

- ii. The Original Application filed by the petitioner stands allowed.
- iii. It is held that the petitioner is entitled to get the benefit of his training period i.e. from 05/01/1965 to 10/04/1967 i.e. till the date on which he was given regular appointment, for counting the said period for the purpose of calculation and payment of the pension. It is clarified that the said period is counted only for the purpose of pensionary benefits and for no other purpose.
- iv. The Railway Department is directed to revise the pension of the petitioner and start giving effect of the same within a period of three months from today. If the petitioner is entitled for monetary benefits on the basis of such revised pension, such arrears be released.
- v. The petition is accordingly allowed.
- vi. Rule is made absolute in above terms. No order as to costs.