

PETITIONER:
UNION OF INDIA & ANR.

Vs.

RESPONDENT:
DR.BALIAR SINGH

DATE OF JUDGMENT: 25/11/1997

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

THE 25TH DAY OF NOVEMBER, 1997

Present:

Hon'ble Mrs.Justice Sujata V.Manohar
Hon'ble Mr.Justice D.P.Wadhwa

A.S.Nambiar, Sr.Adv., (Ms.Kanupriya Mittal, Ms.Sushma Suri)
Ads. for Arvind Kr.Sharma, Adv. with him for the appellants.
Janaranjan Das, Adv. for the Respondent

J U D G M E N T

The following Judgment of the Court was delivered:

Mrs. Sujata V. Manohar, J.

Delay Condoned.

Leave granted.

The respondent initially served under the Government of Orissa from 14.4.1962 to 11.5.1972. Thereafter he served with the Government of Chandigarh from 15.5.1972 to 29.12.75. The respondent joined the railways and was appointed as plastic surgeon at Byculla Hospital, Central Railway, on 31.12.1975. He sought voluntary retirement and was allowed to voluntarily retire from his service with the Central Railway on 1.4.1987. He would have retired on superannuation on 26.11.1991. The respondent thus served as followed:

S.No.	SERVICE RENDERED WITH	YEARS	MONTHS	DAYS
1.	Service rendered in Government of Orissa	10 years	0	28
2.	Service rendered in the Government of Chandigarh	3 years	7	14
3.	Service rendered in the Railways	11 years	2	9
Total		24	10	21

Prior to his voluntary retirement, he had sought a clarification as to whether his past services with the Government of Orissa and the Government of Chandigarh would

court for the purpose of pensionary benefits. By order dated 29.5.1985, the appellants informed the respondent that his past services with the Governments of Orissa and Chandigarh would count as qualifying service to pensionary benefits. He would also get an additional five years' service on account of voluntary retirement; and as a result his total service for pensionary benefits would be 29 years, 11 months and 9 days.

The respondent was accordingly granted retirement benefits. He has, however, been denied complimentary railway passes on retirement on the ground that his service with the railways was of less than 20 years and hence he was not eligible for complimentary railway passes on retirement. The respondent moved the Central Administrative Tribunal by filing O.A.No.530 of 1996 claiming a right to complimentary railway passes. His application has been allowed by the Central Administration Tribunal, Bombay Bench, Hence, the Union of India through the General Manager, Central Railway, has filed the present appeal.

Under Railway Services Pension Rules, Chapter III deals with qualifying service. Under Rule 22, the service of a railway servant which shall qualify for pensionary benefits includes, inter alia, service rendered under the Central Government in a Civil Ministry or Department or a civilian employee under the Ministry of Defence including the Ordnance Factories, or a state Government before transfer to railways. In accordance with the provisions of Rule 27, such service will count for the purpose of pension. Rule 27 prescribes the detail of such counting of service for various kinds of pensionary benefits. The respondent has been given the benefit of counting his previous service with the State of Orissa and with the Government of Chandigarh as qualifying service for the purpose of his retirement benefits under the said Pension Rules. Under the Scheme of voluntary Retirement for railway employees which has been set out in the Railway Board's letter dated 9.11.1977 it is provided that in respect of those employees who are allowed to retire voluntarily under the terms of that scheme, weightage of upto five years would be given as an addition to the qualifying service in the case of those who are governed by Railway Pension Rules. Accordingly, the respondent has also been given an addition of five years' service for the purpose of his retirement benefits.

It is the contention of the respondent that the service which has been counted as a part of his qualifying service and the weightage of five years' service which has been given to him on account of his voluntary retirement, should also be taken into account for the purpose of giving him complimentary railway passes after retirement. The Rules for grant of complimentary railway passes are, however, a completely different set of Rules unconnected with the Rules relating to pension or voluntary retirement. Railway Servant (Pass) Rules, 1986, have been framed in exercise of power conferred by the proviso to Article 309 of the Constitution and they were in force at the time when the respondent retired. These Rules have undergone several amendments. At the time when the respondent retired, the relevant provisions of Railway Servant (Pass) Rules, 1986 were as follows:

"Rule 8: Post-retirement Pass:-

- (1) A post-retirement pass may be issued to a railway servant after retirement of after he ceases to be a railway servant.
- (2) The category of railway

servants, the circumstances and the conditions subject to which a pass under sub-rule (1) may be issued shall be as specified in Schedule IV.

Schedule IV which deals with post-retirement complimentary pass is as follows:

Category	Number of passes admissible in one year	Conditions for issue of post-retirement complimentary pass	Other facilities
Groups: A & B (a) With 20 years service on Railways and above but less than 25 years.	2 sets	.....	.....
(b) With 25 years service on Railways and above	3 sets	.....	.....
C (a) With 20 years service in the Railways and above but less than 25 years.	1 set	.....	.....
(b) With 25 years service with Railways and above	2 sets	.....	.....
D (a) With 25 years services in Railways and above	1 set, in alternate years	.....	.....
(b) Less than 25 years Services	NIL		

Under Schedule IV the category of persons who are eligible for post-retirement complimentary pass consists of those with 20 years of service on railway and above but less than 25 years or with 25 years of service on railways and above. Each of the categories must have the specified number of years' service on railways. There is no provision in the Railway Servant (Pass) Rules, 1986 for counting service in any other organisation, the State Government or the Central Government for the purpose of railway passes. a railways servant under the Railway Servant (Pass) Rules, 1986 is defined under Rule 2(h) to mean "a person who is a member of the service or holds a post under the administrative control of Railway Board and includes a person who holds post in the Railway Board. Persons lent from a service or a pst which is not under the administrative control of the Railway Board to a service or post which is under such administrative control do not come within the scope of this definition.....". Under the Railway Servant (Pass) Rules, 1986 the service

which is counted for the purpose of grant of complimentary passes on retirement of a railway servant is service on the railways alone. The respondent who had served in the railways only for 11 years, 2 months and 9 days, therefore, pass not qualify for complimentary railway on retirement since he has to his credit railway service of less than 20 years.

The respondent contended that the weightage of five years' service given to persons retiring voluntarily should also be given for the purposes of complementary railway passes after retirement. He has drawn our attention to clause 9 of the Railway Board letter of 9.11.1977 which provides that the weightage of five years given year the voluntary retirement scheme will count towards post-retirement passes. Unfortunately for the respondent, even if he is given weightage of five years, his 11 years' service with the railways become sixteen years' service. He still ralls short of 20 years'. service which is required before he can obtain complimentary railway passes after retirement.

The Tribunal has relied heavily upon a judgment of Central Administrative Tribunal, Jodhpur Bench in the case of Jagdishwer Bhatt v. Union of Indra ([1996] 34 ATC 92) which was a similar case of a Divisional Medical Officer in the railway who retired without completing 20 years of service in the railways. While the Tribunal had granted him the benefit of complimentary passes after retirement, in appeal, this Court by its judgment and order dated 24.2.1997 (S.L.P.(C) NO.21339/96, Union of India v. Jagdishwer Bhatt) has set aside the order of the Tribunal. This Court had held that it is necessary to have a minimum 20 years of actual service in the railways before a person qualified for complimentary passes on retirement. It has held that the extension of length of service on the basis of Rule 2423-A (C.S.R. 404-P) for the purpose of superannuation pension is not available for counting service in the railways for obtaining complimentary passes after retirement. What is required to be counted is actual service in the railways. Far from helping the respondent this judgment supports the view which we have taken. The provisions of other Rules cannot be imported into Railway Servant (Pass) Rules, 1986 unless these Rules so provide or unless any of the other Rules so provide.

It was also contended by the respondent that Railway Servant (Pass) Rules, 1986 were not in existence when he joined the railways and, therefore, these Rules cannot be applied to him. However, when a pension joins a Government service such as the railways, he knows that his service conditions are liable to change either by amendment or addition of statutory Rules and other administrative instruction. He will be government by the Rules in force at the time when he retires. He acquires no vested rights by reason of the Rules which were in force at the time when he joined the Government services.

The respondent also contended that in the case of other officers who have retired with less than 20 years of railway service, the Railway Board had relaxed the Rules in order to grant complimentary railway passes to these officers after retirement. His case was also similarly recommended but the Railway Board has declined to relax the Rules in his favour. Looking to the Railway Servant (Pass) Rules, 1986, and the actual years of service rendered by the respondent with the railways, this is not a fit case where one can recommend any relaxation of Rules by the Railway Board assuming that the Railway Board has such power to relax the Rules. Learned counsel for the appellants has stated before us that in view

of the fact that the respondent took voluntary retirement, and the railways lost many years of service of the respondent, the Railway Board did not consider this a fit case for relaxation of Rules. The respondent who retired voluntarily on 1.4.1987 would have otherwise retired in the year 1991. The Railway Board applied its mind to the request and has refused to exercise its discretion, even if we assume that the Railway Board had the power to relax the Rules. Hence this submission also has no merit.

The appeal is, therefore, allowed and the impugned order of the Tribunal is set aside. The application filed by the respondent before the Tribunal is dismissed. There will, however, be no order as to costs.

