

SUPREME COURT OF INDIA

Union of India

Vs.

V.D. Dubey (D) By Lhr.

C.A.No.523 of 2005

(J.M. Panchal and K.S.Radhakrishnan JJ.)

08.12.2009

JUDGEMENT

K.S. Radhakrishnan, J.

1. The question that arises for consideration in these cases is whether the Rule 2423-A of the *Indian Railway Establishment Code* as amended, which provides for adding certain period of service, to the qualifying service for superannuation pension, would be available to those who retire from service after 31st March, 1960, irrespective of the fact whether the recruitment rules at the time of their appointment had contained such a specific provision or not.

2. The Railway Administration took up the stand that only if the recruitment rules conferred such a provision the benefit of added years of service, for superannuation pension, would be available. The High Court in all these cases took a consistent view that what is relevant is the date of retirement, not the date of entry in service.

3. Rule 2423-A as it originally stood, stated that an officer appointed to his service or post on or after 1st April, 1960 was eligible to add to his service qualifying for superannuation pension, the actual period not exceeding 1/4th of the length of his service or actual period by which his age at the time of recruitment exceeded 25 years or a period of five years whichever is less provided the post held by him is one for which post graduate research or specialized qualification or experience in scientific technological or professional field is essential and to which candidate of more than 25 years of age are normally recruited. Rule was again amended on 15.11.1976 adding a proviso stating that the concession shall be admissible only if the recruitment rules in respect of a service/post contain such a provision. Rule was again amended stating that the benefit of added years of service under Rule 2423-A/R-II would be admissible to all those who retire from service or posts after 31.3.1960 and who were otherwise eligible under Rule 2423-A/R-II which was made effective from 28th October, 1997.

4. In Civil Appeal No. 523 of 2005, the respondent joined service on 4.8.1959 as Court Inspector in the Western Railway and he retired from service on superannuation as Deputy Chief Vigilance Officer from Central Railway on 31.12.1989. The respondent claimed the benefit of added years of service, the same was, however, denied to him. The reason for denial was that the recruitment rules did not contain such a provision. Further it was also stand of the Railway Administration that the recruitment rules of law inspector were amended only in the year 2000 and the provision in respect of addition of service was effected only then by the time the respondent had retired from service and hence he would not get benefit of Rule 2423-A/R-II.

5. Aggrieved by the stand taken by the Railway Administration, the respondent approached the Central Administrative Tribunal, Bombay Bench filing O.A. No. 473/2002. The Tribunal allowed the application and directed the Railway Administration to fix the pension of the respondent adding to his service, the period by which the respondent at the time of recruitment exceeded 25 years of service or a period of five years whichever is less for the purpose of calculating the pension. The Railway Administration took up the matter in appeal before the Bombay High Court. The High Court endorsed the view taken by the Tribunal and reiterated that in view of the provisions contained in Rule 2301 of the Indian Establishment Code, the pensionable Railway servants claims to pension is regulated by Rules enforced at the time when he resigns or is discharged from service from the Government. The Bench also noticed that Rule 2423 as it 4 originally stood was found incongruous and consequently it was amended on 4.12.1987, whereby it was decided the benefit of added years of service under the Rule 2423-A/R-II was made admissible to all those who retire from service or posts after 31st March, 1960 and who are otherwise eligible under Rule 2423- A/R-II. It was, therefore, held that the Rule as stood after modification is that those who retire from service or posts after 31.3.1960 would get the benefit of adding to their service the period as may be admissible for calculation of pension.

6. In Civil Appeal No. 1024 of 2005, the respondent joined Railways as Assistant Surgeon on 23.10.1942 after having crossed the age of 25 years. While in service he took his master degree in general surgery. On 2.1.1959 he was appointed as D.M.O. Class-I Medical Officer through Union Public Service Commission and the respondent rejoined service in Central Railway. Respondent also claimed the benefit of the Rules which we have referred to in the earlier part of the judgment. The same was denied, hence, he approached the Central Administrative Tribunal which has rejected his application. The respondent took up the matter in appeal with the Division Bench of the Bombay High Court and the appeal was allowed holding that the respondent is entitled to the benefit of Rule 2423-A as amended and the Railway Administration was directed to give the benefit of added years of service, for reckoning the qualifying service for pension.

7. In Civil Appeal No. 1025 of 2005, the first respondent joined service in the Indian Railway Medical Service on 26.10.1958 and the second respondent in November, 1957. Both respondents while in service had acquired their post graduate qualifications. The first respondent retired from service on superannuation on 1.9.1979 and the second respondent retired on superannuation on 11.9.1986. Since both the respondents retired from services

after 31.3.1960 they claimed the benefit of Rule 2423-A by adding certain years of qualifying years of service for pension. Since the same was denied, they approached the Tribunal but the Tribunal dismissed their applications. They took up the matter before the Bombay High Court. The Division Bench of the Bombay High Court allowed their appeals by placing reliance on the judgment in writ petition No. 594 of 2003 (against which CA No.1024/05 has been filed before this Court) and gave a direction to the Railway Administration to give benefit to the respondents as per Rule 2423-A of the Indian Railway Establishment Rules.

8. Learned Additional Solicitor General submitted the Rule 2423-A/R-II as amended in the year 1976 provided that the benefit of added years of service can only be granted to whom if the recruitment Rules confers such a benefit when a person is appointed. Learned senior counsel submitted that the respondents were appointed in service when the recruitment rules did not provide such a provision. Learned counsel also submitted that for the first time the provisions were made in the year 2000 for granting benefit of added years of service vide letter dated 10.11.2000 and prior to that the Law Assistants were not 6 entitled to such benefits. Learned counsel further submitted that the respondent retired in the year 1989 by which time amended provision of Rule 2423-A of Indian Railway Establishment Code which came into existence on 15.11.1976 was in force and at that time recruitment Rules for the Court Inspector/Law Assistant did not contain the specific provision regarding the admissibility of addition to the qualifying service of pensionary benefits. Similar was a contention raised in respect of other two cases also.

9. Learned senior counsel appearing for the respondents on the other hand placed heavy reliance on the Rule 2301 on the Railway Pension Rules and submitted that pensionable Railway Servants Claim is regulated by the Rules in force and at the time when a Railway servant resigns or is discharged from service. Learned senior counsel also fully endorsed the view expressed by the Division Bench of the Bombay High Court for interpretation of Rule 2423-A and submitted if the interpretation given by the learned Additional Solicitor General is accepted then the very object and purpose of the amendment of Rule 2423-A would be defeated.

10. We have already referred to the relevant provisions in the earlier part of the judgment. Looking at the various amendments effected to Rule 2423- A, we are clearly of the view that the benefit of adding certain years of service under Rule 2423-A is intended to be given to all those officers who retire from service after 31st March, 1960 which is more clear when we look at Rule 2301 of 7 the Railway Pension Rules which says a pensionable Railway servant's claim to pension is regulated by Rules in force at the time when he resigns or discharged from the service.

11. Persons who retire from service after 31.3.1960 form a class by themselves irrespective of their entry in service. Further classification or differentiation among them was never intended by Rule 2423-A as amended from time to time read with Rule 2301 of the Railway Pension Rules. Rule 2423- A IREC as amended therefore, in our view, would apply to those categories of employees who have retired from service after 31.3.1960 for adding requisite

number of years to their qualifying service, so as to claim the pensionary benefits. The scope of the proviso of Rule 2423-A of REM Vol. II came up for consideration before this Court in *Secretary (Estt) Railway Board and Another v. D. Francis Paul and others*¹, and this Court held that amendment cannot have retrospective effect in respect of person 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. Therefore the provision which states that the concession be admissible only if the recruitment rule provides so, would operate only prospectively. We fully endorse this view.

12. Civil Appeals are, accordingly, dismissed with the directions to the Appellants to calculate the pensionary benefits and disburse the same to the respondents at the earliest.

¹(1996) 10 SCC 134