*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on November 27, 2015
Judgment delivered on December 1, 2015

\+   **W.P.(C) 969/2014**

V.K. AGGARWAL & ORS ...... Petitioners
Through: Mr.M.S.Saini, Adv.
versus
CHAIRMAN & M.D, IRCTC & ORS ..... Respondents

Through: Ms.Raavi Birbal, Adv. with Mr.Shri Ram Chauhan, Adv. for R-1
Mr.Jagjit Singh, Adv. with Mr.Preet Singh, Ms.Shipra Shukla and Mr.Pranav Agrawal, Advs. for R-2 & R-3
Mr.A.P.Singh, Adv. for R4-UOI

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. In this writ petition, the petitioners have sought the following reliefs:

> *"(i) allow the Writ Petition with costs;*
>
> *(ii) Issue an Order or direction or Writ in the nature of Mandamus commanding the Respondents to discharge their statutory liability for payment of Pension/family pension to petitioner absorbees with all consequential retirement benefits to which they are entitled on their superannuation/retirement by counting the service rendered by them in the Railways and combining the total service rendered by them in the Railways and in the IRCTC for the purpose of*

pensionary benefits in terms of the terms and conditions of their service and the provisions contained in Rule 53A of the Railway Services (Pension) Rules, 1993 by creating Pension Fund without any further delay;

(iii) to issue order or direction for any further consequential relief to the petitioners.

2. Some of the relevant facts are, the petitioners were appointed in the Catering Department of the Indian Railways in the year 1987-1988. In the year 1999, Ministry of Railways created a Public Sector Enterprise known as Indian Railways Catering and Tourism Corporation (IRCTC), the respondent No. 1 to upgrade and professionalise catering services. On March 31, 2003, Ministry of Railways notified terms and conditions, laying down for payment of pension to railway staff consequent upon conversion of Catering Department of the Indian Railways into IRCTC. It is a matter of record, the petitioners belong to Catering Department, were transferred along with the other employees on deemed deputation basis to IRCTC. In the month of April, 2005, the Ministry of Railways accorded approval to the proposal of IRCTC for creating Gazette cadre in IRCTC. Accordingly, IRCTC notified the applications from eligible railway staff, who were on deemed deputation in IRCTC for selection to the post of Assistant Manager in the Grade of Rs. 10750-12000/- (IDA), equivalent to Group-B in Railways. The petitioners, who applied

through proper channel, were found successful and were issued terms of appointment. It is a matter of record that the terms of appointment stipulated that the petitioners would be entitled for pensionary benefits on the basis of combined service rendered by them in the Railways and in the IRCTC in accordance with the formula for calculating pensionary/family pension under the Railway Services (Pension) Rules, 1993. In the meantime, on March 10, 2005, the Railway Board amended the Pension Rules, incorporating the Rule 53A in the Railway Services (Pension) Rules, 1993. On their appointment, the petitioners were absorbed in IRCTC as Assistant Managers/Catering in the Grade of Rs. 10500-16750. The case of the petitioners is that, despite their representations, their grievances for grant of pension in terms of Rule 53A was not responded. It is only on an application under the R.T.I. Act, a reply was given by IRCTC on January 3, 2014, which I reproduce as under:

> *"1.3 Pensionary liabilities in respect of the employees who have opted for pension on the basis of combined service, for the service rendered till the date of absorption can be transferred only after creation of pension fund. The decision regarding the same is pending with Ministry of Railways.*
>
> *2. As per the present practice, settlement dues of Railways employees of Catering Cadre working in IRCTC, are being settled on pro-rate basis i.e. pension and other settlement dues are settled by concerned*

Railways for the period of service rendered in Railways and IRCTC is discharging its liabilities to the optees for their length of serviced in IRCTC by way of one time 100% commutation of pension and differential of other settlement dues."

3. I may only note here, one of the petitioners i.e petitioner No.1 has retired. I have been informed that he has been given pension for the service put in by him in the Railways before his absorption in IRCTC. Similarly, the IRCTC had also granted one time 100% commutation of pension apart from settling the other dues. The respondents have filed their counter-affidavits, wherein, they have contested the claim of the petitioners. The IRCTC-respondent No. 1 in its reply has taken the following stand:

> *"5. The Ministry of Railways incorporated a PSE IRCTC as an extended arm of Indian Railways to upgrade, professionalize and manage catering and hospitality service In the year 1999 and in order to achieve the mandate, proposed to transfer all catering and vending activities along with railway catering staff to IRCTC on as is where is basis vide letter no. 2002/TG3/600/5 dated 04.02.2002. An option was given to the Railway employees either to get absorbed or to seek repatriation and redeployment in other department.*
>
> *6. Accordingly the Railway employees of Catering Department of Indian Railways were transferred enmasse to IRCTC in terms of –Foreign Service without any deputation allowance till such time they get absorbed in IRCTC.*
>
> *7. IRCTC, in order to create its own catering cadre, invited applications for the post of Assistant Manager Catering on all India basis from all deputationist as on 6.4.05, deemed*

deputationist working in IRCTC and catering staff on catering cadre of Indian Railways. The petitioners along with others applied for the said post and after selection process, they were appointed as Assistant Manager catering services in IDA scale of Rs. 29,100-54000 in the year 2007 and joined as such. However Ministry of Railway announced Catering Policy 2010, whereby mandate of Catering Services assigned to IRCTC was taken back and all units vested in the Railways except Food Plaza, Food Courts and Fast Food Units. The Catering Cadre which was converted into IRCTC vide letter dated 4.2.2002 stood restored in the Railways vide RBE no. 187/2010 and an option was called from the staff of Catering Department working in other departments of Railways and deemed deputationist for their deployment n the catering department.

8. It may also be mentioned that no decision has yet been taken in regard to the pension scheme by the concerned authority. Without prejudice to other submissions, it is submitted that the responsibility to create the Trust vests in the Ministry of Railways and as such, Instruction are awaited from the said department. It may also be mentioned that in the interest of the employees and as an interim measure, settlement dues of absorbed Railway employees are being settled on pro-rata basis discharging liability of the IRCTC on 100% commutation basis."

4. The respondent Nos. 2 and 3 have taken a similar stand as taken by the respondent No. 1- IRCTC. That apart, it is their case that a formal notice of relieving the employees from Railways to IRCTC was issued on December 8, 2005 and September 21, 2006. It is also stated that the petitioner No. 1 has retired on October 31, 2014 from IRCTC. His final dues from Railways have been calculated on the basis of his pay in Railways at the time of his absorption in IRCTC i.e. on November 21,

2005.

5. Mr.M.S.Saini, learned counsel appearing for the petitioners has reiterated the stand taken in the writ petition. He would argue that in terms of the appointment letter, the petitioners being entitled to pensionary benefits on the basis of combined service of Railways and IRCTC, the respondents are required to give the pensionary benefits on that basis only and now, cannot resile from their solemn stand in the appointment letter. He has drawn my attention to Rule 53A of the Railways Services (Pension) Rules, 1993 as inserted with effect from September 30, 2000. He would state, under the said Rules also, a Railway servant, who has been absorbed as an employee of public sector undertaking or autonomous body, as the case may be, shall be eligible for pensionary benefits on the basis of combined service rendered by him or her in the Railways as per the formula laid down under the Rules. According to him, the petitioners are entitled to the benefits as claimed for in the petition.

6. On the other hand, Ms. Raavi Birbal, learned counsel appearing for the respondent No. 1 would contest the claim and submit that in the year 2010, the Catering Department has been re-transferred back to the Ministry of Railways. According to her, Rule 53A which was inserted in the Railway Services (Pension) Rules have not been given effect to. She

would also state, the said Rule would have been operational only in the eventuality, there was an en-masse absorption of the persons working in the Catering Department in IRCTC for which, the IRCTC was formed. The Catering Department having been re-transferred back, in the absence of any Pension Fund (having not been created by the Central Government), Rule 53A has no application. It is her case that the petitioners' appointment was a fresh appointment as Assistant Managers/Catering in IRCTC. No doubt, clause 4 of the terms of appointment, states that, they would be entitled to the pensionary benefits on the basis of combined services of Railways and IRCTC, but that was subject to the guidelines issued by the Railways. She would also state, that even in terms of March 31, 2003 notification, the only manner in which, the pensionary benefits need to be given is that the petitioners would be entitled to pro-rata pension for the service rendered in the Railways and separately for the service rendered in IRCTC which has been done in this case. It is her case that the reliefs as prayed for by the petitioners, cannot be granted.

7. Mr.Jagjit Singh, learned counsel appearing for the respondent Nos. 2 and 3 would reiterate the submissions as made in their counter-affidavit by the said respondents. That apart, he would also reiterate the submission as made by Ms. Raavi Birbal, keeping in view the

notification dated March 31, 2003 and Rule 53A of the Railways Pension Rules.

8. Having heard the learned counsel for the parties, it is not disputed that the petitioners were initially on deemed deputation to IRCTC. It is also not disputed that subsequently, the petitioners have applied for recruitment in IRCTC under a special drive and were appointed as Assistant Managers (Catering) not in CDA scale but in IDA scale. It is also not disputed that the services under the IRCTC is not a pensionable service. That being so, it is to be determined whether Rule 53A has an applicability in the case of the petitioners. Some of the provisions of Rule 53A of the Railway Pension Rules are as under:-

> *"53 A. Conditions for payment of pension on absorption consequent upon conversion of a Railway Department into a Central autonomous body or a public sector undertaking:-*
> *4. The permanent absorption of the Railway servants as employees of the public sector undertaking or autonomous body shall take effect from the date on which their options are accepted by the Government and on and from the date of such acceptance, such employees shall cease to be the Railway servants and they shall be deemed to have retired from railway service.*
>
> *5. Upon absorption of Railway servants in the public sector undertaking or autonomous body, the posts which they were holding in the Government before such absorption shall stand abolished.*
>
> *6. The employees who opt to revert to railway service shall be re-deployed through the surplus cell of the Railway.*

8. A permanent Railway servant who has been absorbed as an employee of a public sector undertaking or autonomous body, as the case may be, shall be eligible for pensionary benefits on the basis of combined service rendered by him or her in the railways and in the public sector undertaking or autonomous body in accordance with the formula for calculation of pension or family pension under these rules as may be en force at the time of his retirement from the public sector undertaking or autonomous body, as the case may be.

13. The Government shall create a Pension Fund in the form of a trust and the pensionary benefits of absorbed employees shall be paid out of such Pension Fund.

14. The Member Staff, Railway Board shall be the Chairperson of the Board of Trustees which shall include representatives of the Ministries of Finance, Personnel, Public Grievances and Pensions, Labour, concerned public sector undertaking or autonomous body and their employees and experts it he relevant field to be nominated by the Government.

15. The procedure and the manner in which pensionary benefits are to be sanctioned and disbursed from the Pension Fund shall be determined by the Government on the recommendation of the Board of Trustees.

16. The Government shall discharge its pensionary liability by paying in lump sum as a one time payment to the Pension Fund the pro rate pension or service gratuity and retirement gratuity for the service rendered till the date fo absorption of the Railway servant in the public sector undertaking or autonomous body.

21. Payments of pensionary benefits of the pensioners of a railway department on the date of conversion of it into a public sector undertaking or autonomous body shall *continue to be the responsibility of the Government and the mechanism for sharing its liabilities on this account shall be determined by the Government."*

9. A perusal of the aforesaid provisions would reveal, Rule 53A was incorporated to meet the eventuality of employees working in the Catering Department are absorbed enmasse in the Public Sector Undertaking or Central Autonomous Body like the IRCTC. The appointment/absorption of the petitioners in IRCTC is not a case of enmasse absorption of persons working in Catering Department of the Railways. Rather, I note, the respondent No.1 has in para 7 of the counter-affidavit, which has been noted above, has stated, however Ministry of Railway announced Catering Policy 2010, whereby mandate of Catering Services assigned to IRCTC was taken back and all units vested in the Railways except Food Plaza, Food Courts and Fast Food Units. The Catering Cadre which was converted into IRCTC vie letter dated 4.2.2002 stood restored in the Railways vide RBE no.187/2010. That be so, surely there is no enmasse absorption of employees, who have come on deemed deputation from the Catering Department of the Railways. In the case of petitioners, even though, they had come on deputation but they having been appointed/absorbed under a special drive as Assistant Manager, Catering, their absorption is not an

absorption as contemplated under Rule 53A. I note for benefit, that there is no pension fund created by the respondent Nos.2 & 3. In fact, it is a matter of record that such a decision is still pending with the respondent Nos.2 & 3. The same is a different aspect that would have no bearing on the reliefs sought for by the petitioners in this petition.

10. Insofar as the submission of Mr. Saini, that the terms of appointment of the petitioners stipulate that pensionary benefits shall be granted to the petitioners on the basis of combined service rendered by them in the Railways and in the IRCTC is concerned, the said stipulation reads as under:-

> *"4. You will be eligible for pensionary benefits on the basis of combined service rendered by you in the Railways and in the IRCTC in accordance with the formula for calculating pension/family pension under the Railway service (Pension) Rules 1993 as may be in force at the time of your retirement from IRCTC and as per guidelines issued by the Railway Board on the subject."*

11. This argument of Mr. Saini is not in conformity with the relief sought for, by the petitioners, which is based on Rule 53A. The aforesaid stipulation in the appointment letter reveals that the pension of combined service shall be payable as per the guidelines issued by the Ministry of Railways. The guidelines, which have been issued by the Ministry of Railways respondent Nos.2 & 3 when the appointment was effected, was by way of inserting Rule 53A to the Railway Services (Pension) Rules

1993, which in the conclusion of this Court above is not applicable to the petitioners. No Rules have been shown to the Court, which contemplate grant of pensionary benefits on the basis of combined service of Railways and IRCTC. The reliance placed on circular dated March 31, 2003, which even though through (viii) contemplate that a permanent railway servant, who has been absorbed as an employee of IRCTC, shall be eligible for pensionary benefits on the basis of combined service rendered by him in the Railways and in the IRCTC in accordance with the formula for calculation of pension/family pension under Railway Services (Pension) Rules 1993 as may be in force at the time of his retirement from IRCTC, the said circular has been not made applicable to the Railway employees on deputation to IRCTC, who belong to other departments of the railways than the Catering Department, on their absorption in IRCTC. Such employees, on their absorption in IRCTC, shall be eligible for pro-rata pensionary, etc. benefits. On their absorption in IRCTC, they shall be governed by the PSU rules in respect of their service in IRCTC as distinct from the Rules pertaining to absorbed employees of erstwhile Catering Department of the Railways. The relevant paragraph of communication dated August 26, 2005 is reproduced as under:-

> "2. *The provisions under the letter dated 31.3.2003 shall not apply to the Railway employees on deputation to IRCTC, who belong to other departments of the railways*

than the Catering Department, on their absorption in IRCTC. Such employees, on their absorption in IRCTC, shall be eligible for pro-rate pensionary, etc. benefits in terms of Board's letter No.F(E)III/86/PN-1/5 dated 16.4.1986. F(E)III/84/PN1/4 dated 25.6.1987 and F(E)III/84/PN1/9 dated 10.7.1995. On their absorption in IRCTC they shall be governed by the PSU rules in respect of their service in IRCTC as distinct from the IRCTC rules pertaining to absorbed employees of erstwhile Catering Department of the Railways."

12. From the aforesaid, it is clear that, it is only in the eventuality, an employee in Catering Department, who had come on deemed deputation is absorbed in the IRCTC, the pension in regard to such employee is to be granted on the basis of combined service of Railways and IRCTC, which is in conformity with Rule 53A, which is not a case here as I have already concluded above in that regard, that they had been appointed as Assistant Managers through a special drive, unlike an enmasse absorption of the employees, who have come from Catering Department. This submission of Mr. Saini, needs to be rejected.

13. I do not see any merit in the writ petition. The same is dismissed.

(V.KAMESWAR RAO)
JUDGE

DECEMBER 1, 2015
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