

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1793 OF 2016

Dr. G. R. Sharma,	]	
Ex-Member (Judicial),	]	
Railway Claims Tribunal	]	
and presently at:	]	
12, 2 nd Floor,	]	
Western India House,	]	
Sir P. M. Road, Fort,	]	
Mumbai-400 001	]	..Petitioner

Versus

1] Union of India	]	
Through: The Chairman,	]	
Railway Board,	]	
Ministry of Railways,	]	
Rail Bhavan, New Delhi-110 001	]	
2] The Chairman,	]	
Railway Claims Tribunal	]	
Principal Bench,	]	
13/15 th Mall Road,	]	
New Delhi-110 054	]	..Respondents

Mr. Rahul Walia, Advocate for the Petitioner.

Mr. Suresh Kumar, Advocate for the Respondents.

**CORAM : B. R. GAVAI &
RIYAZ I. CHAGLA, JJ.
DATE : 4th DECEMBER, 2018**

ORAL JUDGMENT (Per B. R. Gavai, J)

1] Rule. Rule made returnable forthwith. Heard finally by

consent of the parties.

2] By way of present Petition, the Petitioner has approached this Court challenging the orders dated 30th October 2006 and 20th February 2007, vide which the Petitioner has been informed that his leave account shows that he had taken excess leave of 9 ½ days in the five year of his service and as such, he is entitled to pension only for four years completed service and not five years completed service.

3] The facts giving rise to the present Petition are as under :-

The Petitioner came to be appointed as a Member (Judicial) in the Railway Claims Tribunal vide order dated 25th May 2001. The Petitioner's appointment was for a period of five years in accordance with the Railway Claims Tribunal (Salaries and Allowance and Conditions of Services of Chairman, Vice-Chairman and Members) Rules 1989 (herein-after referred to as "the said Rules"). The Petitioner in pursuance to the order mentioned aforesaid, joined office of Member (Judicial) of the said Tribunal on

30th July 2001. The Petitioner completed his five years tenure on 28th July 2006. After the Petitioner demitted his office, the Additional Registrar of the Tribunal vide notice dated 31st May 2006, notified that the Petitioner had completed five years tenure on 28th July 2006 in terms of Section 7 of the Railway Claims Tribunal Act, 1987. The Respondent authority also issued a Clearance Certificate for final settlement on 16th June 2006. In the said certificate under clause 9, it was certified that no disputed and admitted debits are outstanding to the Railway administration. The Assistant Registrar of the Ahmedabad Bench, wherein Petitioner was working, also informed the Additional Registrar of the Tribunal that there were four leaves against pay (LAPs) and three numbers of half leaves against pay (HLAPs) to the credit of the Petitioner. The detailed chart of the leave statement was also forwarded alongwith said communication.

4] However, subsequently vide communication dated 30th October 2006, the Petitioner was informed by the Additional Registrar of the Tribunal that the Petitioner had taken excess leave of 9 ½ days and had not completed five years and as such, was not

entitled for five years pension, but was entitled for the pension only for four years. The representation made by the Petitioner, being aggrieved by not grant of pension for five years also came to be rejected vide communication dated 20th February 2007.

5] Being aggrieved thereby, the Petitioner initially approached the learned Central Administrative Tribunal. In the said proceedings, an issue regarding jurisdiction was raised by the Respondents and as such, learned Tribunal granted liberty to withdraw the said OA with liberty to file appropriate proceedings. As such, the Petitioner has approached this Court by way of present Petition.

6] We have heard Mr. Rahul Walia, learned counsel for the Petitioner and Mr. Suresh Kumar, learned counsel for the Respondents.

7] Mr. Rahul Walia, learned counsel submits that firstly, the action of the Respondents in holding that the Petitioner had taken excess leave of 9 ½ days is totally incorrect. It is submitted that when the Petitioner had completed his five years service, upon

scrutiny of the entire record, the Additional Registrar himself had certified that there were no dues against the Petitioner. As a matter of fact, the Petitioner had four LAPs and three HLAPs to his credit. It is submitted that as such, the subsequent action is only by way of an after thought. He submits that assuming for a moment the Petitioner had taken excess leave of 9 ½ days, that by itself would not be a ground for denying him pension, when he had almost completed the entire five years.

8] Mr. Suresh Kumar, learned counsel on the contrary submits that as per the relevant rules, a member of the Tribunal is required to complete year of service for being entitled to pension for that particular year. It is submitted that since the Petitioner's service was short by 9 ½ days, as such, it could not be said that he has completed five years of service and therefore, he has been rightly denied the pension for the fifth year.

9] It will be relevant to refer to Rule 8 of the said Rules :-

“8. Pension.- (1) Every person appointed to the Tribunal as Chairman, Vice-Chairman or Member shall be entitled to pension :

Provided that no such pension shall be payable to such person -

(i) if he has put in less than two years of service : or

(ii) if he has been removed from an office in the Tribunal under sub-section(2) of Sec. 8 of the Act.

(2) Pension under sub-rule (2) shall be calculated at the rate of rupees seven hundred per annum for each completed year of service subject and irrespective of the number of years of service in the Tribunal, the maximum amount of pension shall not exceed rupees three thousand five hundred per annum.

Provided that the aggregate amount of pension payable under this rule, together with the amount of any pension including commuted portion of pension (if any), drawn or entitled to be drawn, while holding office in the Tribunal, shall not exceed rupees four thousand per mensem.”

10] Perusal of sub-rule (1) would reveal that a person appointed to the Tribunal as a Chairman, Vice-Chairman or Member is entitled to the pension, if he has put in more than two years of service. However, if a person is removed from office, he shall not be entitled for the pension. Perusal of sub-rule (2) of the Rule 8 would reveal that it provides for the manner in which the pension is to be calculated. It provides that the pension shall be calculated at the

rate of Rs.700/- per annum, for each completed year of service. However, it provides that irrespective of the number of years of service in the Tribunal, the maximum amount of pension shall not exceed Rs.3500/- per annum.

11] Perusal of Rule 6 would reveal that Chairman, Vice-Chairman or Member of the Tribunal are also entitled to earned leave at the rate of fifteen days for every completed year of service or a part thereof. They are also entitled to half pay leave on medical certificate or on private affairs, at the rate of twenty days in respect of each completed year of service. It could further be seen that members etc. are also entitled to extraordinary leave without pay and allowance upto a maximum period on one hundred and eighty days in one term of office.

12] Perusal of the material placed on record would clearly show that when the Petitioner demitted his office, the entire scrutiny with regard to service record was made by the competent authority and after doing that, Clearance Certificate for final settlement was also issued. Not only that but the Assistant Registrar has also informed the Additional Registrar that there were four LAPs

and HLAPs to the credit of the Petitioner.

13] In that view of the matter, we find that the subsequent action by the Respondents is nothing else, but by way of an after thought. In any case, assuming for a moment that the Petitioner had taken excess leave of 9 ½ days, in view of Rule 6(1)(iv), at the most, the said period of 9 ½ days could have been treated as a leave without pay and the Petitioner be paid pension for the fifth year of completed service. We find that when the Petitioner had almost rendered his complete service in the fifth year, denial of pension for his completed service of the fifth year is wholly arbitrary and unjust. In that view of the matter, we are inclined to allow the Petition.

14] In the result, we pass the following order :-

ORDER

- I] The impugned orders dated 31st October 2006 and 20th February 2007 are quashed and set aside.
- II] It is held and declared that the Petitioner is entitled to the pension of fifth year of completed service in

addition to the what he has been held to be entitled to by the Respondents.

III] The Respondents to work out the pension payable to the Petitioner on the basis of aforesaid and start making revised payment from the month of January 2019.

IV] Arrears to be worked out on the basis of the aforesaid order shall be paid within a period of three months from today.

V] Rule is accordingly made absolute in the aforesaid terms.

[RIYAZ I. CHAGLA, J.]

[B. R. GAVAI, J.]