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C.A.No. 6502 OF 2001
ITEM No.108

COURT NO.9

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO. 6502 OF 2001@@
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SADANANDA SEN ...APPELLANT

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS
(With office report)

Date : 15/01/2003 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE H.K. SEMA

For Appellant (s) Mr. A.P. Mohanty, Adv.

For Respondent (s) Ms. Kumud L. Das, Adv.
Ms. Anil Katiyar, Adv.

UPON hearing counsel the Court made the following
O R D E R

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Mr. A.P. Mohanty, learned counsel for the appellant started his arguments at 12.20 p.m. and concluded at 2.30 p.m. Thereafter, Ms. Kumud L. Das, learned counsel appearing on behalf of the Union of India argued for 10 minutes.

The appeal is dismissed in terms of the signed order. No costs.

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Sarita (Shelly Sengupta)@@
AA
Court Master@@
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(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6502 OF 2001@@
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SADANANDA SEN ...APPELLANT

VERSUS

O R D E R@@
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The appellant questioned the validity of the order of his compulsory retirement dated 7.12.1988 before the Central Administrative Tribunal, Guwahati by filing O.A.No. 69 of 1991. The O.A. was admitted on 2/5/91. The same was dismissed for default on 16/1/95 and it was restored on 26/2/97. Again it was dismissed on default on 1/8/97 and it was restored on 17/3/98. The appellant by his letter dated 18th September, 1995 requested the Authorities to accelerate his claim for final settlement of pension. In the very first paragraph of the abovesaid letter the appellant, without any protest or reservation, accepted the order of his compulsory retirement as ordered by the Railway Administration with effect from 7/12/88. It appears, thereafter the appellant by filing a rejoinder on 23/3/98 before the Tribunal raised a plea that on the date of passing the order of compulsory retirement, on 7/12/88 he

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had not completed 30 years of service. There was nothing before the Authorities to show that the appellant had completed 30 years of qualifying service. The Tribunal, taking into consideration the correspondence that came into existence in regard to the settlement of the pension claim of the appellant, allowed the O.A. and set aside the order of compulsory retirement. The Railway Authorities challenged the order of the Tribunal by filing a writ petition before the High Court of Guwahati. The High Court in paragraph 7 of its order dated 1/4/2000, after noticing the relevant dates and events, has stated thus :

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"We find it difficult to reach a conclusion that the respondent/applicant did not complete thirty years of qualifying service as on 7.12.88 on the basis of the xxxxx xxxxxx letter dated 24.4.96 as well as the xxxx xxxxx note dated 17.4.96. We have already extensively quoted the communication dated 24.4.96 issued for the FA & CAO which was sent to the respondent/applicant. The said letter was sent to the respondent/applicant while the authority concerned was dealing/attending to his appeal dated 4.3.96 that was made before the Hon'ble Minister of Personnel Welfare, Govt. of India, that was sent to the Accounts Section through the General Manager, North East Frontier Railway. By the letter, the Accounts Section intimated their own calculation. The

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note referred to by the learned Tribunal dated 16.3.98, also on its own shows that the aforesaid communication dated 24.4.96 was not the correct reflection of the state of affairs. The above mentioned note clearly pointed out that the said letter dated 24th April, 1996 was issued immediately after the order of the FA & CAO on 23.4.96 and in view of the top priority, the details of the 'dies non' was not probably calculated correctly. The note also indicated that the Asstt. Accounts Officer, New Jalpaiguri should also be called for an explanation, as ordered by the FA & CAO. In these circumstances, it cannot be said that the respondent/applicant did not complete thirty years of service qualifying for pension.

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Aggrieved by the said order of the High Court, the appellant is before us in this appeal.

Learned counsel for the appellant contended on the basis of the grounds raised in the special leave petition and submitted that (1) the order of compulsory retirement was passed by an Authority not competent to do so and (2) on the date of passing the order of compulsory retirement, the appellant having not completed 30 years of qualifying service, the Authorities had no authority to pass such an order when pre-requisite to pass an order of compulsory retirement was not satisfied. Learned counsel for the respondents in the first place pointed out to the letter dated 18.9.95 to contend that it was not open to the appellant to turn round against his own letter having

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accepted the order of compulsory retirement while making claim for final settlement of his pension. It may also be noted that when the appellant applied for settlement of his pension on 18.9.95, even the O.A. itself was not pending before the Central Administrative Tribunal. The first ground was neither urged before the Tribunal nor before the High Court. Examination of the same may require the actual factual aspects. Hence it is rejected. As far as the second ground is concerned, we concur with the view expressed by the High Court. At any rate, the appellant by his letter dated 18.9.95 having accepted the order of his compulsory retirement unqualifiedly, i.e., without any protest or reservation, cannot be allowed to challenge the same now. Thus, viewed from any angle, there is no good reason to disturb the order under appeal. Hence the same is dismissed. No costs.

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.....J.
(SHIVARAJ V. PATIL)

New Delhi,

.....J.

January 15, 2002.

(H.K. SEMA)