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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2325 of 2002

New Delhi. this the 24th day of April, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Bhagyawati Madhukar  
W/o Late Shri Om Dutt  
R/o D-20 Tilak Bridge, Railway Colony,  
College Lane,  
New Delhi.

Applicant

Through H.P. Chakravorty,  
Advocate  
CAT, Bar Room,  
Principal Bench.  
New Delhi.

By Advocate: Shri H.P. Chakravorty.

Versus

1. Union of India through  
The Chairman,  
Railway Board,  
Principal Secretary,  
Government of India,  
Ministry of Railways,  
Rail Bhawan,  
New Delhi.
2. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.

RESPONDENTS

(By Advocate: Shri R.L. Dhawan)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

In this OA the applicant impugns Annexures A-1, A-2, A-3 and A-4 vide which the representation of the applicant for enhanced pension has been rejected.

2. The applicant who is the wife of late Shri Om Dutt had made a representation for enhanced family pension on the basis of counting of last 2 years of apprenticeship for the purpose of counting of family pension. Her representations had been rejected vide

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impugned orders.

3. Facts in brief are that Late Shri Om Dutt was selected as Special Class Railway Apprentice (SCRA) of 1975 batch and had worked as Apprentice for 4 years w.e.f. 1.3.76 in the Indian Railway Institute of Mechanical and Electrical Engineering Jamalpur. He completed the apprenticeship period on 28.2.1980 and thereafter he joined as Class-I Mechanical Engineer w.e.f. 1.3.80 as a Probationer. Subsequent to that he is stated to have died on 8.2.86. Thereafter his service was counted for the purpose of retiral benefits and for the purpose of grant of pension. The respondents counted the qualifying service w.e.f. 1.3.80 to 8.2.86. The applicant claims that he is entitled to claim 2 years from the apprenticeship period also as the last 2 years can be counted towards pension as per rules.

4. The respondents submitted that the rules do not permit the counting of 2 years out of the Apprenticeship period. The applicant for the purpose of this has sought support from the following rules. Paragraph 308 of the Manual of Railway Pension Rules, 1950 prescribe the cases in which pensionary benefits are not earned at all. However, there is an explanation which says that a special class apprentice is deemed to be apprentice only for the first 4 years of his apprenticeship and the last 2 years of apprenticeship will be treated as a period of probation. The relevant extracts of para 308 is reproduced hereinbelow:-

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308. Cases in which pensionary benefits are not earned at all - When the whole period of employment of an employee is in one or more of the following capacities, no claim to pensionary benefits is admitted-

- (i) xxx xxx xxx
- (ii) at casual market/daily rates:
- (iii) as an apprentice.
- (iv) xxx xxx xxx
- (v) xxx xxx xxx
- (vi) xxx xxx xxx
- (vii) xxx xxx xxx
- (viii) xxx xxx xxx

Explanation- For the purpose of these rules-

(1) A Special Class Apprentice is deemed to be an apprentices for only the first four years of his apprenticeship; the last two years of apprenticeship will be treated as a period of probation.

(2) All the posts on the Railways will be deemed to have been pensionable from the beginning".

5. Similarly the counsel for the applicant referred to para 407 which prescribe that periods which are not treated as service. It also says in the similar fashion that which period has to be counted for qualifying service. This rule also has an explanation. The said rule is reproduced hereinbelow for ready reference:-

407. Periods which are not treated as service - Periods of employment in any of the following capacities do not constitute service for pensionary benefits and the expression 'service' used in Paras 408-431 does not include any of these except as provided in Paras 404-406:-

- (i) xxx xxx xxx
- (ii) at casual market/daily rates:
- (iii) as an apprentice.
- (iv) xxx xxx xxx

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(v)	xxx	xxx	xxx
(vi)	xxx	xxx	xxx
(vii)	xxx	xxx	xxx
(viii)	xxx	xxx	xxx

Explanation- For the purpose of these rules-

(i) A Special Class Apprentice is deemed to be an apprentices for only the first four years of his apprenticeship; the last two years of apprenticeship will be treated as a period of probation.

(ii) All the posts on the Railways will be deemed to have been pensionable from the beginning; and

(iii) in the case of temporary or permanent Railway servants who are appointed as apprentices, and are thereafter absorbed permanently in the post/service for which they are apprentices, the period of apprenticeship will be treated as dies non, i.e., neither constituting a break in service nor counting as qualifying service if during that period they were paid stipend and not pay under Rule 2015 (FR 20) R.II".

6. The counsel for the applicant then referred to para 408 also which includes certain periods for the purpose of counting of service for pension. Rule 408 is also reproduced hereinbelow:-

"408. Periods included in service - Service counting for pensionary benefits includes, inter alia, period of probation of a Railway servant appointed as a probationer or on probation as also the last two years of apprenticeship of special class apprentices which are treated as a period of probation. It also includes all periods of 'deputation' (loan) to a State Government or to another Ministry/Department of Government of India when such deputation (loan) is on the understanding that on the expiry thereof the Railway servant will return to the Railway servant".

7. Though these rules have been revised in the year 1993 and the similar provision has been made in the Railway Services (Pension) Rules, 1993 in para 14 (vii) and Rule 23 which are also reproduced herein below:-

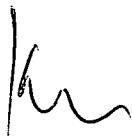
"14(vii) First four years of apprenticeship of Special Class Apprentices (the last two years of apprenticeship shall be treated as a period of probation).

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23. Counting of service on probation- Service constituting period of probation of a railway servant appointed as a probationer or on probation and also the last two years of apprenticeship period of Special Class Apprentices shall be treated as qualifying service".

8. The learned counsel appearing for the applicant submitted that according to the revised rules it is last 2 years of apprenticeship period which is to be counted for qualifying service and in this case the applicant has undergone course of apprenticeship during the period of 1.3.76 to 29.2.80 and probation w.e.f. 1.3.80 to 28.2.82. So out of 4 years of apprenticeship, the last 2 years should be counted towards the period of qualifying service for the purpose of pension whereas the respondents had taken the period only w.e.f. 1.3.80 to 8.2.86 and if 3 years are counted, then the applicant is entitled to enhanced pension.

9. In reply to this Shri Dhawan appearing for the respondents submitted that as per the Recruitment Rules earlier there was 6 years of apprenticeship out of which 4 years were practical training and last 2 years were treated though continued to be apprentice but the applicant was treated to be on probation. So out of 6 years, 2 years were counted for the purpose of qualifying service for grant of pension. Now since the period of apprenticeship has been reduced to 4 years and thereafter a candidate is put on probation for 2 years period only is to be counted for qualifying service so out of 4 years no period can be counted towards qualifying service. The learned counsel for the respondents referred to the Recruitment Rules of the year 1960 where apprentice undergoing a training for a period of 4 years and



immediately thereafter he shall be put on probation for a period of 3 years and it was the only period of probation which was to be counted for the purpose of grant of pension.

10. The counsel for the respondents further submitted that in case of apprentice the rules had been changed and the apprenticeship was confined only to the period of 4 years and straightaway thereafter the candidate was put on probation and from probation onwards the period was counted towards qualifying service for pension.

11. The counsel for the respondents also referred to letter written to the Director National Commission for SC/ST on the representation made by the applicant for the purpose of reckoning of 2 years of qualifying service and in detailed reply the Government of India, Ministry of Railways after referring to the Revised (Pension) Rules, 1993 stated in their letter that 4 years of the apprenticeship period are not to be counted for qualifying service for pension. In the same very letter it has been stated that earlier as per Recruitment Rules of 3.10.1959 the appointment and pay as probationer was to commenced from the date of six year of apprenticeship or the actual date of completion of training, whichever is later.

12. The rules were further modified by letter dated 10.12.1960 which also prescribed that service for increment, will, subject to paragraph 6 above, count from the date of appointment as probationer. So in their

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reply they have simply stated that the service for the purpose of qualifying service was to be treated from the date when the candidate is put on probation and it has also been mentioned that there has not been a single case where the candidate has been allowed benefit of qualifying service of 2 years out of total 4 years of apprenticeship period.

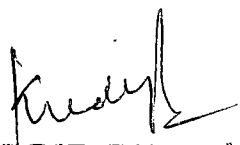
13. Thus the learned counsel for the respondents submitted that by no stretch of imagination 2 years period out of apprenticeship can be counted towards qualifying service for the purpose of pension.

14. From the pleadings and the arguments advanced by the rival counsel the only short question which involves decision by this court is whether out of 4 years apprenticeship period 2 years can be counted for qualifying service for the purpose of pension. The rules which have been quoted above go to show that Rule 308 prescribed that no pensionary benefits are earned during the period as an apprenticeship. The explanation provided to Rule 308 though it says that the apprentice is deemed to be an apprentice for first 4 years of his apprenticeship and last 2 years of apprenticeship shall be treated as period of probation. This explanation cannot be read in isolation. It has to be read along with the Recruitment Rules which prescribed earlier the 6 years period of apprenticeship when it was revised in 1960. This also stated that the appointment and pay as a probationer shall commence from the date of 4 years of apprenticeship or the actual date of completion of training whichever is later meaning thereby that one had

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to complete 4 years of apprenticeship minimum to come on the pay roll as probationer and only then he was entitled to pay as probationer. Paragraph 308 specifically excluded the period of apprentices during which the pensionary benefits are not earned at all. Similarly paragraph 407 says that the apprentice period is not to be treated as a service period. Though paragraph 408 says that the period of probation of Railway servant appointed on probation also includes the last 2 years of apprenticeship of Special Class Apprentices but this position was so when the apprenticeship was for 6 years and not 4 years. So these rules are to be interpreted as the same were then existing. Paragraph 407 and 23 specifically excluded the period of 4 years of an apprenticeship and then only when he is appointed on probation that period can be treated as service or as a qualifying service for the purpose of pension.

15. Thus I find that the interpretation, as suggested by the learned counsel for the applicant is a misplaced one and the same cannot be accepted. The OA is with regard to counting of service when the deceased employees was working as an apprentice is without any merits. The pension of the deceased employee had been rightly fixed after counting the qualifying service for grant of retiral benefits. No interference is called for. Accordingly, the OA is dismissed. No costs.

  
( KULDIP SINGH )  
MEMBER(JUDL)

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