

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/00727/2019

DATED THIS THE 28th DAY OF FEBRUARY, 2020

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

K.Vijayakumary
Aged 54 years
W/o.C.K.Prasantham
Residing at No.14
Gurukripa Nilaya
Magadi, Main Road
Bangalore-23
Working as Helper
Electrical TLD
Bangalore.

....Applicant

(By Advocate Sri K.Hanifa)

Vs.

1. Union of India
Rep. by General Manager
South Western Railway
Hubli, Karnataka-580020.

2. The Chief Personnel Officer
South Western Railway
Hubli, Karnataka-580020.

3. The Senior Divisional Personnel Officer
South Western Railway
Bangalore Division
Bangalore
Karnataka-560023.

....Respondents

(By Advocate Sri J.Bhaskar Reddy)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

Aggrieved by the refusal of reckoning his 50% of commission bearer service for retirement and service benefits by the respondents, the applicant has filed the present OA seeking the following relief:

- a. *To declare that 50% services of the applicant from the date of entry into Railway (25/1/1989 to 24/2/2001) as Commission bearer shall be reckoned for all service benefits including pensionary benefits and MACP, arrears thereto.*
 - b. *To direct the respondents to calculate all service benefits including the pension benefits in accordance with prayer A.*
2. The applicant submits that he entered the services of the Railways in Catering Department as Commission Bearer initially on the basis of an agreement on 25.1.1989(Annexure-A1). On the basis of judgment of the Hon'ble Supreme Court, all commission bearers including the applicant are granted the status of salaried commission bearer w.e.f.1.12.1983. The applicant was regularized on 24.2.2001. He submitted representation for considering his commission bearer service for pension and other benefits by taking into account the fact that 50% of commission bearer service of similarly placed employees was taken into consideration in other divisions namely Trivandrum, Palghat and whole of Tamil Nadu. But the said representation was not considered. The applicant submits that while calculating pension benefits the respondents did not take into account his commission bearer services despite the declaration of law by the Hon'ble Apex Court. A casual labourer in Railway attains temporary status on completion of 120 days continuous service. Applicant had attained temporary status after completion of 120 days from the date of his initial entry into the service. But the respondents did not reckon those periods for any service benefits even half of it for any other benefits including pensionary benefits. Delay in regularisation adversely affected his career prospects and it affected pensionary benefits also.

3. The applicant submits that following the dictum laid down by the Hon'ble Supreme Court, the Ernakulam Bench of this Tribunal in TAK No.316/1987 held that there exists a master and servant relationship, Railway has got absolute supervision and control and nature or relationship is of contract of service between commission bearers and Railways. Hon'ble High Court of Kerala in WP(C) No.15756/2006 held that 50% of commission bearer service will have to be reckoned for all service benefits including fixation of MACP and terminal benefits. In RA.No.275/2016 also, the High Court of Kerala held that 50% of commission service shall be reckoned for all service benefits. Consequently benefits were extended to similarly placed employees. The Madras Bench of this Tribunal also in OA.No.728/2014 & 558/2015 decided the issue in favour of the employees. By virtue of judgments of this Tribunal in OA.No.440/2003, 311/2010, 360/2011 & 417/2013, similarly placed commission bearers were granted pension benefits by taking into account their commission bearer services. The applicant is entitled to get 50% of his service for all service benefits, consequential increments and leave salary. The applicant is entitled to MACP benefits also since commission bearer services are at par with temporary status service. Therefore, there is no justifiable reason for 3rd respondent to reject the claim of the applicant. He did not take into account the law laid down by the Hon'ble Supreme Court, High Courts and Tribunals in the matter. Hence, the order passed by the 3rd respondent is bad, illegal and violative of Article 14 & 16 of the Constitution. Railway being a model employer should not have adopted an anti-labour policy in the matter of last Grade employees. Certain salaried commission bearers retired without any benefits after serving the Railways for more than 30 years.

4. The respondents have filed an MA for adopting the reply filed in OA.No.717/2019.
2. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The applicant in OA.No.717/2019 has filed a list of judgments on which he has relied upon. From the list of various judicial orders cited by the applicant, it is seen that all the points canvassed by the respondents for denial of the benefit as claimed by the applicant have been comprehensively dealt with right from OA.No.440/2003, 311/2010, 417/2013, 289/2018, 198/2019, 454-458/2019, 571-572/2019 & 695/2019 of the Ernakulam Bench of this Tribunal and in the decisions of the Madras Bench of this Tribunal in OAs.No.360/2011, 1193, 1217, 1327, 1872, 1918, 1968/2014 & 558/2015 and many writ petitions including WP(C).No.15756/2006 vide order dtd.20.3.2009 & WP(C).No.21511/2009(S) of the Hon'ble High Court of Kerala and related judgments wherein uniform orders have been issued to the respondents to count half the service rendered by the applicants in the above cases as commission bearers/salary commission bearers before their regular absorption while calculating pension and other terminal benefits. Therefore, there is no question of any further discussion on the subject and the respondents are directed to extend similar benefits to the applicant in this case as has been given in any number of similarly placed persons. In fact, in all the orders cited, the various Benches of this Tribunal have also extended the other service benefits including MACP and arrears etc., to the persons placed similar to the applicant and definitely for the purpose of calculating pension and pensionary benefits. We therefore quash Annexure-A2 in OA.No.717/2019 and direct the respondents to issue necessary orders considering half the service rendered by the applicant before his regular

absorption for all the consequential benefits. This they shall do so within a period of two(2) months from the date of issue of this order.

5. The OA is allowed as above. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred by the applicant in OA.No.170/00727/2019

Annexure-A1: Cash receipt dtd.25.1.1989

Annexures with reply statement:

-NIL-
