

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/00717/2019

DATED THIS THE 28th DAY OF FEBRUARY, 2020

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

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

Nagendra Kumar
Aged 66 years
S/o S.Mani Bhadriya
AC Technician
SBC Bangalore (Retd)
282, 46th Building, Shirkae Apartment
K.H.B.Colony, Kenkeri, Upanagara
Bangalore-560 060, Karnataka.

....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 vide their order

dtd.11.1.2019(Annexure-A2), the applicant has filed the present OA seeking the following relief:

- a. *To quash and set aside Annexure-A2*
 - b. *To declare that 50% services of the applicant from the date of entry into Railway (22/6/1979 to 22/11/1996) as Commission bearer shall be reckoned for all service benefits including pensionary benefits and MACP, arrears thereto*
 - c. *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 22.6.1979(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 22.11.1996 and retired on 31.5.2013. 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 3rd respondent rejected the said representation vide order dtd.11.1.2019(Annexure-A2). 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, on the other hand, have submitted in their reply statement that the OA has not been filed within the prescribed period of limit if the date of disposal of representation is taken into consideration. Hence, the OA is not maintainable and is liable to be dismissed.
5. The respondents submit that the applicant was engaged as commission bearer in the catering department of the Railways. He was not paid any salary and was paid only commissions for the sale carried out by him as per contractual agreement until absorption in Railways. In pursuant to the judgment of the Hon'ble Apex Court in the case of *T.I.Madhavan vs. Union of India (1998 Supp (1) SCC 437)* and having accepted the terms and conditions stipulated in offer of appointment vide letter dtd.11.9.1996, the applicant along with others was screened and absorbed on 22.11.1996 as AC Khalasi in Electrical department of Bengaluru Division on Pay Rs.750 in pay scale of Rs.750/940 plus other allowances, as admissible from time to time. He was promoted in his service career as per rules. He was superannuated from service on 31.5.2013. After his retirement, all the settlement benefits have been arranged as per rules. There is no rule/policy to count 50% of the period from the date of initial engagement as commission bearer to the date of regular absorption for the purpose of pensionary benefits. There is no instruction under IREC or IREM to regulate the period of engagement as commission bearers and hence the same is not covered as qualifying service under Railway Services (Pension) Rules, 1993. Commission bearers were engaged for selling food items on commission basis. Their very name infers their relationship. They could never have been treated at

par with casual labourers or contract labourers or regular employees and there was no employer and employee relationship between the Railway and the commission bearers. This relationship came into existence only from the date of absorption. Therefore, the services rendered as commission bearer was not taken into account for the purpose of calculating the pensionary benefits and settlement benefits were arranged as per rules. The Madras Bench of this Tribunal in OA.146/2015 filed by the applicant and others had given direction to the respondents to consider the representation of the applicant and pass speaking order. In compliance of which, the matter has been examined in detail and disposed of vide letter dtd.29.6.2017 by passing a detailed speaking order.

6. The respondents further submit that the order in OA.440/2003 that the half of the services rendered by the casual labourers to be counted for pensionary purposes was confirmed by the Hon'ble High Court of Kerala in WP(C) No.15756/2006. Though this order was challenged before the Hon'ble Apex Court in SLP(C) No.17410/2010, but was dismissed on the ground of delay. Dismissal of SLP without a speaking order would mean that the Apex Court was not inclined to exercise its discretion in granting leave to file the appeal, it does not attract the doctrine of merger and the view expressed in the order does not become the view of the Hon'ble Apex Court. The dismissal of SLP by a non-speaking order would remain a dismissal simpliciter in which permission to file the appeal before the Apex Court is not granted. This may be because of various reasons. It would not mean to be the declaration of law by the Hon'ble Supreme Court. The applicant has only sought the same analogy as that of casual labourers who are on a totally different footing. The casual labourers were initially engaged and subsequently granted temporary status and thereafter absorbed on the basis of

the direction of the Hon'ble Supreme Court. Whereas the applicant had entered into an agreement undertaking not to claim any remuneration/compensation other than the commission for the products sold. He cannot be equated with regular employees doing similar work. The recruitment rules and service conditions of Railways do not apply to the commission bearers on the cadre of Railway Catering Service, they are not subject to the disciplinary jurisdiction of the Railway authorities under the relevant rules. Therefore, the applicant is not entitled to any relief and the OA is liable to be dismissed in limine.

7. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The applicant 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 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.

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

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexure-A1: Cash receipt dtd.22.6.1979

Annexure-A2: Order dtd.11.1.2019 issued by R3

Annexures with reply statement:

-NIL-
