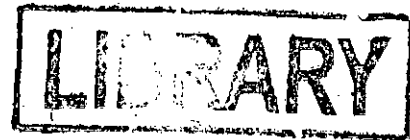


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA



Date of order : 09.12.2019

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

O.A. No.350/1517/2019 : Smt. Bina @ Binarani Choudhury

- Versus -

1. Union of India service through
The General Manager, S.E. Railway,
Gardenreach, Kolkata-700 043;
2. The General Manager, S.E. Railway,
Garden Reach, Kolkata – 700 043;
3. The Divisional Railway Manager,
S.E. Railway, Kharagpur,
District-Paschim Medinipur,
Pin-721 301;
4. The Sr. Divisional Personnel Officer,
S.E. Railway, Kharagpur, District-
Paschim Medinipur, Pin-721 301

O.A.No.350/1518/2019 : Smt. Nageswari Devi

-Versus-

1. The Union of India
Service through the Principal Secretary,
Ministry of Railway, Government of India,
Rail Bhawan, New Delhi;
2. The General Manager,
S.E. Railway, Gardenreach,
Kolkata-700 043;
3. Chief Personnel Officer, S.E. Rly, GRC,
S.E. Railway, Gardenreach,
Kolkata-700 043;
4. GRC FA & CAO(Settlement),
S.E. Railway, Gardenreach,



Kolkata – 700 043;

5. Divisional Railway Manager,
S.E. Railway, Kharagpur,
P.O. & P.S. : Kharagpur,
District : Paschim Medinipur,
Pin : 721 301

350/1519/2019 : B.N. Sahoo @ Bancha Nidhi Sahoo

-V e r s u s -

1. Union of India service through
The General Manager, S.E. Railway,
Gardenreach, Kolkata – 700 043;
2. The General Manager, S.E. Railway,
Garden Reach, Kolkata-700 043;
3. The Chief Personnel Officer(Com.),
S.E. Railway, Santragachi,
14, Strand Road (8th Floor),
Kolkata – 700 001;
4. The Divisional Railway Manager(P),
S.E. Railway, Kharagpur,
P.O. & P.S.-Kharagpur, District-
Paschim Medinipur, Pin-721 301



O.A.No.350/1520/2019 : Manorama Nandi

O.A.No.350/1521/2019 : Goparani Devi @ Ghurani Devi

-V e r s u s -

1. Union of India service through
The General Manager, S.E. Railway,
Gardenreach, Kolkata-700 043;
2. The General Manager, S.E. Railway,
Garden Reach, Kolkata – 700 043;
3. The Divisional Railway Manager,
S.E. Railway, Kharagpur,

District-Paschim Medinipur,
Pin-721 301;

4. The Sr. Divisional Personnel Officer,
S.E. Railway, Kharagpur, District-
Paschim Medinipur, Pin-721 301

For the applicant : Mr. G.K. Das, counsel
Mr. T.K. Biswas, counsel

For the respondents : Ms. G. Roy, counsel

ORDER

Bidisha Banerjee, Judicial Member

Since identical issues have been raised, the matters are taken up analogously to be governed by the same order.

2. For convenience O.A.350/1517/2019 is delineated. The applicant in this O.A. has sought for the following reliefs:-

"A) The respondents be directed to disburse the family pension and other retirement benefits of the applicant at par with that of other regular/permanent employees of the Railway and to pay and/or extend to the applicant all arrear pension as on 08/12/2003 under Ex-"Bearer" under Sr. Manager, Catering Department, S.E. Railway, Kharagpur, emoluments and/or benefits with immediate effect;

B) The respondents be further directed to extend to the applicant the pensionary benefits as mentioned in the said Letters of the Railway Board dated 18.05.1990 and 19.11.1990 as in Annexures A-1 and A-2 hereto, subsequently clarified by Railway Board's Circular dated 17.01.2006 as in Annexure A-4 hereto which are being enjoyed by other regular/permanent employees with all arrears to the applicant by the Railway Administration with interest as on 08/12/2003 till date of actual payment is made;

C) Any other or further order or orders to which the applicant may be found entitled by this Learned Tribunal."

3. The applicant is the widow of one Bhagirath Chowdhury and claims that her husband served as Bearer under catering Department, South Eastern Railway as a regular employee for more than 40 years.



The applicant has further claimed that her husband served as a commissioned vendor since 28.12.1962 along with several others and rendered 40 years of service which has been treated as qualifying service for pension for other similarly circumstanced who have already been regularised in view of the decision of Hon'ble Apex Court in W.P.(C) 196 of 1995, Railway Board's orders dated 19.11.1990, RBE No.169/2005 dated 17.01.2006 and that in view of the decision of Hon'ble Apex Court and diverse circulars of Railway Board issued from time to time, the service of her husband is entitled to count past service as canteen employee for pension and post retirement complimentary passes. The applicant is aggrieved as a representation dated 24.09.2019 has not yielded any result till date and has pleaded that her husband having superannuated at the age of 60 years from railway service should be allowed pension and other benefits in terms of a decision of Hon'ble High Court at Calcutta in WPCT.No.28/2011 in **Badal Das & Others vs. Union of India & Others** rendered on 30.08.2012 and Board's orders dated 19.11.1990 and 17.01.2006. The applicant has contended that the order passed by the Hon'ble High Court has been upheld in SLP(C) 25019/2013 on 14.11.2017 and in substantiation thereof the decisions have been annexed in support.

4. Ld. counsel for the applicant would submit at hearing that the authorities should be directed to issue appropriate orders on the representation.



5. Id. counsel for the respondents submits that a direction may be issued to that effect.

6. We note that the petitioners in WPCT 28 of 1971(**Badal Das & Others vs. Union of India & Others**) were employed as Commission Vendors/Commission Bearers with the South Eastern Railway between the period from 1962 to 1977. They were employed for doing jobs which were identical to those performed by regular employee of the Railways. The Hon'ble Apex Court having noted the judgment in the case of **M.M.R. Khan and Others vs. Union of India and Others** reported in **AIR 1990 Supreme Court 937** was of the following view:-



"There is no dispute – in fact there can be none – that the petitioners being Commission Vendors/Commission Bearers have been regularised in service and are employed in non-statutory recognised canteens. Thus, they would also be entitled to the benefits of the aforesaid circulars of 18th May, 1990, 19th November, 1990 and 17th January, 2006. The entire period of service rendered by the petitioners prior to 1st April, 1990 and post this date, must be considered for computing the qualifying service for payment of pension and all other post retiral benefits including complementary passes.

The observations of the Tribunal in the impugned order are unacceptable. It has held that the Apex Court had not granted service benefits, such as, pension, etc. which would be available to them on regularisation. The Tribunal has held that the petitioners were not temporary Railway servants nor were they employees of the canteens and, therefore, the aforesaid letters/circulars of the Railway Board were not applicable to them. These observations, in our opinion, are completely contrary to the findings of the Supreme Court in Writ Petition(Civil) No.196 of 1995. The Supreme Court had held that all Commissioner Vendors/Commission Bearers who are working in the South Eastern Railway were entitled to be absorbed and treated at par with the Railway servants. They were entitled to be absorbed against the available vacancies. These employees were directed to be paid the minimum revised pay scale on the basis of Fifth Pay Commission's recommendations together with the dearness allowance and other allowance including house rent allowance till they were absorbed in service as regular employees. However, increments were not to be paid to such employees who had not been absorbed. Naturally, therefore, after absorption the Commission Vendors/Commission Bearers were also entitled to increments and every other allowances which were paid to the regular employees of the Railways. Thus, the findings of the Tribunal are inconsistent and conflicting with the material on record.

Considering the stipulations contained in the letters/circulars of the Railway Board dated 18th May, 1990, 19th November, 1990 and 17th January, 2006, we have no hesitation in concluding that the petitioners would be entitled to compute the qualifying service for being paid the pension and other post retiral benefits by taking into account the entire period of service prior to and post 1st April, 1990.

Reliance was placed before the Tribunal on the case of State of Haryana and others vs. Shakuntala Devi reported in (2008) 15 Supreme Court Cases 380. The Tribunal relied on this judgment and held that the petitioners were not entitled to any relief in view of the observations of the Supreme Court in this judgment. We have perused this judgment of the Supreme Court and in our opinion, it has no application to the facts before us. The issue in Shakuntala Devi's case was whether family pension was payable to ad hoc employees who had rendered continuous service. In the present case, the petitioners cannot be regarded as either ad hoc employee or temporary employee. They were regular permanent employees employed by the Railways and who have been paid salaries at par with the Railway employees pursuant to the directions of the Supreme Court. Therefore, the judgment in Shakuntala Devi's case has no application in the present case.

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We have found that the petitioners, who are employed as Commission Vendors/Commission Bearers, are entitled to the relief that they have claimed. In the reply to the petition the respondents have submitted that some of the petitioners were on the verge of attaining 60 years when they were regularised and, therefore, they are not entitled to pension. The order of the Supreme Court directing such regularisation was passed in 1997. However, in spite of the orders of the Supreme Court, the Railway regularised the petitioners' service only after the contempt petition was filed and order were obtained in that contempt petition in the year 2001. Thus, the Railways did not bother to comply with the orders of the Supreme Court passed in 1997 and, therefore, cannot now contend that some of the petitioners who had been regularised were close to the age of retirement and were not entitled to pension. In any event, in view of the Railway Board's letters they are entitled to pension and other retiral benefits at par with the pension and other benefits available to all other Railway employees.

Accordingly, the writ petition is allowed. The Rule is made absolute. There will be no order as to costs.

All arrears arising from amounts payable as person and other post retiral benefits must be made available to the petitioners within four months from today.

Urgent photostat certified copy of the order, if applied for, be supplied to the learned advocate for both the parties as early as possible."

7. We further note that the widow, Smt. Bina Choudhury preferred a detailed representation on 24.09.2019 which is yet to be disposed of. The applicant has annexed a copy of pay slip of January, 2003 where her husband has been shown as a Bearer who was allowed all the privileges of a regular employee such as a scale of pay, Provident Fund account, D.A., HRA, Transport Allowance, NHA and was entitled to the benefit of CGEGIS, LAP, LHAP etc. His identity card has also been annexed to substantiate that he was a regular employee of South Eastern Railway, Kharagpur.



8. In view of such we find no hesitation to ask the railway authorities to consider the representation as preferred by the widow in the light of the decision cited, in **Badal Das & Others** as mentioned in the representation itself, and to issue appropriate orders to ameliorate her grievance suitably and in accordance with law by issuing orders within 3 months from the date of receipt of a copy of this order.

9. We notice that all other applicants in the aforesaid OAs have preferred identical applications and representations and, therefore, the order passed in O.A.350/1517/2019 shall govern all these cases clubbed together.

10. Therefore, the Railways shall consider their prayer in the light of the decision in **Badal Das & Others** and issue appropriate orders within 3 months as directed in para 8 supra. O.As accordingly stand disposed of. No costs.



(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member