

Central Administrative Tribunal
Principal Bench

O.A. 1714/98

New Delhi this the 6 th day of **October, 1999.**

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Bodan S/o Shri Bhani Sahai,
Vill & PO : Gondala, Teh-Behror,
Distt. Alwar (Raj). Applicant.

By Advocate Shri Yogesh Sharma.

Versus

1. Union of India through
The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Sr. Civil Engineer,
Const/GC/TKT,
Northern Railway, Tilak Bridge,
Mahabat Khan Road,
New Delhi. Respondents.

By Advocate Shri B.S. Jain.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application feeling aggrieved by the action of the respondents in not granting service pension to him on his retirement from Railway Service on 30.9.1993 on superannuation at the age of 58 years.

2. The brief facts of the case are that the applicant was initially engaged as Casual Labour Gangman in the year 1971 under PWI/Gurgaon and after completion of 120 days continuous service he was granted temporary status. The applicant states that in 1988 he was screened and was also medically examined and was declared passed in that year. According to him, he has rendered 17 years service as casual labour with temporary status and 5 years regular service, but he has not been granted service pension. The

applicant has stated that he had made a number of representations to the respondents in respect of his pension which, according to him, has been illegally denied to him. Shri Yogesh Sharma, learned counsel for the applicant, has submitted that the applicant had received gratuity. He has submitted that the claim of the applicant for pension is permissible under Rule 31 of the Railway Services (Pension) Rules, 1993 (hereinafter referred to as 'Pension Rules'). He has submitted that the applicant had been appointed as Chowkidar w.e.f. 1.1.1981. He has relied on the judgements of the Supreme Court in **Ram Kumar & Ors. Vs. Union of India & Ors.**, decided on 2.12.1987 (1988(1) SLR 677) read with **Ram Kumar & Ors. Vs. Union of India & Ors.**, decided on 6.9.1990 (1996(1) SC SLJ 116); ~~(1988(1) SLR 677)~~ and **Yashwant Hari Katakhar Vs. Union of India & Ors.** (1995 LAB. I.C. 718) in which it was held that a Government servant while putting in service for 18 1/2 years and there was nothing on record to show why he was not made permanent, shall be deemed to have become permanent after serving for more than 10 years. The Court held that the appellant was entitled to pensionary benefits.

3. The respondents in their reply have denied the above averments. Shri B.S. Jain, learned counsel for the respondents, has submitted that the applicant had worked with Respondent No. 2 as Casual Labour in different capacities i.e. Casual Khalasi, Chowkidar and Gangman w.e.f. 1.1.1981. He submits that the applicant had been given temporary status as Chowkidar w.e.f. 1.1.1981 after declaring him medically fit. He has submitted that the applicant was not screened as Casual Labour till he attained the age of 58 years and, therefore, was not entitled to any pensionary benefits. He has further submitted that a

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Temporary status holder is not entitled to any pensionary benefits as the temporary status holder is not a temporary railway employee, and the learned counsel has relied on certain judgements mentioned in the reply, including the judgement of the Tribunal in **Nanki Devi Vs. Union of India & Ors.** (O.A. 2477/97), decided on 1.7.1998 (copy placed on record).

4. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. Rule 31 of the Pension Rules reads as under:

"Counting of service paid from contingencies. In respect of a railway servant, in service on or after the 22nd day of August, 1969, half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment, subject to the following conditions namely:-

(a) the service paid from contingencies has been in a job involving whole time employment;

(b) The service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned as posts of malis, chowkidar, and khalasis;

(c) the service should have been such for which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly basis and which, though not analogous to the regular scales of pay, borne some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period by staff in regular establishments;

(d) the service paid from contingencies has been continuous and followed by absorption in regular employment without a break;

Provided that the weightage for past service paid from contingencies shall be limited to the period after 1st January, 1961 subject to the condition that authentic records of service such as pay bill, leave record or service book is available.

6. Learned counsel for the applicant has submitted that as the applicant was working in the post of Chowkidar w.e.f. 1.1.1981 and has already been screened as Casual

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Labour in 1988 he is entitled to the benefit of the aforesaid Rule 31 even though he might have put in service of 17 years as Casual Labour on which half the service could be counted i.e. eight and a half years. Rule 31 provides, inter alia, that in respect of a railway servant in service on or after the 22nd day of August, 1969, half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment. It is not denied by the respondents that the applicant was given temporary status as Chowkidar w.e.f. 1.1.1981. According to the applicant, he had been employed as Chowkidar. Rule 31(b) of the Pension Rules provides that the service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned as posts of Malis, Chowkidars, and Khalasis. Therefore, taking into account the facts and circumstances of the present case and the provisions of Rule 31 of the Pension Rules, the application is entitled to succeed. It is further relevant to note that the learned counsel for the applicant has categorically submitted that the applicant had received gratuity from the respondents for his service.

7. In **Ram Kumar's case (supra)**, decided on 2.12.1987, the Supreme Court has observed as under:

"Several instructions issued by the Railway Board and the Northern Railway Headquarters were placed before us to show that the Administration is anxious to take appropriate steps to remove the difficulties faced by the casual labour but there is perhaps slackness in enforcing them. We hope and trust that such an unfortunate situation will not arise again and in the event any such allegation coming to the Court, obviously the Administration will have to be blamed".

Further in the same case of **Ram Kumar & Ors. (supra)** decided on 6.9.1990, the Supreme Court held as follows:

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"The only other question to be seen is with regard to entitlement to pension. It appears that the Board on the basis of the Fourth Pay Commission Report has provided for pension at the time of superannuation even to those who are temporary employees. In paragraph 12 of our order on the basis of material then placed before us, we had taken the view that temporary employees were not entitled to pension on superannuation. We direct the Railway Board to consider the claim of temporary employees who are before us for pension at the time of superannuation or otherwise in view of the fact that the Board has taken its own decision differently. Obviously appropriate material had not been placed before this Court when the submission of Mr. Ramaswamy for Railway administration was accepted in the order. The decision is beneficial to the employees and we direct that the Board's decision may be implemented".

(Emphasis added)

8. Learned counsel for the respondents had made a submission that the later decision of the Supreme Court in **Ram Kumar's case (supra)** cannot be relied upon by the applicant as the same had been reported many years later. This argument has obviously to be rejected as the decision of the Supreme Court in **Ram Kumar's case (supra)** has to be read as a whole and besides the decision of the Supreme Court dated 6.9.1990 is by a Larger Bench of three Hon'ble Judges. The decision of the Supreme Court in **Yashwant Hari Katakkar's case (supra)** is also relevant.

9. The Tribunal in **Nanki Devi's case (supra)** relied upon by the respondents has referred to the judgement of the Supreme Court in **Ram Kumar's case** reported in 1988 but does not refer to the later decision of the Supreme Court in the same case dated 6.9.1990. Therefore, the contention of learned counsel for the respondents that the Tribunal is bound by the judgement of the Tribunal in **Nanki Devi's case (supra)** and not by the judgement of the Supreme Court is baseless and is accordingly rejected. The facts in the judgement of the Supreme Court in **Union of India Vs. Moti Lal & Ors.** (1996(33) ATC 304) which deals with the

regularisation of railway employees are also distinguishable from the facts in the present case. The judgement of the Tribunal in **Smt. Selvambal Radhakrishnan Vs. Union of India & Ors.** (1996(3) SLJ 172) is a judgement of the Bombay Bench of the Tribunal. In this case, the Tribunal had referred to the Ministry of Railway's circular giving concession of counting half of the temporary status casual service other than non project casual service as qualifying service for pension, which concession was extended to project casual labourer by letter dated 28.11.1986. It was held in that case that the applicant's husband was a project casual labourer and he was not even screened for absorption, much less absorbed, and in the facts of the case the applicant had not made out a case for grant of family pension. The facts in that case will not apply to the facts of the present case. The fact that the applicant is working in the post of Chowkidar, which is one of the posts mentioned in clause (b) of Rule 31 of the Pension Rules, shows that he had been doing a job for which regular post could have been sanctioned, but may not have been actually done by the respondents. The applicant has also stated that he has been given gratuity after his retirement and he has also been given temporary status as Chowkidar w.e.f. 1.1.1981 and has rendered continuous service in that post.

10. In the circumstances of the case and having regard to Rule 31 of the Pension Rules and the observations of the Supreme Court in **Ram Kumar's case (supra)** decided on 6.9.1990; the application is allowed with the following directions:

The respondents are directed to consider the claim of the applicant for granting service pension from the date of his retirement in accordance with the

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Rules and instructions. He shall also be entitled to arrears of pension from the due date which shall be paid within three months from the date of receipt of a copy of this order. However, in the circumstances of the case, the claim for interest is rejected.

No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

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