

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.917 of 1998 decided on 24.2.99

Name of Applicant : Chabi Lal Sharma

By Advocate : Shri S.K.Gupta

Versus

Name of respondent/s Union of India through the
General Manager, Northern Rly. & anr.

By Advocate : Smt. B. Sunita Rao

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/~~No~~

2. Whether to be circulated to the - ~~Yes~~/No
other Benches of the Tribunal.


(Mr. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 917 of 1998

New Delhi, this the 24th day of February, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

Chabi Lal Sharma, S/o Shri Fali Ram
Sharma, R/o Village & P.O. Akbar Pur,
Kutub Pur, Tehsil Jasrana, Distt.
Ferozabad.

-APPLICANT

(By Advocate Shri S.K.Gupta)

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, State Entry Road (N.R.), New Delhi.

-RESPONDENTS

(By Advocate Mrs. B.Sunita Rao)

O R D E R (Oral)

By Mr. N. Sahu, Member(Admnv) -

The prayer in this Original Application is for grant of pensionary benefits to the applicant for the service rendered by him for a period of 23 years and five months from 31.12.1971 to 31.5.1995 along with interest at the rate of 18% per annum.

2. This OA is filed pursuant to the directions recorded by this Tribunal in OA No.1087/96 decided on 25.2.1997 in which it was directed that the respondents shall release all pensionary benefits within a period of 10 weeks from the date of receipt of a copy of this order.

3. The respondents have vide PPO No. 0196020962 issued provisional pension at the rate of Rs.397/- per month after taking into account the service of the applicant for a period of 18 years.

:: 2 ::

Under Annexure-A-6 the provisional pension was issued by the order dated 1.10.1996 with effect from 1.6.1995 and the designation of the applicant is stated as B.Fitter. This is contested by the applicant on the ground that he was born on 18.5.1937 and he was appointed as Fitter Grade-II on 31.12.1971 in the scale of Rs.196-232. He appeared in a qualifying examination for the post of Bond Fitter in 1978 and vide Annexure-A-4 he was promoted as Bond Fitter in the scale of Rs.260-400 with effect from that date. The service certificate of the applicant issued by the DRM on 30.6.1995 (Annexure-A-1) states that the applicant worked in his division from 31.12.1971 to 31.5.1995, on which date he superannuated. Accordingly the applicant's claim is for his pensionary benefits for the period from 31.12.1971 consistent with the certificate given by the DRM at Annexure-A-1.

4. After notice the respondents state that the applicant was appointed on 31.12.1971 and regularised with effect from 14.5.1982. For the period from 31.12.1971 to 13.5.1982 he worked in a temporary capacity and accordingly under Para 2005 (C) of the Indian Railway Establishment Manual, Volume II they restricted payment of pension to 50% of the service rendered.

5. The service book of the applicant was produced by the respondents. The service book states that the applicant's date of appointment as Bond Fitter was 31.12.1971. The leave account in the

service book also states that the date of appointment of the applicant as 31.12.1971. The date of appointment has been consistently mentioned in all the documents in the service book as 31.12.1971.

6. Para 2005(c) ibid reads as under -

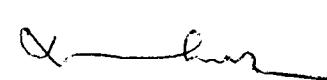
"No temporary posts shall be created to accommodate such casual labour, who acquire temporary status, for the conferment of attendant benefits like regular scale of pay, increment etc. After absorption in regular employment, half of the service rendered after attaining temporary status by such persons before regular absorption against a regular/ temporary/ permanent post, will qualify for pensionary benefits, subject to the conditions prescribed in Railway Board's Letter No.E(NG)II/78/CL/12 dated 14.10.80."

It talks of a casual labour who acquired temporary status and has not been absorbed in regular appointment. It is only in such cases that half of the service rendered after attaining temporary status by such persons before regular absorption shall be considered for pensionary benefits by virtue of the Railway Board's letter dated 14.10.1980. The applicant was a casual labour even as early as on 4.2.1959. The applicant's promotion to Fitter Grade-II cannot be in any other capacity except to a post. Unless somebody is appointed to a post, his service book, leave account and other benefits cannot be recorded chronologically and considered. Whatever material has been shown to me clearly shows that the applicant was appointed to a post as a Fitter. The service certificate of the DRM, which is conclusive proof in this case also shows that the applicant has been continuously working from 31.12.1971 onwards in

a post. The respondents, therefore, have no right in law to restrict the pension that is admissible to a person who works on a regular post. Para 2005(c) ibid as stated above contemplates a case of restriction to pension to 50% for the service rendered after attaining temporary status but before regular absorption. The applicant's case is totally different.

7. In the circumstances of the case, the OA is allowed. The respondents are directed to pass an order, within six weeks from the date of receipt of a copy of this order, of admissible pension to the applicant with all other retirement benefits during his service period to be treated as 31.12.1971 to 31.5.1995.

8. It has already been held in the order dated 25.2.1997 passed in OA 1087/96, filed by the applicant, following the law laid down by the Hon'ble Supreme Court in the case of R. Kapur Vs. Director of Inspection, 1995 SCC (L&S) 13, to pay interest at the rate of 18% per annum to be calculated after allowing a period of two months from the date of retirement i.e. from 1.8.1995. This rate of interest shall be paid to the applicant for the amount due on the differential amount after deducting whatever has been paid by way of provisional pension.


(M. Sathu)
Member (Admnv)

rkv.