

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

O.A./TXAY No. 2232 of 1996

Decided on:

10.9.97

Shri Sukh Ram

....Applicant(s)

(By Shri B.S. Mainee

Advocate)

Versus

U.O.I. & Others

....Respondent(s)

(By Shri B.S. Jain

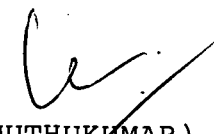
Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not? yes
2. Whether to be circulated to the other Benches of the Tribunal? ✓

  
(K. MUTHUKUMAR)  
MEMBER (A)

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2232 of 1996

New Delhi this the 10th day of September, 1997

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Sukh Ram  
S/o Shri Lekh Raj,  
R/o House No. J-101 Dakshin Puri,  
New Delhi-110 052. ..Applicant

By Advocate Shri B.S. Mainee

Versus

Union of India: Through

1. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.
2. The Divisional Railway Manager,  
Northern Railway,  
Allahabad.
3. The Assistant Engineer,  
Northern Railway,  
Tundla. ..Respondents

By Advocate Shri B.S. Jain

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant claims all the retirement benefits on his retirement on 29.2.1996 after having put in 33 years of service. Applicant was a Substitute Gangman appointed in 1967 and claims to have been given temporary status and was posted under Permanent Way Inspector (hereinafter referred to PWI), Aligarh under the respondents. He claims to have superannuated on 29.2.1996 and his grievance is that the respondents had only paid his Provident Fund dues but no pension and other retirement benefits had been given. His representation also did not yield any result.

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2.

2. Respondents maintain that the applicant was appointed as a Substitute Gangman with effect from 6.3.1963 but maintain that as he was not empanelled till the date of his retirement and before his representation dated 22.7.96 was replied to, the applicant has approached this Tribunal.

3. The learned counsel for the applicant submitted that the applicant has been treated as a regular Gangman right through and that he has also been paid wages as Gangman. The respondents cannot possibly deny his benefits after he has completed 33 years of service without any interruption. He has cited several rulings in support of his contentions and these are considered in the following paragraphs.

4. The counsel for the respondents has pointed out that the applicant had no reasons to presume that he was regular employee as at no stage he was regularised. He was also not empanelled for the regular post of Gangman. He had never bothered in the last so many years of his service to claim for regularisation and empanelment for regular post. He maintains that it is a settled law that a person who sleeps over his right, cannot agitate the issue after long period and, therefore, the application suffers from serious delay and laches.

5. I have heard the learned counsel for the parties and have perused the record.

*[Handwritten signature]*

6. It is an admitted position that the applicant who was appointed as a Substitute Gangman continued without any regularisation for 33 years. It is really surprising that the applicant had never asserted his claim for his regularisation all along and only after his cessation of duties with the respondents, he has raised this matter. The learned counsel for the applicant points out that from the pay bill of January, 1996 it is clear that he has been considered as a regular Gangman. I have perused this pay bill which shows that the applicant is shown as a Gangman and has been paid a pay of Rs.1150/-. The scales of pay of Gangman are indicated as 775-1025 and 800-1150 as per the revised pay scales of 1986. It is also seen from Chapter V of the Indian Railway Establishment Manual Volume I that 70% of the posts are in the pay scale of Rs.800-1150. From the pay statement of the applicant it is seen that he had been drawing the maximum of Rs.1150/-. It is also seen from the definition of 'Substitutes' in para 1512 of the IREM Vol.I that substitutes are persons engaged on regular scales of pay and allowances applicable to posts against which they are employed, when these posts fall vacant on account of leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant. In para 1515 of the IREM (Supra) Vol.I it is provided that the substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service and their services should be treated as continuous for

all purposes except seniority on their eventual absorption against the regular post after selection (emphasis added). It is also provided that the conferment of temporary status on completion of 4 months continuous service will not entitle them to automatic appointment/absorption in the railway service unless they are in turn for such appointment on the basis of their position in select lists and/or they are selected in the approved manner for appointment in the Railway post. The respondents have stated that the applicant had not been empanelled for regular appointment. Under Rule 32 of the Railway Services (Pension) Rules, 1993 it is provided as follows:-

"Service rendered as substitute shall be counted for pensionary benefits from the date of completion of 3 months in the case of teachers and four months in other cases for continuous service as substitute followed by absorption in a regular Group 'C' or Group 'D' posts without any break." (emphasis added)

7. It is an admitted position that the applicant has been working as a Substitute Gangman without any break but there is nothing on record to indicate whether his substitute service was followed by absorption. On the other hand, respondents have averred that the applicant was never empanelled for regular appointment and this has not been denied by the applicant also. The applicant has only stated that his

*[Handwritten signature]*

representation for payment of retirement benefits was not considered by the respondents and he had to make representation to the Hon'ble Minister and other senior officers. There is, however, no specific denial to the averment that he was never empanelled. The learned counsel for the applicant argued that in reply to para 4.2 where he had said that he retired on superannuation, the respondents have not denied this. This by itself will not be a conclusive proof that the applicant had retired from a pensionable post. I now turn to the various decisions relied upon by the learned counsel for the applicant. Relying on B.S. Rohilla Vs. U.O.I. & Others, (1192) 22 ATC 321, the learned counsel argued that the applicant could not be denied pension after 33 years of service. In the aforesaid case, it was held that the applicant could not be denied pension after 25 years of service when he missed confirmation due to Government's default in not converting temporary posts into permanent ones. The facts in the present case are slightly different. The applicant is prima facie not eligible for pension under Rule 32 of the Pension Rules (Supra) and the aforesaid decision is not of any help. In the case of the applicant, as stated earlier by the virtue of the fact that his substitute service was not followed by absorption, he did not qualify for pension.

8. The learned counsel then referred to the case of Bhaskar Gajanan Kajrekar Vs. Administrator, Dadra and Nagar Haveli and Others, reported in ATJ 1993 Volume I page 563. In this case there was a question of non-confirmation of the applicant on the ground that


there were no Rebruitment Rules for the said post and, therefore, it was held that denial of confirmation on that ground was held to be arbitrary. In the case of the applicant, however, the question is about the substitute service followed by absorption. The fact remains that the applicant has slept over his right of absorption for serveral years now and in the light of the latest decision of the Apex Court in Ratam Chandra Sammanta & Others Vs. The Union of India & Others, JT 1993 (3) SC 418, a person who has lost his remedy by lapse of time loses his right as well. The learned counsel pointed out that the applicant not being a very literate person, cannot be expected to agitate his rights. I am afraid that this is a very tenuous plea. Even casual labourers are very conscious of their right for regularisation. Although he was drawing pay in the scale of pay of Gangman, he cannot take the plea that he was not aware that he was to be appointed on a regular basis. The learned counsel pointed out that the pay scale does not show him to be a substitute Gangman. By this alone, it cannot be said that he can be taken as a regular Gangman unless there is some evidence to show that he has been regularly appointed to the post of Gangman.

9. The learned counsel then referred to the case of O. Samayamuthu Vs. U.O.I. & Others, ATSLJ 1992(2) Vol.44 page 272 which also does not help the applicant as in that case, the question was about the pension not being given as regular service plus 50% of temporary service was less than 10 years and in terms of circular dated 2.3.1988 full temporary service was

ordered to be counted. In the case of the applicant, he was never made a regular temporary Government servant. In the case of Smt. Malati Kumari Vs. U.O.I., it was held that the widow of casual labourer who had worked for more than 13 to 18 years but were not regularised, was entitled to family pension. In that case, the admitted position was that the deceased casual labourer had completed all his formalities for regularisation completed and, therefore, it was held that he should be deemed to have been regularised. Therefore, the facts and circumstances are not parimateria with those of present case.

10. The learned counsel for the respondents on the other hand, however, relies on Smt. Selvambal Radhakrishnan Vs. U.O.I. & Others, 1996(3) AISLJ page 172 in which it was held that temporary status casual labourer is a state of the art term and is not same as Temporary Railway servant and hence pension was held not to be admissible.

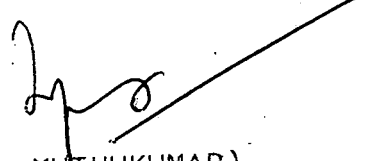
11. In the conspectus of the above discussion it is seen that applicant whose substitute service was not followed by regularisation and who had not raised this issue and had slept over his right despite his long 33 years of service, forfeits his claim in the light of the rules on the subject for grant of pension and other retirement benefits. In this application, the applicant has only prayed for pensionary benefits





and there is no prayer for regularisation. In the light of delay and laches and in the absence of regularisation, the applicant cannot agitate this matter at this late stage. It is however seen that the respondents have also not clarified as to why despite 23 years of service, the applicant who was a substitute Gangman was not considered for regularisation when his turn came up. It is, however, open to the respondents to review the case of the applicant for regularisation in case the applicant makes a suitable representation in this behalf. It is made clear that this is only by way of an observation.

Application is devoid of merit and is rejected. No costs.

  
(K. MUTHUKUMAR)  
MEMBER (A)

Rakesh