

Central Administrative Tribunal, Principal Bench

O.A.No.523/96

Hon'ble Shri R.K. Ahooja, Member(A)

New Delhi, this 24th day of February, 1997

Shri Tejender Nath
s/o Late Shri Durga Dutt
retired Storeman
under Inspector of Works (Vehicle)
Northern Railway
Shakur Basti
r/o 24/23-A, Tilak Nagar
New Delhi. ... Applicant

(By Shri S.K.Sawhney, Advocate)

Vs.

1. Union of India through
General Manager
Northern Railway
Baroda House
New Delhi.
2. Divisional Railway Manager
Northern Railway
Chelmsford Road
New Delhi.
3. Senior Divisional Accounts Officer
DRM Office
Northern Railway
Chelmsford Road
New Delhi. ... Respondents

(By Shri P.S.Mahendru, Advocate)

O R D E R

The applicant claims that he worked as a Casual Labour continuously from 20.10.1971 till his retirement on 30.11.1989. He further claims that he acquired temporary status on completion of 180 days continuous service on 17.4.1972. As per rule, half of the service rendered after 20.10.1971 to the date of regularisation i.e. 1.4.1988 is to be counted towards qualifying service for pension under the Railway Services (Pension) Rules. Since he retired on 30.11.1989 his total qualifying service comes to more than 10 years and under Rule 69 (2)(b) of Railway Services (Pension) Rules, 1993, is entitled to the minimum pension.

He further claims that since his pension has been wrongly denied, he should be granted arrears along with 18% interest.

2. The respondents controvert this claim and submit that though the applicant continuously worked as a Casual Labour from 20.10.1971, he was granted temporary status only from 1.1.1981. According to the Rules, half the service rendered from the date of granting temporary status to the date of regularisation will count towards qualifying service for the purpose of admissibility of pensionary benefits. On that basis his qualifying service for pensionary benefits comes to only 3 years 5 months and 14 days, hence, he does not possess the required qualifying service.

3. I have heard the counsel on both sides. The learned counsel for the applicant draws my attention to Rule 31 of the Railway Service (Pension) Rules, 1983. This rule reads as follows:

Rule 31: Counting of service paid from Contingencies:- In respect of a railway servant, in service on or after the 22nd day of August, 1968, 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 such as posts of malis, chowkidars 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;

-3-

(11)

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.

NOTE:- (1) the provisions of this rule shall also apply to casual labour paid from contingencies.

(2) The expression "absorption in regular employment" means absorption against a regular post.

4. The learned counsel for the applicant submits that there is no mention in the above rule about grant of temporary status, the crucial point being that the service paid from contingencies has been continuous and has been followed by absorption in regular employment, without a break. The applicant has been continuously paid from contingencies from 20.10.1971, followed by regularisation w.e.f. 1.4.1988. Therefore, his total employment as Casual Labour prior to regularisation has to be counted towards pensionary benefits.

5. The learned counsel for the respondents on the other hand draws my attention to the Indian Railway Establishment Manual Advance Correction Slip No.135, part of which reads as follows:

"..... Casual Labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of 120 days continuous employment and before regular absorption as qualifying service for the purpose of pensionary benefits.."

6. Learned counsel for the respondents argues that since the grant of temporary status took place only on 1.1.1988 it is only after that date that 50% of service rendered will be counted towards qualifying service.

7. I have carefully considered the matter. There is no denial on the part of the respondents that applicant had been continuously engaged as Casual Labour, paid from

Dr

-4-

(122)

contingencies from 1971. Shri S.K.Sawhney, learned counsel for the applicant claims that temporary status is automatically due after completion of 180 days continuous service in a calender year. Be that as it may, the fact remains that there was no break in service and the Casual Labour culminated in absorption against a regular post, I am in agreement with the learned counsel for the applicant even though an amendment carried out in Para 2511(a) IREM (Advance Correction Slip No.135) cannot over rule the substantive provisions of the pension rules which are statutory in nature, having been framed under Article 309 of the Constitution of India. In these rules there is no mention of grant of temporary status as a condition precedent to counting the period rendered in service paid from contingencies as qualifying period for pension. Accordingly, in terms of Rule 31 of the Pension Rules, the applicant is entitled to consider half of the service rendered by him towards qualifying service for purpose of pension. This obviously comes to 10 years, hence the applicant is entitled to grant of minimum pension. It is accordingly so ordered.

8. The applicant has also prayed for payment of 18% interest on arrears. He has filed this application on 8.3.1996. While the delay, in filing the application where he is entitled to pay or pension as per rules cannot act as a bar, the relief to be granted will have to be moulded keeping in view such delay. Accordingly, it is ordered that applicant would be entitled to payment of 12% interest on the arrears on the date of filing of this application i.e. 8.3.1996 to the date of the actual payment.

av

9. The application is allowed with the above directions. The respondents will calculate and pay the arrears of pension within a period of three months from the date of receipt of this order. No costs.

Recd
(R.K.AHOOJA)
MEMBER(A)

/rao/