

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Tuesday 23rd day of August Two Thousand And Sixteen

PRESENT:
THE HON'BLE SHRI R. RAMANUJAM, MEMBER (A)

O.A./310/00392/2015

V. Mani,
S/o. Vadivel Pillai,
Aged about 55 years,
R/o. No. 19A, M.M.D.A. Colony Main Road,
Arumbakkam,
Chennai- 600 106.Applicant

(By Advocate : M/s. Balan Haridas)

-versus-

Union of India
Rep. by its Workshop Personnel Officer/West/Perambur
Chief Electrical Workshop Engineer Office
Personnel Branch
Southern Railways,
Chennai- 600 003.Respondent

(By Advocate: Mr. K. Muthamilraja)

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member (A))

The applicant has filed this O.A. seeking the following reliefs:-

"(i) to set aside the orders of the respondent dated 28.07.2014 bearing No. EPB/353/OA1322/2010 and order dated 22.08.2014 bearing No. EPB/353/OA1322/2010 in so far as not granting benefit of 2nd MACP, Annual Increments, LARSGESS as illegal, arbitrary and contrary to law.

(ii) consequently direct the respondent to extend MACP, Annual increment, LARSGESS to the applicant for the services rendered and pay arrears arising out of extending MACP, Annual Increment etc and

(iii) pass such other orders or directions as this Hon'ble Tribunal think fit in the circumstances of the case."

2. According to the applicant, he had joined service of the respondent's as Commissioner Bearer on 22.12.1978 and worked continuously till 14.06.1999. He was entitled to be absorbed in the services of the respondents in terms of the directions of the Hon'ble Apex Court in the case of similarly placed employees. The applicant had filed O.A. No. 341/2005 which had been allowed by this Tribunal to permit the applicant to join duty as Bearer and process the case of his absorption as per directions of the Hon'ble Apex Court by order dated 28.09.2005. Following this, the applicant was appointed on 08.11.2005 as a fresh entrant and, thereafter, was issued with an appointment order dated 13.3.2006 for the post of Helper Grade-II Kalasi.

3. The applicant filed O.A. No. 334/2007 to take into consideration the service rendered by him from the year 1978 for the purpose of pension, fixation of pay and all other service benefits. The said O.A. was allowed on 2.5.2008. The respondent, however, filed W.P. No.1536/2009 against the same whereupon, the applicant was directed to submit a representation and the respondent directed to pass orders. By order dated 18.08.2010, the respondent rejected the representation of the applicant following which the applicant filed O.A. No. 1332/2010. This Tribunal by order dated 12.2.2013 allowed the O.A. and directed the respondent to count 50% of the past service from 1978 to 14.2.1999 along with Railway services rendered by him to reckon the total qualifying service for the purpose of pension, fixation of pay and all other service benefits. The order was confirmed in W.P. No. 19677/2013 by the Hon'ble Madras High Court vide order dated 30.09.2013.

4. The respondent initially passed an order No. EPB/353/OA1322/2010 dated 11/4/2014 counting 50% of the period from 22.12.1978 to 14.6.1999 for the purpose of pension. Since the order was silent on whether the applicant was eligible for fixation of pay and other benefits, he made a representation to the respondent. Thereafter, the respondent issued the impugned order dated 28.7.2014 stating that 50% of the Commission Bearer service would be taken into consideration for pension and that the applicant would not be eligible for any fixation of pay and other service benefits.

5. The applicant filed a Contempt Petition before this Tribunal which, however, was closed with liberty to the applicant to challenge the respondent's orders in case of any illegality. He has accordingly filed this O.A. seeking a direction to the respondent to extend MACP, Annual Increment, LARGEES Scheme etc for the previous service and pay arrears arising out of such pay fixation.

6. The respondent contests the relief prayed for stating that they had complied with the order of the Tribunal in O.A. No. 1332/2010 by accepting 50% applicant's Commission Bearer's service from 22.12.1978 to 14.06.1999 for the purpose of pension under the Railway Services (Pension) Rules. The respondent also refers to the order of the Tribunal in Ernakulam Bench in O.A. No. 440/2003 dated 24.2.2006 (Annexure-R1) where a similar matter had been dealt with and a direction was given to treat 50% of such service for the purpose is eligible for pension. As far as the applicant's claim for pay fixation etc, it is stated that he is not eligible for the same.

7. Heard the learned counsel on both sides and perused the records.

8. Learned counsel for the applicant would refer to the order passed by this Tribunal in O.A. 1322/2010, the operative portion of which reads as under:-

"15. Following the ratio laid down by this Tribunal in the above mentioned OA (OA194/2010) dated 24.8.12, we hereby set aside and quash the order bearing No. P(S)269/III/SCB dated 18.8.2010 impugned in this OA and direct the respondent to count 50% of past

services rendered by the applicant from the year 1978 to 14.6.1999 in catering Establishment as Commission Bearer/Vendor along with his Railway Service respectively till his retirement to reckon the total qualifying service for the purpose of pension, fixation of pay and all other service benefits as has been granted by the Ernakulam Bench of this Tribunal in OA440/2003 and pass a reasoned order within a period of eight weeks from the date of receipt of a copy of this order."

As the W.P. filed by the respondents against the said order has been disallowed, the respondents are bound to implement the order which includes a direction to count the qualifying service for the purpose of fixation of pay and all other service benefits as well.

9. The learned counsel for the respondent would, however, point out that the Tribunal in the aforesaid order had referred to the order passed by the Ernakulam Bench in O.A. No. 440/2003. The Ernakulam Bench had not granted the benefit of qualifying service for the purpose of pay fixation and other service benefits and, therefore, the respondent is justified in confining the relief granted to pension only.

10. I have carefully considered the matter in the light of the submissions made by rival counsel and material available on record.

11. It is not in dispute that there is no mention in the order passed by the Ernakulam Bench in O.A. No. 440/2003 dated 224.4.2006 that the applicant therein was entitled to count half the period of his service as Commission Bearer for the purpose of pay fixation and other service benefits as well. On the other hand, the order of the Hon'ble Apex court

in Civil Miscellaneous Petition No. 1670/1987 in WP 191/86 dated 08.09.1987 stated as follows:-

"In view of this, we must necessarily modify the direction contained in this Court's order dated 10th March, 1986 as to payment of salary. In modification of the earlier direction, we direct that the vendors and bearers so absorbed in the Railway Catering Service shall be entitled to salary as from the date of their absorption and not from December 1, 1983."

12. In view of the above, I have no hesitation in holding that the respondent was justified in restricting the relief granted to the applicant to counting of his previous service for the purpose of pension only. The O.A. is devoid of merits and is accordingly dismissed. There shall be no order as to costs.

(R. RAMANUJAM)
Member (A)

23.8.2016

Asvs.