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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1091/2004

New Delhi the 18th day of July, 2005

Hon'ble Mrs.Meera Chhibber, Member (J)

Palley
S/O Shri Bengali,
Ex.Safaiwala, Chief Health Inspector,
Northern Railway, New Delhi
R/O A 1/3412, Sultanpuri, New Delhi- 41

..Applicant

(By Advocate Shri M.L.Sharma)

VERSUS

1. Union of India through
The Chairman, Railway Board
Ex-Officio Principal Secretary,
Govt. of India, Ministry of Railways,
Rail Bhawan, New Delhi.
2. The General Manager,
Northern Railway,
HQ Office-Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway, New Delhi.

..Respondents

(By Advocate Shri R.L.Dhawan)

O R D E R (ORAL)

Heard both the learned counsel.



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2. This is the third round of litigation filed by the applicant. He had initially filed OA 1559/1997 which was decided on 5.3.1998 by directing the respondents to treat the applicant as a regular employee from the same date as his next junior was regularized in the screening test held in the year 1995 and to work out his retiral benefits after deciding his application for resignation.

3. In this OA, grievance of the applicant was that though he was sent on deputation to Container Corporation of India (CONCOR), yet when he requested for absorption he was discharged from service. After considering the rival contentions, this Tribunal observed that the applicant ought to have been treated as a regular employee from the same date when his next junior was regularized in the screening test held in the year 1995. Accordingly applicant was treated deemed to have resigned from Railway w.e.f. 11.8.1995 to take up employment in CONCOR and the order of his discharge was treated as cancelled. This was done vide order dated 30.9.1998. However, applicant was not granted any pension, therefore, he had to file 2nd OA bearing No. 2453/2001 which was decided on 12.7.2002 giving an opportunity to the applicant^{to} make a detailed representation to the respondents regarding his grievance along with corroborated evidence to prove that he had worked from 1979 to 1984 with direction to the

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respondents to decide his representation strictly in accordance with the rules and instructions and in the light of the Railway Board's circular dated 14.10.1990 and communicate the speaking order to the applicant.

4. It was pursuant to this direction that respondents passed the final order dated 30.1.2003 stating therein that though applicant was initially engaged as casual labour Safaiwala on 25.4.1975 and had already put in 1988 days till 31.12.1985, but from the available records it could not be ascertained whether during this period applicant had at any point of time worked continuously for 120 days or not. However from the entry made in the Service Book his date of appointment in the Railways is on 5.6.1984 which is duly authenticated by the applicant. He was regularly appointed vide order dated 7.1.1988. Accordingly 50 % of the period was calculated from 5.6.1984 to 7.1.1988 (casual working) and full period from 8.1.1988 to 11.8.1995 (date of resignation). As per the Railway Board's letter dated 14.10.1980, the total qualifying period comes to 9 years, 4 months and 19 days. It is thus stated by the respondents that since applicant had not put in 10 years of qualifying service as required under Para 69 (b) of Railway Services (Pension) Rules, 1993, he is not entitled to get any pension.

5. It is against this decision that applicant has filed the present OA. The main grievance of applicant is that since he had been working as casual

labour w.e.f. 25.4.1975 which was admitted by the respondents under Para 4 of order dated 30.1.2003, he ought to have completed 120 days on a much earlier date. There is no justification for granting temporary status w.e.f. 5.6.1984. To substantiate his averment, he relies on various certificates given to him by the Chief Commercial Inspector under whom he had worked during 1981-82 and even by the DRM who appreciated his work and even rewarded him with Rs.100/- (pages 32 to 34) whereas counsel for respondents relied on judgement dated 5.3.1998 given in OA 1559/1997 to show that applicant approached this Tribunal in which he had himself stated that he was appointed as a Casual Safaiwala under the Chief Health Inspector, Northern Railway on 1.8.1979 and was granted temporary status w.e.f. 2.9.1984 and was screened for regularization on 10.12.1986. Therefore, it is not open now for the applicant to take a different stand.

6. It is correct that in OA 1559/1997 applicant had stated that he was granted temporary status w.e.f. 2. 9. 1984 on his appointment as Casual Safaiwala under Chief Health Inspector, Northern Railway on 1.8.1979 but as per respondents' own reply dated 30.1.2003, they have found out from the records that applicant was initially engaged as casual labour w.e.f. 25.4.1975 and not from 1.8.1979. If applicant could make a wrong statement with regard to his initial date of appointment, he could also have some confusion

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with regard to the date of grant of temporary status as well. Therefore, simply because applicant had stated in his first OA that he was granted temporary status w.e.f. 2.9.1984 it cannot be termed so sacrosanct that it cannot be corrected. After all, it is respondents who have taken the date 5.6.1984 for grant of temporary status which must be on the basis of some documents available with the respondents. It is definitely not as per applicant's statement because he had stated temporary status was granted w.e.f. 2.9.1984. Since both the parties were not able to substantiate their claim but respondents had admitted applicant was working as casual labour since 25.4.1975, the respondents were directed by order dated 18.3.2005 to keep the service record of the applicant available on the next date of hearing for court's perusal and also to show the order by which temporary status was granted to the applicant. Respondents have produced the proceedings dated 19.8.1997 wherein applicant's name is shown at Serial No.52 and his initial date of engagement is shown as 25.4.1975. In the column of remarks his result is shown to have been withheld for verification of service records. There is further a letter dated 7.1.1998 on record which is in continuation of letter dated 19.8.1987 whereby the candidates from 34 to 87 excepting 45,49,55, 75 and 112 to 119 except 118 are deemed to have been declared as found fit for regular absorption against the permanent post of Safaiwala as

MS/DLI has verified the genuiness of their casual service rendered by them prior to 28.8.1976 and onwards. However, there is no letter on record to show when all these persons were regularized. Counsel for respondents orally submitted that all the persons were regularized only from 7.1.1988, including juniors to applicant but there is nothing on record to show that.

7. The issue here is, not the date of regularization but the date on which applicant was given temporary status because payment of pension is dependant on 50 % of the period after temporary status is granted till he is regularized and full period thereafter till he resigned. I had repeatedly asked counsel for the respondents to show the order by which applicant was granted temporary status w.e.f. 5.6.1984 because this date is different from the date stated by the applicant in his first OA. Therefore, there must be some basis as to how applicant is shown to have been given temporary status w.e.f. 5.6.1984. However no satisfactory reply could be given by the respondents' counsel nor there is any such order on record. On the contrary, I found note in the service book of the applicant which reads as under:

“ He has worked as casual labour Safaiwala from 25.4.1975 1988 days upto 31.12.1985 vide screening result declared vide

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No 19.8.1987 and 7.8.1988 There is also reference of some personal file S.No. 34/9 and 40.

However, personal file was not produced. Therefore, counsel for respondents was directed to produce the said file also within two days. Respondents thereafter produced the personal file. Perusal of the file shows that after the screening was done of Safaiwala in Sanitation department, applicant's name figured at Sl. No. 52 of successful candidates but his result was withheld due to verification of service record as on 19.7.1987. Further it was only due to non availability of record that officer observed that applicant cannot be stated to have worked continuously from 1.8.1979 to 31.12.1983 even though it is admitted that applicant was engaged w.e.f. 25.4.1975 to 31.12.1985 and also that he had completed 1988 days. Therefore, it is clear that the qualifying period now arrived at is not based on any records but has been presumed. Apart from it there is also mention in the notings that settlement section had calculated his qualifying service to be 13 years 11 months and 22 days and ultimately pensionary benefits were sanctioned also by the Divisional Personnel Officer on 5.11.2002 by treating his qualifying service as 11 years 6 months and 7 days. While calculating this period applicant's 1988 days upto 31.12.1985 + 594 days from 1.1.1986

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to 18.8.1987 were added which made it 2592 days. Thereafter 50 % of this period was reduced to 3 years 6 months and 15 days which was added to the period from 19.8.1987², from which date applicant was declared as passed after screening thus from 19.8.1987 to 11.8.1995 it came to 7 years 11 months and 22 days, thus total qualifying service was 11 years 6 months and 7 days.

8. After going through the file, I am satisfied that this calculation was rightly arrived at and was approved also, therefore, any contrary decision taken subsequently based on no evidence cannot be sustained in law. Since DPO had already approved pension of applicant by treating his qualifying service to be 11 years 6 months and 7 days that must be given effect to.

9. In view of the above discussion, the order dated 31.1.2003 is quashed and set aside. Respondents are directed to release the pension and arrears of applicant from due date, by treating his qualifying service as 11 years 6 months and 7 days as was approved by the DPO. This shall be done within a period of 3 months from the date of receipt of a copy of this order. Applicant would be entitled to get interest @ 4 % in normal course but in case the arrears are not paid to him within 3 months, applicant will be entitled to get



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interest thereafter at the rate of 7 % till he is actually paid the same. The arrears shall be paid along with due and drawn statement.

10. With the above directions, OA is allowed.

18/7/05
(Mrs. Meera Chhibber)
Member (J)

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