

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

original Application No. 822 of 2001

this the 14th day of July 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Ali Bux, S/o late Asgar Ali, aged about 71 years, retired
Surchman, Dehri-on-sone. Eastern Railway (Mughal Sarai)
at present resident of Mughalsarai Chak Ali Nagar Bazar,
post office Mughalsarai, District Chandauli.

Applicant.

By Advocate : Sri K.N. Katiyar.

Versus.

1. Union of India through the General Manager, Eastern Railway, Fairlie place S.C. Bose Road, Calcutta.
2. D.R.M., E. Railway Mughalsarai, District Chandauli.
3. Sr. Divisional Personnel Officer, E. Rly., Mughalsarai District Chandauli.

Respondents.

By Advocate : Sri K. P. Singh.

ORDER (ORAL)

By this O.A., applicant has sought the following relief(s):

"(a) That the Hon'ble Tribunal may graciously be pleased to quash the impugned order dated 26.3.2001 (Annexure A-1) rejecting the appeal dated 27.2.2001 (Annexure-XIII).

(b) That the applicant's continuous working as Sub. Box Porter from Jan'54 to 31.5.1961 be computed and included in total qualifying service for pensionary benefits w.e.f. 1.5.54 to 31.5.61 on his eventual absorption in regular service after selection w.e.f. 1.6.1961.

(c) That accordingly his pension @ Rs.660/- P.M. w.e.f. 1.7.88 to 31.12.95 and @ Rs. 2017/- P.M. w.e.f. 1.1.96 and onwards be paid, commutation of pension and gratuity be also revised, having rendered more than 33 years of qualifying service on retirement w.e.f. 30.6.88 based on his last pay drawn @ Rs.1320/- P.M. and preceding 10 months and paid accordingly with arrears.

(d) That the applicant may be awarded interest at the rate of 18% per annum w.e.f. 1.6.1989 on arrears of pension, commutation of balance and gratuity as held in case of R. Kapoor Vs. U.O.I. 1995 SCC (L&S) 13.

(e) -----.

(f) -----."

2. It is submitted by the applicant that he was initially appointed as Substitute Box Porter Grade Rs.30.1/2-35 (PS) under Station Supdt. Mughalsarai under the control of Divisional Supdt., Eastern Railway, Danapur in Jan'54. Since he was working satisfactorily, he was even sent for training of Pointsman/Shuntman/Gateman which he passed vide competency certificate dated 16.2.54 (Annexure A-2). He was also sent for training of Leverman Gr.II/Shuntman/Gateman which was passed by him on 30.5.56 (Annexure A-3). He was also issued identity card dated 1.12.54 as Box Porter by the then Station Supdt. (Annexure A-4).

3. It is submitted by the applicant that he retired on superannuation on 30.6.88 as Relieving Surtchman (RSW/man) under Traffic Inspector-HQ, Dehri-on-sone (Mughalsarai), as per his service certificate as his date of birth was 1.7.30, which is evident from Annexure A-5.

4. The grievance of the applicant in this case is that his period has been counted from 1.6.61 to 30.6.88 i.e. 27 years and 29 days only i.e. the date from which he was regularised, but his earlier period has been totally ignored. It is further submitted by the applicant that since his basic pay was not correctly fixed as he was not given the benefit of promotion from Box Porter to Leverman and to Surtchman in the grade of Rs.1240-2040/- during the relevant time as a result of which his pensionary benefits have been affected. It is submitted by him that his period of service in Danapur Division has not been taken into consideration at the time when Mughalsarai Division was created. He has, however, admitted that less paid leave encashment of 112 days has been paid to him during the pendency of case in Labour Court, Allahabad. His main grievance is that the services of the applicant w.e.f. 1954 to 31.5.61 has not been counted for determining the

pensionary benefits which came to the notice of the applicant in the year 1988, therefore, he immediately gave his representation dated 10.12.88 to the authorities (Annexure A-7) followed by another representation dated 3.5.89, but no action has been taken thereon.

5. Being aggrieved, applicant filed Misc. case no. 45 of 1993 and 37 of 1997 which were dismissed in default. He further filed Misc. case no. 31 of 1998 under Rule 33C(2) of Industrial Dispute Act, 1947, which was also rejected on the point of jurisdiction vide order dated 13.9.2000 by the P.O., Labour Court, Allahabad with direction to the applicant to submit a representation and in case the same is rejected, applicant may approach competent court of law (Annexure A-12). Pursuant to the said direction, applicant gave his representation to the DRM, Eastern Railway, Mughalsarai (Annexure A-13), but the same has been rejected illegally, arbitrarily and unreasonable without any valid reasons. It is this order which has been challenged by the applicant in the present O.A. and he has sought the relief(s) as mentioned above.

6. Respondents, on the other hand, have submitted that the applicant was appointed as temporary Box Porter on 1.6.61 in the pay-scale of Rs.70-85 as recorded in the first page of Service book, which is also supported by offer of appointment and his acceptance vide letter dated 31.5.61 (Annexure 1 & 2). They have, thus, submitted that his qualifying service has correctly been counted which comes to 27 years and 29 days. They have further submitted that after bifurcation from Danapur Division, his leave encashment was also paid in accordance with law which he was entitled to. As far as the seniority lists are concerned, they have submitted that the seniority lists were issued from time to time and the applicant never raised any objection either for his seniority or for inspection of service record/leave record. They have further submitted

that no such record pertaining to his utilisation as substitute period upto 1.6.61 is available in official record. They have explained that the service record of the applicant was prepared at Danapur as this Division came into existence only in the year 1978, therefore, all the entries were made in the service record of the applicant by Danapur Division itself. They have also stated that as per directions in Misc. Application no. 31/98 the representation of the applicant has since been disposed of by rejecting his prayer. They have, thus, submitted that there is no merit in the O.A. and the same may be dismissed with costs.

7. I have heard both the counsel and perused the pleadings as well.

8. Vide order dated 26.3.2001 the authorities have informed the applicant that perusal of the documents did not show that he had regularly worked since 1954 and was made permanent on 1.6.61. The service record shows that he was appointed on 1.6.61 and at that time he never raised any objection, but he represented after a long time i.e. after 13 years from the date of retirement. Since there is no such document available, nor there is any mention in the service record, therefore, his prayer cannot be accepted. I had asked the applicant's counsel to show me some documents from which it could be inferred that the applicant had worked from 1954 to 1.6.61 as alleged by him, but apart from showing some certificates of competency issued in the years 1954 and 1956, he has not been able to show any other document from which it could be inferred that the applicant had worked as substitute from 1954 to 1961. On the contrary, he has himself annexed the certificate as Annexure-5 which shows that his period from service w.e.f. 1.6.61 to 30.6.88. Since the applicant has not annexed any document on the basis of which it could be either ascertained or inferred that he had worked as Substitute from 1954 to 1961, I do not think

that any case is made ^{out} by the applicant for interference by this tribunal. Accordingly, this O.A. is dismissed with no order as to costs.


MEMBER (J)

GIRISH/-