

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD.**

Original Application No. 126 of 2004

Tuesday, this the, 21st, day of October, 2008

Hon'ble Mr. K.S. Menon, Member (A)

Kishore Ram S/o Har Govind R/o Tenuat, P.O. Sakaldiha, District Chandauli.

Applicant

By Advocates: Sri S.K. Dey
Sri S.K. Mishra.

Vs.

1. Union of India through the General Manager, E.C. Rly., Hajipur/Bihar.
2. The Divisional Rly. Manager, E.C. Rly., Mughalsarai, Dt. Chandauli.

Respondents

By Advocate: Sri K.P. Singh

ORDER

By K.S. Menon, Member (A)

This O.A. has been filed against the impugned order dated 26.03.2003 forwarded by Divisional Railway Manager, E.C. Railway, letter dated 28.03.2003 rejecting the applicant's claim for fixing his pay as per recommendation of Vth Pay Commission and consequently payment of retiral benefits on the basis of revised pay scale, so fixed.

2. The applicant was engaged as a casual labour under respondents' department in the year 1959 and claims that he was granted temporary status in June, 1973. He was sent for screening test and medical examination and was declared fit in medical category B-1 vide letter dated 27.07.1984 (annexure A-1 to Compilation No. II). The applicant alleges that he was formally posted as a Gangman on 31.07.1985 i.e. after an inordinate delay of one year. He was retired on 01.08.1997 on a pay of Rs.965/- in the pay scale of Rs.800-1150/-. His basic grievance is that although Pay Commission recommendations were effective from 01.01.1996, his

9

pay was not re fixed according to recommendations of the Pay Commission and he was paid his Provident Fund, Insurance and D.C.R.G. on the basis of pre revised scale. He further states that his leave salary has been worked out incorrectly on the basis of 129 days. His other main grievance is that although he had served as Casual Labour from 31.07.1985 o 31.07.1997 and was regularized with effect from 1992, he was not found eligible for grant of pension despite the fact that he had completed more than 10 years of service. Being aggrieved by the action of the respondents, he filed representation on 20.03.2001 and as no action was taken on that, he filed an O.A. No. 377 of 2002, which was disposed by this Tribunal on 08.10.2002 with direction to respondents to decide and pass order on his representation. He, therefore, states that the impugned order passed in compliance of this Tribunal's order dated 08.10.2002, is contrary to Pension Rule 107 and Para-1515 of Indian Railways Establishment Manual, besides his pay has not been fixed as per Pay Commission recommendations and his retiral benefits have therefore been paid on the pre revised pay scale. He contends that the impugned order dated 28.03.2003 is liable to be quashed. He has prayed for the following relief (s): -

- (i) ***That this Hon'ble Court may be pleased to quash the impugned order dated 28.03.2003 and the respondents may be directed to pay pension and due leave salary of 119 days and D.C.R.G. after due fixation of pay under 5th Pay Commission effected from 1.1.1996 with due interest.***
- (ii) ***Any other relief or reliefs to which he is entitled may also be awarded to him."***

3. The respondents in their Counter have denied all the averments made by the applicant. Their basic contention is that the applicant was posted as CPC Gangman in the pay scale of Rs.200-250 w.e.f. 31.07.1985 after getting temporary status. He was regularized as Gangman w.e.f. 14.02.1992 after having been found suitable in the screening test and medical examination. The respondents state after retirement, applicant's service period was counted from the date of temporary status i.e. 31.07.1985 to the date of regularisation i.e. 14.02.1992, which comes to 6 years 8 months and 15 days. Since the period from the date of temporary status to the date of regularisation is always treated as half, as per rules for the purpose of determining qualifying service, his services was taken as 3 years 4 months and 7 days. The service period after

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regularisation till date of retirement i.e. 15.02.1992 to 31.07.1997 as a regular employee comes to 5 years, 5 months and 16 days. The total service, therefore, works out to 8 years, 9 months and 23 days and after reducing 22 days as leave without pay, qualifying service for pension comes to 8 years, 9 months and 1 day. The prescribed qualifying service required for pension as per Pension Rules is 10 years and since the applicant had completed 8 years, 9 month and 1 day services, he was not found eligible for grant of pension and hence no pension was sanctioned to him. The respondents have further stated that all other retiral benefits have been paid to the applicant as per Vth Pay Commission's recommendations and he was accordingly paid the difference in this regard. The respondents have, however, not communicated any details/documents in support of the above contentions. The applicant's representation dated 23.02.2001 appears to have been disposed of in compliance of this Tribunal's Order dated 08.10.2002. The respondents, therefore, maintain that there was no arbitrariness or illegality in the rejection of applicant's representation and that the speaking order dated 26.03.2003 has been passed in accordance with Rules and Regulations on the subject. They have, therefore, urged that the O.A. is without any merit and deserves to be dismissed.

4. Heard learned counsel for the applicant-S/Sri S.K. Dey and S.K. Mishra and Sri K.P. Singh, learned counsel for the respondents. Perused the pleadings.

5. There are basically two issues that need to be considered in this case. First is facts and dates pertaining to grant of temporary status, and date of regularisation, which would ultimately determining the length of service rendered by the applicant to be considered for pensionary benefits; Secondly whether the applicant's pay was re fixed in accordance with the Vth Pay Commission's recommendations and consequently whether retiral benefits have been paid in accordance with the said recommendations. The applicant has stated that he was granted temporary status in June, 1973, a fact which has not been substantiated or rebutted by the respondents. On the other hand in the impugned order dated 26.03.2003, the respondents have mentioned that his service period was counted from the date he was posted as CPC Gangman after

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grant of temporary status on 31.07.1985. Since neither party have annexed documents to substantiate their respective contention about the date of grant of temporary status, it is difficult to come to a conclusion about the exact date of grant of temporary status. It also does not appear realistic that a person who was appointed in the year 1959 was granted temporary status in 1985. The onus is, therefore, on the respondents to have come out clearly regarding the exact date of grant of temporary status. This point is being elaborated upon as it has an impact on the length of service rendered by the applicant, after grant of temporary status, for pensionary purposes.

6. Rule 1515 of Indian Railway Establishment Manual does state that conferment of temporary status on the Substitutes on completion of four months continuous service will not entitle them to automatic absorption/appointment to 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 to regular railway posts. In the instant case, it is difficult to imagine the date on which temporary status was granted as there are gaps in the pleadings on record. If the statement of the applicant is taken to be true then there has been a considerable delay in regularizing the services of the applicant, which in this case works out to be almost 20 years. The applicant was cleared by the Screening Committee and Medical Board in July 1984 and the respondents have inordinately delayed appointing him regularly on 31.07.1985 i.e. after a period of one year. It can be argued in favour of the applicant that, had he been appointed on regular basis after he was declared medically fit, he would perhaps have had the requisite qualifying service for being eligible for pensionary benefits. If the date of grant of temporary status, as mentioned by the applicant, is to be taken as correct, then the period 1973 to the date of regularization in 1992 works out to be 19 years of qualifying service and on this ground, the applicant would have been eligible for pensionary benefits. The respondents do not seem to have come clean with regard to facts and figures while denying the applicant's pensionary benefits.

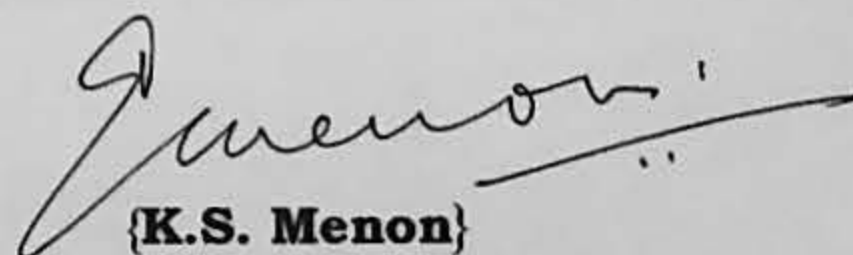
7. The respondents have merely stated in para-12 of their Counter that pay and retiral benefits have been paid to the applicant

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on the basis of Vth Pay Commission recommendations. They have, however, not annexed any document in support of this contention, which as model employer, they should have done. On the other hand, the applicant has categorically stated and indicated that all retiral benefits paid were in accordance with the pre revised scale of pay and has annexed Annexure A-3 and A-4 to Compilation No. II in support thereof.

8. In view of the above, I am not convinced that the applicant had been treated fairly and even if he has been treated fairly, same is not quite apparent from the pleadings on record or the submissions made. The impugned order dated 26.03.2003 is, therefore, set aside. The applicant is directed to file a fresh detailed representation indicating clearly what is due to him and what he has received alongwith a certified copy of this Order within a period of 3 weeks from the date of receipt of a certified copy of this Order. The respondents will on receipt of such a representation, re-consider the applicant's case with reference to facts and dates of his service and fixation of his pay and payment of retiral benefits, in accordance with the recommendations of Vth Pay Commission and pass a reasoned and speaking order on the above lines within a period of two months thereafter.

9. The O.A. stands disposed of with the above directions. No order as to costs.


{**K.S. Menon**}
Member (A)

/M.M/