

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

ORIGINAL APPLICATION NO. 1083 of 2006.

ALLAHABAD THIS THE 4 DAY OF March 2009.

Hon'ble Mr. A.K. Gaur, Member (J)

Bhawani Singh aged about 67 years son of Late Shri Dangal
Resident of Village Barkhera, Post Jiron, P.S. Jakhlaun,
District Lalitpur.

.....Applicant

By Advocate: Shri R.K. Nigam

Versus.

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi.

.....Respondents

By Advocate: Shri Anil Kumar

ORDER

The applicant is aggrieved against the order dated 15.5.2006 issued by respondent No.2 thereby declining to grant regular pension to the applicant.

2. According to the applicant, he started his career as Skilled Artisan w.e.f 1.6.1959 in the Signal and Telecommunication Engineering Department of Central

Railway, Jhansi. The applicant retired from service w.e.f. 30.9.1994 after attaining the age of superannuation. The applicant further asserted that there is ample evidence to show that he continued to work as Skilled Artisan in Signal and Telecommunication Engineering Department. As the applicant was not given regular pension, which otherwise should have been paid to him, he filed O.A. NO. 647 of 1999- Bhawani Singh Vs. Union of India and others. The Tribunal while disposing of the O.A. clearly observed that if the applicant satisfied the conditions provided in para 207 of the Indian Railway Establishment Manual Vol-II and if he was engaged as a Skilled Labourer from the very beginning, the pension shall be altogether different. Accordingly, this Tribunal directed the respondents to consider entire period of working claimed by the applicant and verify the same from their record and then calculate the pension in accordance with law within a period of 3 months from the date of receipt of copy of this order. The grievance of the applicant is that respondents, however, without filling any review/writ petition or SLP have ventured to over turn the judicial order of the Tribunal dated 13.3.2001 vide their order dated 17.9.2001 thereby taking a different stand. The legality of aforesaid order dated 17.9.2001 was again challenged by way of O.A. NO.623/02. The Tribunal again directed that since the supplementary affidavit filed by the applicant indicates certain new facts, which require confirmation from the respondents in

order to determine the issue. Accordingly, this Tribunal directed respondents to consider the facts mentioned in the Supplementary Affidavit and pass appropriate order vide judgment and order dated 1.2.2006. Applicant has also placed reliance on the decision rendered by the Principal Bench of the Tribunal in O.A. No. 284 of 2005, Smt. Anita Devi Vs. Union of India and others and submitted that Tribunal has considered the whole gamut of law into consideration and finally held that a Casual Labourer/MRCL shall draw pension after fulfilling certain requirement of law and qualifying service.

3. In reply filed by the respondents, it is alleged that applicant was granted MRCL w.e.f. 1.1.1981 as per Railway Board letter dated 11.9.1986 issued in pursuance of judgment rendered in Indrapal Yadav's case decided by Hon'ble Supreme Court. It is also submitted that applicant worked as MRCL from 1.1.1981 to 19.12.1989 (8 years, 11 months 11 days) and worked on permanent basis upto 13.9.1994 upto the date of his retirement i.e. 4 years, 9 months and 10 days total 9 years, 3 months and 4 days. As per Rule 69 of Railway Service Pension Rule 1993, the applicant has less than 10 years of qualifying service in pursuance of order dated 13.3.2001. Applicant's representation has already been decided by the respondents by a reasoned and speaking order dated 17.9.2001, against which applicant has again filed O.A.

NO. 623/02, which has also been decided. The applicant is not entitled to get pension. It is wrongly alleged by the applicant that similarly situated persons, who have not even requisite qualifying service has been granted pension. Since the applicant has not completed 10 years qualifying service as required under Railway Service Pension Rule 1993, he is not entitled to get the pension.

4. By filing rejoinder the pleas taken by the respondents in the counter reply has been denied. It is submitted that applicant has rendered 35 years and 10 months continuous/substantive service and the respondents have taken false plea that the applicant did not render qualifying pensionable service. The case decided by the Tribunal in O.A. NO. 658/05 decided on 23.8.2005 has been relied upon. Applicant also submitted that the case of Babu Singh is squarely applicable to the facts of the present case. According to the applicant, impugned order is totally perverse and without jurisdiction.

5. In the supplementary counter reply filed by the Railway Administration, it is alleged that merely sending the applicant's paper to the Competent Authority for necessary action, would not make him entitle for the pension unless eligible for the same. The respondents have rightly considered the applicant's request for grant of pension and the same has

not been found to be feasible accordingly reasoned and speaking order were passed.

6. Having heard Shri R.K. Nigam, learned counsel for the applicant and Shri Anil Kumar, learned counsel for the respondents. I am not very much convinced with the pleas taken by the applicant in Original Application.

7. It is seen from the record that the applicant has rendered total 9 years, 3 months and 4 days service. Under the provision of Railway Service Pension Rules 1993, the applicant can only be granted pension after completing 10 years qualifying service. Applicant has filed series of Original Applications in this Tribunal for redressal of his grievance. The case law relied upon by the applicant is not at all applicable to his case. It is also seen from the record that the judgment rendered in O.A. NO. 623/02 decided on 1.2.2006, it was merely directed to the respondents to reconsider the applicant's case in view of the facts mentioned in the supplementary affidavit filed by him. The Tribunal did not even touch the order dated 17.9.2001, which was passed in applicant's earlier O.A. NO. 647/99. In these circumstances, there was hardly any occasion for the respondents to approach the Higher Court or for filing Review Petition as alleged by the applicant. Applicant's counsel vehemently

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urged that this Tribunal has directed the respondents as follows:-

"It appears appropriate and just that respondents may be asked to consider the entire period of working claimed by the applicant and verify the same from their record and then calculate the pension in accordance with law".

8. From the pleadings of the parties and from the perusal of the record, it clearly indicates that the case of the applicant was considered by the respondents and entire period was taken into consideration after thorough verification and Competent Authority came to the conclusion that the applicant does not qualify for grant of pensionary benefits on the ground that he has rendered only 9 years, 3 months and 4 days whereas under Railway Service Pension Rules 1993, 10 years qualifying service is must for grant of pensionary benefits.

9. Shri R.K. Nigam, learned counsel for the applicant would further contend that the decision rendered by the Hon'ble High Court in the writ ***petition No. 56057 of 2004, Babu Singh Vs. State of Uttar Pradesh and others*** is fully applicable to the facts of the present case. In the case of Babu Singh (supra), petitioner has sought mandamus to pay post retiral benefits, he was appointed on the post of Godam Chowkidar on temporary basis. In 1995, he was regularized and retired on 30.6.2001. While dealing with the said case,

Hon'ble High Court clearly observed that under Fundamental Rule 56 read with Paras 424 and 361 of Civil Service Regulations, the petitioner is entitled for pension, since the entire period of service even prior to the date of regularization would be counted towards qualifying service for payment of pension. This observation was made by the Hon'ble High Court relying upon the decision of a Division Bench of High Court reported **in 2006 (1) ESC page 611, Board of Revenue and others Vs. Prasidh Narain Upadhyay**. In the instant case provisions of Rule 56 read with Paras 424 and 361 of Civil Service Regulations will not be applicable and this case is squarely covered under the provision of Rule 69 of Railway Service Pension Rules 1993. It is trite law that pensionary/retiral benefits are no longer bounty with the right of the retired employee as held in **AIR 1983 Supreme Court page 130- D.S. Nakara Vs. Union of India and others**. In the case of D.S. Nakara (supra), Hon'ble Supreme Court has clearly ruled that the right to get pension is governed by Rules and retiral benefits are payable only in accordance with Rules. In my considered view, the case of Babu Singh (supra) decided by Hon'ble Allahabad High Court is not applicable to the facts of the present case.

10. Learned counsel for the respondents argued that only $\frac{1}{2}$ of temporary service of the applicant after 1.1.1981 till regularization shall be considered towards pensionary

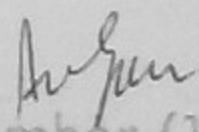
benefits. The Competent Authority while considering the case of the applicant in the light of the direction dated 13.3.2001 clearly observed that under provision of Railway Establishment Code Para 207, it is specified that in an emergent situation for the post of Semi Skilled Artisan, Casual Labour Skilled Artisan may be appointed. In view of decision rendered by Hon'ble Supreme Court and on the basis of Railway Board's letter dated 11.9.1986, the applicant was given temporary status on the basis of his working prior to 1.1.1981. According to the Rules, the applicant was also regularized in Group 'D' w.e.f. 20.12.1989. On 30.9.1994, he was superannuated and at the time of retirement his eligibility for pension was considered on the basis of qualifying period of service under Pension Manual. Since the applicant worked as M.R.C.L. from 1.1.1981 to 19.12.1989, total period of 8 years, 11 months and 18 days, the period according to eligibility of pension will be counted $\frac{1}{2}$, which comes 4 years, 5 months and 24 days. The regular service of the applicant w.e.f. 20.12.1989 to 30.9.1994 comes to 4 years, 9 months and 10 days. In these Circumstances, for pensionary benefits his total qualifying service comes to 9 years, 3 months and 4 days and under Pension Manual, a person having less than 10 years of service is not entitled to get pension and in my considered view the respondents have rightly rejected the case of the applicant for grant of pensionary benefits.

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11. My aforesaid view is fully supported by the Railway Board letter dated 11.9.1986 and by the decision rendered by Hon'ble Supreme Court in Indrapal yadav's case.

12. Having given my anxious thought to the pleas advanced by the parties counsel, I am firmly of the view that the applicant has utterly failed to prove his case for grant of pensionary benefits. The case of Babu Singh (supra) relied on by learned counsel for the applicant is not at all applicable to the instant case. Babu Singh case (supra) is related to the employee of State of Uttar Pradesh having different service Rules regarding pension. In the case of the applicant provision of Rule 69 of Railway Service Pension Rules 1993 is applicable and in view of D.S. Nakara case (supra), pension is to be given to an employee on the basis of Rules and Regulations alone.

13. In my considered view, O.A. has no merit and it is accordingly dismissed. No order as to costs.


Member (J)

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