

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 25th DAY OF March 2011)

HON'BLE DR. K.B.S. RAJAN, MEMBER (J)

Original Application No. 1223 of 2006

(U/S 19, Administrative Tribunal Act, 1985)

Dukhoo s/o Gaya Ram, R/o Mawai Khurd, PO. Mughalsarai,
District-Chandauli.

..... Applicant

**Present for Applicant : Sri S. K. Day
Sri S. K. Mishra**

Versus

1. Union of India through its General Manager, Northern Rly.,
Baroda House, New Delhi.
2. Divisional Rly. Manager, N. Rly. Hazratganj, Lucknow.

..... Respondents

Present for Applicant : Sri Ravi Ranjan

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

The case of the applicant is as under:-

2. The applicant was initially engaged as Parcel Porter under the contract as Contract Labour in 1970 and in the wake of the Judgment of the Hon'ble Supreme Court in Writ Petition No.507 of 1992 decided on 09th May, 1995 the applicant was screened for regularization and was absorbed as Parcel Porter w.e.f. 22.05.1996. The applicant superannuated on 31.03.2004. As the applicant's regular service fell short by almost three years, he was not granted

pension as 50% of his service rendered under contract was not counted. If, however, the same is taken into account, he fulfils the minimum condition for qualifying service. The applicant claims such inclusion of 50% of his service with regular service for the purpose of pension and other benefits.

3. Respondents have contested the O.A. According to them there is no scope at all for counting the contract services pension towards the service of the applicant for pension purpose and as such the applicant is ineligible for pension.

4. Applicant has filed his Rejoinder reiterating that 50% of his service rendered under contract is to be counted for qualifying service for pension.

5. Counsel for the applicant referred to Rule 31 of Railway Service (pension) Rules 1993 (Annexure-CA-1) to contend that provision exists for counting the same which as under:-

"31. Counting of service paid from contingencies

In respect of a railway servant, in service on or after the 22nd day of August, 1969, half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment, subject to the following conditions namely:-

- (a) *the service paid from contingencies has been in a job involving whole time employment.*
- (b) *The service paid from contingencies should be in a type of work or job for*



which regular post could have been sanctioned as posts of malis, chowkidars, and Khalasis;

(c) The service should have been such for which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly basis and which, though not analogous to the regular scales of pay, borne some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period by staff in regular establishments;

(d) The service paid from contingencies has been continuous and followed by absorption in regular employment without a break;

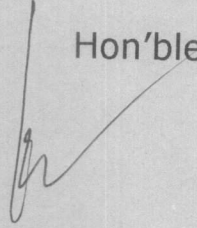
Provided that the weightage for past service paid from contingencies shall be limited to the period after 1st January, 1961 subject to the condition that authentic records of service such as pay bill, leave record or service-book is available.

Notes:1. The provisions of this rule shall also apply to casual labour paid from contingencies.

2. The expression "absorption in regular employment" means absorption against a regular post."

6. Counsel for the respondents submits that above rule does not apply to the service rendered under a contractor.

7. It is seen from the decision of the Hon'ble Apex Court that a report was called from the Assistant Labour Commissioner which is made available on 31st August, 1993 on the basis of which the decision was rendered by the Hon'ble Apex Court which is as under:-

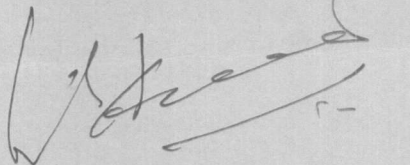


"The absorption and regularization of the petitioner in the petitions, who could be appointed as permanent Railway Parcel Porters shall be done according to the terms indicated above and on such other terms to which they may be subjected to according to the rules or circulars of the Railway Board as expeditiously as possible not being later than six months from today, those who have put in longer periods of work as Railway Parcel Porters on contract labour getting preference in the matter of earlier appointment.

All the writ petitions are, therefore, allowed by issue of the above directions to the respondents. No costs.

8. In pursuance of the aforesaid judgment only the Railway had taken expeditious action and ensured the regularization of service of the applicant from 22.05.1996. Even if regularization is advanced to the date of judgment i.e. on 09.05.1995 then also the applicant does not fulfil the minimum years of service.

9. In view of the above there is no scope to accommodate the applicant for pension purposes. Hence the O.A. is rejected. No Costs.



[Dr. K. B. S. Rajan]
Member-J

/Dev/