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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

O.A No. 370/2006

, this the 30th day of November, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

Sri Baldev, S/o Bhagwan Das, R/o 10 Ponnappa Road, (New Cantt.)
Officer Line, Allahabad.

... Applicant

By Advocate : Shri J. Singh

V E R S U S

1. Union of India through the General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Allahabad.
3. The Senior Divisional Personnel Officer, North Central Railway, Allahabad.
4. The Senior Section Engineer (Loco Diesel Shed), North Central Railway, Kanpur.

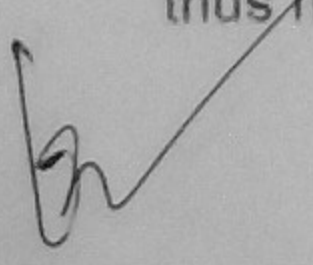
... Respondents

By Advocate : Shri A.K. Sinha

O R D E R

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The claim of the applicant in this case is that his period of service for the purpose of working out his pension has been wrongly calculated and thus he is being paid the pension at the reduced rates. His pension should



have been calculated on the basis of his total qualifying service taking into account his substitute service followed by regular service. According to the calculations of the applicant he has put in 23 years of service whereas the respondents have accounted for only 14 years of service. Hence this original application has been filed seeking the following reliefs:-

(i) To issue a suitable order or direction to pay to the applicant all his settlement dues i.e. pension, gratuity, provident fund, leave encashment etc with interest at the bank rate over each and above from the due date till the date of actual payment and further direct continuously to pay to the applicant his pension.

(ii) To issue any such further orders or direction that this Hon'ble Court deemed fit and proper under the circumstances of the case.

2. Briefly stated, the case of the applicant is that he was appointed as a casual labourer w.e.f. 18-10-1979 and was screened for regular Class IV post in May 1982 vide Annexure RA 2. Later on, he was medically declared unfit and was discharged from service w.e.f. 22-12-2004. Thus, the period of service rendered by the applicant is minimum of 22 years and as such, all his terminal benefits were expected by him to be based on the total qualifying service of 22 years whereas respondents have restricted his pension reckoning the service rendered by the applicant as only 14 years.

3. Per Contra, respondents contend that the applicant was initially

functioning as casual labour w.e.f. 18-10-1979 and was granted temporary status as Fitter Khalasi in the pay scale of Rs 196 – 232 w.e.f. 31-01-1981. His total service till the date of his discharge is only 14 years 3 months and 16 days. Calculation of pension and terminal benefits had been accordingly worked out.

4. In his rejoinder the applicant had added a copy of order dated 05-05-1982 whereby the applicant was placed in the panel of Class IV categories of Loco other than cleaner. He has also annexed a copy of the medical report dated 22-02-2003 in which the period of service rendered has been indicated as 22 years and 2 months.

5. In their supplementary counter to the rejoinder, the respondents have stated that the applicant had worked as daily rated casual labour from 22-01-1978 to 25-09-1979 and was later appointed as substitute Khalasi in the pay scale of Rs 196-232 on 31-01-1981. Later on he was appointed as temporary Khalasi on being screened and empanelled vide notice dated 05-05-1982. Pension is calculated after four months from the date of substitute appointment and the **period of absence from duty on leave without pay is treated as non-qualifying service** and accordingly the qualifying service has been computed 14 years 3 months and 16 days.

6. In his additional rejoinder the applicant^{by} contended that the respondents have never treated any period of service as absence from duty ~~to~~ treating the same as leave without pay. Thus their contention in this

regard is devoid of merits.

7. Counsel for the parties put ^{for} ~~for~~ their arguments on the basis of their pleadings.

8. Arguments were heard and documents perused. First, the support sought by the applicant from the medical report annexed to the Rejoinder is to be disregarded since the recording of the total service by the medical authorities is not on the basis of any authentic records but only on the basis of the information furnished by the applicant. Or else, from the date of initial appointment, till the date of certification, the period in between is worked out and indicated. This would not take into account the period that would not have qualified to be treated as qualifying service. The other documents only are to be analyzed to work out the period of qualifying service. Admittedly the applicant was serving as a casual labourer for some time between 1979 and 1980 followed by engagement as substitute Khalasi from 31-01-1981 and from 5-5-1982, he had been empanelled as temporary Class IV employee and was finally medically invalidated w.e.f. 22-12-2004. For the purpose of reckoning qualifying service, the casual Labour service has to be ignored. Thus, the qualifying service has to be calculated from 31 - 1- 1981 when the applicant was engaged as substitute subject to discounting the period which does not qualify to be reckoned as qualifying service. By 05-05-1982 he became regular Class IV employee. In so far as the period of service as substitute is concerned, Rule 2318 of the Rules applicable to Railway Establishments provides that

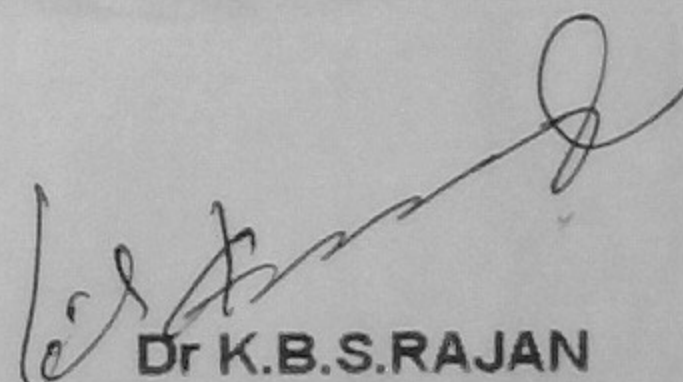
substitutes shall be afforded all the rights and privileges as may be admissible to temporary Railway Servants, from time to time on completion of 6 months' continuous service. In the instant case, since the applicant had been treated as temporary Class IV employee from 05-05-1982, the period of substitute service is less than six months. Hence, the applicant's regular service commences from 05-05-1982. The applicant has been medically invalidated w.e.f. 22-12-2004. Thus the period in between works out to 22 years, 7 months and 17 days. From this period has to be discounted period of service treated as leave without pay. Details are not known to us. If the contention of the applicant is taken into account, no such period has been treated as leave without pay. In that event, the claim of the applicant for counting the period of service over 22 years has to be accepted. However, in the absence of the leave account being produced, the Tribunal cannot on the face value of the contentions of the applicant hold that there is no period that could be discounted from the qualifying service of 22 years plus. Hence, the only way is to refer the matter back to the respondents to verify from the leave records maintained by them and work out such period that has to be discounted from the total period of qualifying service. And, the details of the same should be given to the applicant. If the period is more than 14 years, then the pension and other terminal benefits of the applicant shall be calculated accordingly and the difference in pension, DCR Gratuity and Leave encashment (if any) should be disbursed to the applicant and revised PPO issued to the authorities concerned in respect of pension. In all expectation, the pension of the applicant from 2006 would be on the straight formula of 50% of the

minimum in the pay scale plus grade pay, unless the notional pay of the applicant worked out as on 01-01-2006 happens to be more than the minimum in the pay scale, in which case, 50% of such notional pay would be the pension admissible from 2006, here again on pro rata basis with reference to the qualifying service as the applicant did not complete 33 years of service.

9. The OA is, therefore, **disposed** of with the direction to the second respondent that he would cause instructions issued to the authorities below to verify from the service record of the applicant to work out the extent of leave without pay and discount the same from the total period of 22 years 7 months 17 days as worked out above and if the same is more than 14 years, 3 months and 7 days worked out by the respondents, then action as indicated in the preceding paragraph be taken.

10. Time scheduled to completely comply with the order (including payment of arrears if any, and issue of revised PPO, if the same was warranted) within five months from the date of communication of this order.

11. Under the circumstances, there shall be no orders as to cost.


Dr K.B.S. RAJAN
JUDICIAL MEMBER