

2

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.263 OF 1994

Cuttack, this the 30th March, 1999

Narayan Samal

Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.263 OF 1994

Cuttack, this the 30th day of March, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Narayan Samal, aged about 61 years,
son of late Gourahari Samal,
At/PO/District-Keonjhar

Applicant

Advocates for applicant -

M/s R.N.Naik
A.Deo
B.S.Tripathy
P.Panda
D.K.Sahoo

Vrs.

1. Union of India, represented by the
Secretary, Ministry of Communication,
Sanchar Bhavan,
New Delhi.

2. Chief General Manager,
Telecommunication,
Orissa Circle,
At/PO-Bhubaneswar, Dist.Khurda.

3. Divisional Engineer, Telegraphs,
At/PO/District-Cuttack.

4. Divisional Engineer, Telegraphs,
At/PO/District-Dhenkanal.....

Respondents

Advocate for respondents - Mr. P.N.Mohapatra
A.S.C.

O R D E R

S Som. SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for a direction to the respondents to recalculate his
pensionary benefits including gratuity by taking into
account his total length of service instead of 20 years

service. The second prayer is for a direction to the respondents to consider the case of the petitioner for retrospective promotion to the post of Selection Grade Supervisor from the date his juniors were given such promotion and for consequential benefits and recalculation of his pensionary benefits accordingly. At the time of hearing, the learned counsel for the petitioner confined his prayer only to giving of direction to the respondents to recalculate his pensionary benefits taking into account his full length of service. The prayer for retrospective promotion has not been pressed and it is, therefore, not necessary to refer to that aspect of the matter.

2. The facts of the case, according to the petitioner, are that he entered Government service as Telephone Operator on 16.7.1957 and after working at various places, he retired on invalidation with effect from 5.11.1985 as he suffered from Poly Arthritis. Even though the applicant had rendered about 30 years of valid service, due to mistake his qualifying service was recorded as 20 years and accordingly his pension was finalised and gratuity was given, but both at a reduced rate. The petitioner made an application on 5.12.1991 to Divisional Engineer, Telegraphs (respondent no.3) to supply him a copy of the Service Book after depositing the necessary fee. This representation is at Annexure-2. But no action was taken on this. He filed a further representation on 16.12.1992 (Annexure-3) seeking re-fixation of pensionary benefit. But as no action was taken on his representations, he has come up in this O.A. with the prayers referred to earlier.

3. The respondents in their counter have stated that pensionary benefit and gratuity have been correctly calculated. According to them, the applicant was appointed as Telephone Operator on 16.7.1957 and he retired on invalidation on 5.11.1985. Thus, his total period of service was 28 years 3 months and 21 days. Out of this

period, a period of seven years five months and twelve days was taken as non-qualifying service for the purpose of pension and gratuity as per details given below:

DETAILS OF NON-QUALIFYING SERVICE

	FROM	TO	YEAR	MONTH	DAYS
1. Extraordinary Leave without MC	22.2.63	27.3.66	3	1	4
2. Strike on	-	19.6.68			1
3. Leave without Pay	5.2.67	6.2.67			2
4. Suspension	3.10.78	1.2.79			4
5. Dies non	1.11.81	5.11.85	4		5
			Total	7	5
					12

This has been mentioned in paragraph 2(B) (page 2) of the counter. The respondents have further stated that the applicant was on long leave from 6.11.1962 to 12.6.1966 and during this period he undertook employment elsewhere without permission of the Department. For this disciplinary proceedings were initiated against him and he was awarded penalty of reduction of his pay to the stage of Rs.160/- for a period of two years during which he was not entitled to increment. He was also under suspension from 3.10.1978 to 1.2.1979 and after proceedings, was awarded punishment of stoppage of one increment. After deducting the non-qualifying service period, the net qualifying service of the petitioner came to 20 years 10 months and 9 days and accordingly his pension was correctly calculated. The respondents have given the detailed calculation of his pension in page 3 of the counter. It has also been mentioned that his pension and gratuity have accordingly been released to him. The petitioner had also met the Accounts Officer and he was explained in detail about the period of qualifying service which has been taken into account. The respondents

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have also stated that Pension Payment Order was issued on 9.4.1986 and he had never disputed the said Pension. He never filed any representation and after the passage of more than eight years, he cannot be allowed to raise this question. On his representations, it has been mentioned that the petitioner having retired from the office of Divisional Engineer, Telegraphs, Dhenkanal, should have filed representation through him. But his representations at Annexures 2 and 3 are addressed to Divisional Engineer, Telegraphs, Cuttack, who is not the proper authority to deal with his representations. On the above grounds, the respondents have opposed the prayers of the petitioner.

4. I have heard Shri B.S.Tripathy, the learned counsel for the petitioner and Shri P.N.Mohapatra, the learned Additional Standing Counsel appearing for the respondents, and have also perused the records. The learned counsel for the petitioner has also filed a written note of submission with copy to the other side and this has been taken note of.

5. As earlier noted, from the total period of service of 28 years 3 months and 21 days, non-qualifying service has been taken as 7 years 5 months and 12 days. This comes under five items. Of these five items, item no.2 is for one day, i.e., on 19.9.1968 when the applicant was on strike and item no. 3 is for two days when the applicant was on leave without pay on 5th and 6th February 1967. These two items are not considered because three days will not make any difference with regard to pension and gratuity of the applicant. Amongst the three items, the first item is extraordinary leave without medical certificate for a period of 3 years, 1 month and 4 days from 22.2.1963 to 27.3.1966. The respondents have stated that the applicant was on long leave from 6.11.1962 to 12.6.1966 and during this period he undertook employment elsewhere without permission of the Department. For this disciplinary action was initiated

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against him and he was punished. The period from 22.2.1963 to 27.3.1966 was taken as extraordinary leave. The point for consideration is whether this period would count towards his qualifying service for the purpose of pension. Rule 21 of Central Civil Services (Pension) Rules, 1972 lays down that all leave during service for which leave salary is payable and all extraordinary leave granted on medical certificate shall count as qualifying service. It is laid down in the proviso that in the case of extraordinary leave other than extraordinary leave granted on medical certificate the appointing authority may, at the time of granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to a Government servant due to his inability to join or rejoin duty on account of civil commotion, or for prosecuting higher scientific and technical studies. From the above Rule it is clear that extraordinary leave granted on medical certificate shall count towards pension as qualifying service. In case of extraordinary leave granted without medical certificate, the appointing authority can allow the period to count towards pension as qualifying service only if the Government servant was unable to join the duty on account of civil commotion or on account of his prosecuting higher scientific and technical studies. In the instant case, the respondents have pointed out that this period of three years, one month and four days was treated as extraordinary leave without medical certificate and the case of the petitioner does not come within the benefit of the proviso and therefore, this period has been rightly treated as non-qualifying service. The second item to be considered is the period of four months from 3.10.1978 to 1.2.1979 when he was under suspension. The respondents have pointed out in the counter that after this period of suspension, he was awarded with a penalty of stoppage of increment. Rule 23 of Central Civil Services

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(Pension)Rules, 1972 deals with counting of period of suspension. It is laid down that time passed by a Government servant under suspension pending inquiry into conduct shall count as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified; in other cases, the period of suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declares at the time that it shall count to such extent as the competent authority may declare. In the instant case, the petitioner was not exonerated and after the inquiry, punishment of stoppage of one increment was imposed on him. The disciplinary authority apparently has not passed any order for counting the period of suspension of four months as qualifying service for the purpose of pension. This period of suspension was from October 1978 to February 1979, i.e., more than six years prior to his retirement on 5.11.1985. The applicant had not obviously moved the disciplinary authority at that time to count the period of suspension towards pension. Therefore, after long lapse of time, it is not open for him to claim that the period of suspension should count towards pension. This contention is also, therefore, held to be without any merit and is rejected.

6. The third period is from 1.11.1981 to 5.11.1985, the date of his retirement on invalidation. This works out to a period of 4 years and 5 days which has been treated as dies non. According to Note under Rule 27 of Central Civil Services (Pension) Rules,1972, printed at page 62 of Swamy's Compilation (12th Edition), Comptroller and Auditor General has laid down in his Memo dated 12.9.1958 that period of absence not covered by grant of leave shall have to be treated as dies non for all purposes, viz., increment, leave and pension. It is further laid down that

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such absence without leave where it stands singly and not in continuation of any authorised leave of absence will constitute an interruption of service for the purpose of pension and unless the pension sanctioning authority exercises its powers under Article 421, Civil Service Regulations (now rule 27 of the Central Civil Services (Pension) Rules) to treat the period as leave without allowance, the entire past service will stand forfeited. In the instant case even though this period of four years and five days has been treated as dies non, the previous qualifying service minus the period referred to above has been treated as qualifying service. The period of dies non will not count towards qualifying service and as such the respondents have been right in leaving out this period of four years and five days from the qualifying service of the petitioner.

7. The learned counsel for the petitioner in his written submission has mentioned that the applicant was at one time a Union leader of the Department, but he has got unblemished service career. The authorities keeping a grudge against him because of his union activity has reduced his qualifying service. As I have already noted, the departmental respondents in their counter have elaborately explained how the qualifying service of the applicant has been calculated and I have also analysed the periods which have been taken as non-qualifying service and it is found that his period of qualifying service has been rightly computed.

8. In the result, therefore, it is held that the applicant has not been able to make out a case for the relief claimed by him. The Original Application is held to be without any merit and is rejected but, under the circumstances, without any order as to costs.

(SOMNATH SOM)
VICE-CHAIRMAN

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