

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO. 578 OF 1995.

CUTTACK, this the 21st day of JANUARY, 1999.

Radhanath Pal.

....

Applicant.

-VERSUS-

Union of India & 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 NO. the Central Administrative Tribunal?.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
21.1.99

21.1.99.
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 578 OF 1995.

CUTTACK, this the 21st day of JANUARY, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

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Radhanath Pal, aged about 62 years,
Son of late Jadunath Pal, resident
of Jobra, P.O. College Square,
Town & Dist. Cuttack.

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APPLICANT.

By legal practitioner: M/s. M. R. Mohanty, P. K. Parida, Advocates.

- Versus -

1. Union of India represented through
General Manager, S. E. Railway,
Garden Reach, Calcutta-7.
2. Divisional Manager, S. E. Railway,
Khurda Road, PO. Jatni, Dist. Khurda.
3. Senior Divisional Personnel Officer,
South Eastern Railway, Khurda Road,
PO. Jatni, Dist. Khurda.
4. District Engineer,
S. E. Railway (Construction),
S. E. Railway, Cuttack.

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RESPONDENTS.

By legal Practitioner: M/s. B. Pal, C. N. Ghosh, Senior Counsel.

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O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

In this application, filed on 26-9-1995 applicant Radhanath Pal, who worked under the Railway Respondents, on casual basis acquired temporary status on 1-1-1982 and was regularised on 11-04-1984. He retired from Railway Service on 31-12-1991 on attaining the age of superannuation. He claims that he had more than ten years of qualifying service under the Respondents on the ground that he served as Chowkidar under the Railway from 9-9-69 to 23-8-1970, again from 8-9-1972 to 23-9-1974 and as a Survey Khalasi from 1-10-1977 to 23-2-1975; and as a regular Khalasi from 13-5-1975 to 23-12-1976 and as such, he is entitled to get pension and all other retiring dues but inspite of several representations, he has not been sanctioned pension. Hence, he seeks a direction to the Respondents for payment of retirement dues with interest @ 12 interest.

2. The Respondents, in their counter, denied his engagement from 9-9-1969. According to them, he was engaged as Casual labourer w.e.f. 24-12-1976 but was granted temporary status in terms of Estt. Sl. No. 187/86 with effect from 1-1-1982 in view of the judgment of the Apex Court in Inderpal Yadav's case. Thereafter, he was granted status on a permanent construction reserve post with effect from 1-4-1984 and confirmed on 9-1-1991.

After his superannuation, he was given Rs.133/- towards insurance, Rs.11,136/- towards encashment of leave salary of 240 days and his Provident Fund dues. He has not been sanctioned pension ~~because~~^{as} his qualifying service comes to less than ten years, because under Rule 623 of Manual of Railway Pension Rules, a Railway servant to be entitled to get pension, is required to put in ten years of qualifying service. As per Estt. Sl. No. 4/87 (Annexure-R/2) and para 2005 of the Railway Establishment Manual (Annexure-R/3) only 50% of casual engagement rendered after attainment of temporary status would be counted for qualifying service. Hence the applicant was entitled to count half the period from 1-1-1982 to 1-4-1984 as qualifying service towards pensionary benefits and thereafter full period from 1-4-1984 to 31-12-1991 towards pensionary benefits, and this entire period would come to eight years, 10 months and 15 days i.e. less than ten years. On these averments, the Respondents pray for dismissal of the Original Application.

3. We have heard the submission of Shri H.M. Dhal, learned counsel for the applicant and Shri B. Pal, learned Senior Counsel appearing for the Respondents. We have also perused the records.

No Rule or authority was cited in support of the averments in the application that the period of casual service from 1976 till the conferment of temporary status ^{is} ~~not~~ ^{qualifies} to be qualifying service. Hence, we are not

inclined to take note of this averment in the pleadings. Para-2005 of the Railway Establishment Manual, Vol.II (1990 edition) is clear that only half of the period of service rendered by casual labourer after attaining the temporary status till regular absorption, will be counted as qualifying service for the purpose of pensionary benefits and these benefits will be admissible only after his absorption in regular employment. Applicant, as earlier stated, has got temporary status on 1-1-1982 and was regularised on 11-4-1984. Half of this period and the period from his regularisation till his retirement on superannuation in total would come to eight years, ten months and fifteen days, which is less than ten years. Rule 623 of Manual of Railway Pension Rules, is clear that pension is granted to a railway servant, who has completed ten or more years of regular service.

Learned counsel for the applicant, places reliance on the decision of the Apex Court in the case of Ram Lal Vrs. Union of India reported in AIR 1997 SC 453. In support of his contention that his entire temporary status period, shall have to be added towards the qualifying service. We have carefully gone through this decision. The Hon'ble Supreme Court, nowhere, in this decision, laid down that the entire temporary status period, has to be added to the qualifying service for pensionary benefits. In that case, interpretation to Rule 3511(C) of IREM was involved. This rule, as quoted in the decision is to the effect that unless, a candidate is sent before the Medical Board and

selected by the regular selection Committee, he has no right to the post. Applicant Ramlal was appointed on adhoc basis as a casual worker on 1-1-1962. His appointed was terminated on 18-9-1964. This was challenged in Court of law which held the order of termination was illegal, void and inoperative. Accordingly, he was reinstated on 14-7-1971. After his medical examination in 1987, he came to be appointed on regular basis w.e.f. 14-9-1971. He preferred Original Application, before the Central Administrative Tribunal, Calcutta Bench contending that he must be deemed to have been regularly appointed from the initial date of his appointment and as such, entitled to all consequential benefits. This application was dismissed. In para-2 of the Judgment, the Honourable Supreme Court also agreed with the order of the Calcutta Bench of the Central Administrative Tribunal. Towards the last, the Hon'ble Supreme Court observed that however, by operation of Rule 3511(C) of IREM, the petitioner is entitled to the pensionary benefits treating the temporary service as a qualifying service for pensionary benefits. Learned Counsel for the applicant, ^{last para} led trace on this observation. We do not agree with his contention that the Honourable Supreme Court through this observation held that the entire temporary status service period, will have to be

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counted towards qualifying service. The judgment reveals that at the time of termination, the applicant was an adhoc employee with temporary status. In the observation, relied on by the learned counsel for the Applicant, the Honourable Apex Court, had not used the expression 'temporary status' but only temporary service which means his temporary period of service from his appointment on regular basis till confirmation. The contention advanced by the learned counsel for the applicant, in this regard, fails.

4. In the result, we do not see any merit in this application which is accordingly dismissed. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN, 99

21.1.98
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.