

2
X
7
CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 225 OF 1996

Cuttack, this the 14th day of July, 1999

Sri Bairagi

...Applicant

Vrs.

The Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be circulated to all the Benches of the Central Administrative Tribunal 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
19.7.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

8

ORIGINAL APPLICATION NO. 225 OF 1996
Cuttack, this the 19th day of July, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

....

Sri Bairagi, son of late Bankayya,
aged about 69 years, Resident of
Golla Kanchili (v), Kanchili (Po)
Srikakulam Dist, A.P. Pin- 532 290....Applicant

Advocate for applicant - Mr.B.P.Yadav

Vrs.

1. The Union of India, represented by the Secretary for Railways, Rail Bhavan, New Delhi.
2. The General Manager, South Eastern Railway, Garden Reach, Calcutta.
3. The Divisional Personnel Officer, South Eastern Railway, Khurda Road (Post) Jatni, District-Puri (Orissa).
4. The Permanent Way Inspector, South Eastern Railway, Cuttack (Orissa)...Respondents

Advocate for respondents - Mr.Ashok Mohanty

O R D E R

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 pay him pension and service gratuity with effect from the date of his superannuation.

2. The applicant's case is that he was employed under Permanent Way Inspector, S.E.Railway, Cuttack (respondent no. 4) on 24.10.1973 as a Gangman. The provident fund number of the applicant was 522778. He retired from service on superannuation on 23.2.1987. He

made several representations claiming pension and service gratuity but without any result. Ultimately he has filed a representation dated 22.8.1995 (Annexure-1) to respondent nos. 2 and 3 but has not received any response. That is why he has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayer of the applicant. They have stated that the applicant was initially engaged as Casual Gangman on 24.10.1973 under respondent no.4. Later on in the same capacity he was engaged under Permanent Way Inspector, Sompeta, till 18.11.1984. Thereafter he was transferred to work under respondent no.4 as Gangman till his retirement on 28.2.1987. The applicant's service was regularised with effect from 15.10.1984 after due screening by competent authority against a regular post of Gangman. The respondents have further stated that as per instruction issued by Railway Board in Establishment Serial No.93/96 the applicant, after his superannuation, has been paid terminal gratuity amounting to Rs.3446/- and service gratuity of Rs.6893/-. The respondents have pointed out that the applicant is not entitled to pension as he has not rendered adequate length of pensionable service. According to the respondents, under the rules 100% of the regular service and 50% of the casual service have to be taken into account and the total period has to work out to 10 years of qualifying service. In the applicant's case he has rendered two years, four months and seventeen days of regular service from 15.10.1984 (the date of his regularisation) to 28.2.1987, the date of his superannuation. Even if 50% of the period of his casual service is taken into account it does not work out to ten

years and that is how the applicant is not entitled to pension. It is also stated that the Hon'ble Supreme Court in the case of Ram Kumar v. Union of India, AIR 1988 SC 390, have affirmed the above position. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has submitted that he was originally engaged as Casual Gangman in 1958. He worked under Permanent Way Inspector, Sompeta from 1958 to 1968 as a Casual Gangman. During this period after every two or three months there was break in service for ten to fifteen days. It is further stated that from 24.10.1968 till 23.10.1973 the applicant worked as Casual Gangman continuously. The applicant has stated that he could not submit the detailed particulars of his service in his OA because he thought that it would be available in his record of service and he felt that temporary service from 24.10.1973 would be sufficient for pensionary benefits. The applicant has further stated that he is entitled to get ordinary gratuity and pension under Rule 102(d) of Manual of Railway Pension Rules, 1950. In view of the above, the applicant has reiterated his prayer in the OA.

5. I have heard Shri B.P.Yadav, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned counsel for the respondents and have perused the records. The learned counsel for the petitioner has filed extracts of Railway Establishment Rules as also extracts of Manual of Railway Pension Rules, 1950 which have also been taken note of.

6. The petitioner in his OA has stated that he joined as Casual Gangman with effect from 24.10.1973. Respondents in their counter have also stated that he was

engaged as Casual Gangman with effect from 24.10.1973. But during the calculation of pensionable service enclosed as Annexure-R/3 by the respondents, it appears that the applicant was granted temporary status with effect from 24.10.1973. The applicant in his rejoinder has mentioned that he had earlier worked from 1958 to 1968 as Casual Gangman. But as he has not mentioned this important point in his OA and has introduced this new fact only in his rejoinder, this cannot be taken into consideration and therefore, for the purpose of adjudication of the OA it has to be taken that the applicant has got temporary status with effect from 24.10.1973. The respondents have pointed out that the applicant was regularised in service with effect from 15.10.1984 and he superannuated on 28.2.1987. Thus his regular service was to the tune of two years, four months and seventeen days. The respondents while mentioning in the counter that the applicant's service was regularised with effect from 15.10.1984 have in their calculation regarding qualifying service taken the date of regularisation as 18.11.1984 and worked out the regular service as two years, four months and thirteen days. But in view of the specific averment of the respondents that the service of the applicant was regularised with effect from 15.10.1984 it must be taken that the applicant has rendered regular service from 15.10.1984 to 28.2.1987, the date of his superannuation and this works out to two years, four months and seventeen days. His service as Casual Gangman with temporary status was from 24.10.1973 to 14.10.1984 and this works out to ten years, eleven months and twenty-one days. Fifty percent of that will work out to five years, five months and twenty-six days. Thus, in total, the qualifying service of the applicant works out to seven years, ten

12 (12)

months and thirteen days. Because of wrong calculation in Annexure-R/3 the respondents have determined the pensionable service of the applicant as seven years, eight months and thirteen days though it actually works out to seven years, ten months and thirteen days. As this falls short of the required qualifying service of ten years, the applicant is *prima facie* not entitled to pension. The learned counsel for the petitioner has relied on Rule 102 of the Manual of Railway Pension Rules, 1950 which lays down that ordinary gratuity/pension becomes due on quitting service on account of superannuation. It is submitted that under this Rule the applicant would be entitled to pension. But for getting pension under this Rule the Railway servant has to render the required amount of qualifying service which is ten years. As earlier mentioned this ten years service is counted by taking 100% of regular service which in this case is from 15.10.1984 to 28.2.1987 and 50% of service rendered after getting temporary status which is from 24.10.1973 to 14.10.1984. As has been earlier calculated this works out to seven years, ten months and thirteen days, and therefore the applicant is not entitled to pension.

7. In the result, I hold that the application is without any merit and the same is rejected but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
19.7.99