

12
O.A.NO. 337 OF 1998

ORDER DATED 08-01-2003.

Heard Mr. U.N. Mishra, Learned Counsel for the Applicant and Mr. C.R. Mishra, Learned Additional Standing Counsel for the Railways, appearing for the Respondents and perused the pleadings of the parties as also the service Book produced today in court by the learned ASC for the Respondents.

Applicant in this Original Application (filed under Section 19 of the Administrative Tribunals Act, 1985) has prayed for a direction to grant him the pension taking into consideration his entire period of service, be it casual, temporary and regular. He, further, has prayed in this Original Application for a direction to the Respondents to count his period of service till attainment of 60 years instead of 58 and grant him all consequential benefits.

Respondents have filed their counter stating inter alia ~~stating~~ that the Applicant is not entitled to continue upto the age of 60 years on the face of the Railway Board's Circular No. 1103/1998 dated 14.5.1998 which provides as under:-

AFD
*Except as otherwise provided specifically every Railway Servant including R/F/RPSF personnel, whose age of retirement is currently 58 years shall now retire from service on the ~~afternoon~~ of last day of 4
8

13
O. A. No. 337/1998

the month in which he/she attains the age of sixty years. However, a railway servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the proceeding month on attaining the age of sixty years.

These orders will come in force with effect from 13.5.1998 and will be applicable to all Railway employee except those who have already retired in accordance with the earlier rules or those who are in extension in service on 13.5.1998 or those who are governed by specific rules/regulation."

With regard to granting of pensionary benefits, it was submitted/averred by the Respondents that since the Applicant had put in only 3 years 9 months and 7 days of service, he is not entitled to pension; because, it has been averred by the Respondents, one is entitled to get pension if he has ten years minimum qualifying service. In support of their pleas, the Respondents have given the detailed of working days of the Applicant, which is as under:-

1959-1965	...	714 days
2.9.87 to 23.10.1987.	...	52 days
27.7.1988 to 20.10.1988.	...	85 days
27.6.1989 to 23.10.1989.	...	118 days
10.5.1990	Re-engaged upto 31.10.1996
10.5.1990	Conferred with temporary status and remained CPC temporary gangman
1.10.1995	...	Applicant was regularised as Jr. gangman.
31-10-1996.	...	Applicant retired from service on attaining the age of 58 years.

AFR

14
2
O.A.No.337/1998

Learned Counsel for the Applicant Mr. Mishra, during the argument has submitted that even though the Applicant had put in more number of days of work on casual basis, as no certificate has been granted to him by the Railways, he is not able to produce the same to show that he is well qualified for getting the pension in view of the judicial pronouncements on the subject. It has further been argued by the learned Counsel for the Applicant that in not allowing the Applicant to work continuously or conferring temporary status on a later date and consequential regularisation was not within the control of the Applicant but, since the fact remains that the Applicant had put in about 37 years of dedicated service for the nation/Railways, he should not be allowed to suffer during his evening days of life. It has been submitted further that if the past work of the Applicant, which had not been entered into the service book, is taken into consideration, then as per the judicial pronouncements made in the case of SACHI PRUSTY VRS. UNION OF INDIA AND OTHERS rendered in OA No. 581/1996 on 24.4.2002, in the case of Settlement Class-IV Job Contract Employees Union, Balasore vrs. State of Orissa and Ors. in OJC No. 2047/1991 on 24-3-1992 and in the case of Yashwant Hari Katakhar vrs. Union of India and others reported in 1995 AIR SCW 370.

At the out-set, it is to be noted that the Authorities/Respondents were within their right in retiring the Applicant at the age of 58 years as per the circulars

AFR

7
6

15
O. A. No. 337/1998

of the Railway Board, quoted above, and at the same time it is reiterated that it is a settled law that pension is no longer bounty. Pension is accrued to a retiree in lieu of his long span dedicated service rendered to the nation/Department, for his sustenance till the last part of life after his superannuation. Every Government servant, one day or the other, has an inevitable end of retirement from service and he will feel the pensionary amount as a healing balm to end the misery at the superannuated age. It is always expected of a model employer to take all possible benevolent steps to see that its employee is in no way succumbed to harassment and thereby move with begging bowls. The employer should also leave no room of doubt to its employees presuming that anything has been suppressed to their prejudice. Keeping in view, the aims and objectives that a retiree, after his retirement on superannuation should neither depend on his dependants, nor would be a burdensome on the society, the scheme of pension in respect of those retirees, have been introduced by the Government. It is a fact that pension is in no way inferior to the rights that of the rights to property. Keeping this in mind, the Competent authorities of the Railways/Respondents should be magnanimous enough to formulate grant of pensionary benefits to the retirees like the Applicant in this case, instead of allowing them to move with begging bowls, from post to pillar during the rainy days of life, after retirement, to thrive himself and his dependants.

4

AFR

16
O.A.No.337/1998

In addition to this, it is worth-mentioning that "nothing is understood without sympathy". The Hon'ble High Court of Orissa, in the case of Settlement Class-IV Job Contract Employees (Supra), speaking for the Court, pleased to observe as follows:-

p "... ... For the purpose of calculating the pensionary benefits so much of their earlier service period shall be reckoned, even if there had been breaks in their employment, so as to make them eligible for pension. The necessity of giving this direction has been felt because, if service rendered after regularisation alone, shall be counted for pensionary benefits, most of the present incumbents would be denied the same, because to earn pension 10 years minimum service is necessary, which most of the incumbents at hand would not put in after regularisation, as they would retire before completing this period having ^{been} appointed two decades back".

AFD
Since, in this instant case, the Applicant alleges that he had put in more number of days in the past but the same having not been reflected in the Service sheet of the Applicant, he has been deprived of getting the pension taking into consideration various judicial pronouncements. Therefore, without entering into a roaving enquiry into the matter, and taking into fact that the Applicant is an illiterate and rustic one, the Respondents/Railways/Competent Authorities are hereby, directed to make an enquiry, in the presence of the Applicant to find out the number of actual days of work of the Applicant and grant him the pensionary benefits taking into consideration somuch of his

7
8

17
O. A. No. 337/1998

earlier service period; even if there had been breaks in his employment, so as to make him eligible for the minimum pension; because to get pension minimum ten years of qualifying service is required. Since the Applicant is now 63 years of age, the whole exercise shall be completed within a period of 120 days from the date of receipt of a copy of this order.

In the result, this Original Application is disposed of with the observations and directions made above. No costs.

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)
08.01.2003

AFR

KNM/CM.

Free copies of
final order
dt. 8.1.03 issued
to counsel for
both sides.

Bib
21/1/03
S.O.D.

DS
21.1.03