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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 402 OF 1998.  
Cuttack, this the 11<sup>th</sup> day of October, 2002.

Sri Raja @ Rajkishor Parida. .... Applicant.

- Versus -

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.

*Manoranjan Mohanty*  
11/10/2002

(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 402 OF 1998.  
Cuttack, this the 11th day of October, 2002.

C O R A M:-

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL).

...

Sri Raja @ Rajkishor Parida,  
S/o. Late Ganesh @ Ganesh Ch. Parida,  
Village: Retang, PO: Retang, PS: Khandgiri,  
District: Khurda. .... .... Applicant.

By legal practitioner: Mr. U. N. Mishra,  
Advocate.

: Versus:

1. Union of India represented through the  
General Manager, S. E. Railway, Garden Reach,  
Calcutta-46, West Bengal.
2. Divisional Manager, S. E. Railway,  
Khurda Road Division, At/PO: Jatni,  
District: Khurda.
3. Sr. Personal Officer (welfare), S. E. Railway,  
At/PO: Jatni, District: Khurda.
4. Divisional Personal Officer, S. E. Railway,  
Khurda Road, At/PO: Jatni, District: Khurda.

.... .... Respondents.

By legal practitioner: Mr. S. R. Patnaik,  
Additional Standing Counsel  
for the Railways/Respondents.

....

*[Signature]*

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :-

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the Applicant has prayed for the following reliefs :-



- "(i) The previous service of the petitioner may kindly be accepted and accounted for, towards pension;
- (ii) the Applicant may be allowed to join his duty forthwith since he is entitled to work upto 60 years or on the alternative his pension papers may be corrected".

2. It is the case of the Applicant that even though he had been in the Railways, on casual basis, from the year 1958 and Annexure-1 to the O.A. shows that he had been working in the Railways as a substitute/casual labourer, in the superannuation order dated 29-07-1997 it has been mentioned by the Respondents that he had worked only from 24-01-1990 to 31-08-1997; which fact he had also brought to the notice of his authorities/Respondents through representation but did not yield any fruitful result. It is alleged that even though his date of birth is 25-07-1942, the same has been wrongly recorded as '05-08-1939' and taking into consideration his wrong date of birth (as '05-08-1939') he has been made to retire prematurely at the age of 56 years.

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and, therefore, according to his correct date of birth, he is entitled to continue in service upto the age of 60 years. He further alleged in his Original Application that his entire period of service starting from 1958 may kindly be computed towards pension and other retiral benefits. The fact remains that taking into consideration the entry of the date of birth of the Applicant in the service records, he has been made to retire w.e.f. 31.08.1997.

3. Respondents have filed their counter stating therein that the facts mentioned in Annexure-2 to the Original Application are correct in all respects in terms of the Rules in force. It has been averred that although the Applicant had worked as a substitute/casual labour from a remote date, it was not continuous in nature. Only on 24-1-1990 he attained the temporary status after 120 days of continuous service, as per rules and thereafter, his services were regularised with effect from 24-4-1995 and he was confirmed as a Gangman on 19-4-1996 and worked upto 31-08-1997 (AN). In no case the days of working on casual basis prior to attaining temporary status can be counted for the purpose of pensionary benefits etc. in terms of letter No. ESTT. Srl. No. 239/80 dated 31.10.1980, under Annexure-R/1. It is stated that Applicant's date of birth was recorded as '05-08-1939'. It is specifically averred by the Respondents that the

Applicant had never represented for any change of his recorded date of birth from '05-08-1939' to '25-07-1942' prior to his superannuation on the strength of Annexure-3. It is stated that after the retirement of the Applicant w.e.f. 31-08-1997, the age of superannuation of the Railway servant was changed to 60 years under Railway Board's letter dated 14-5-1998. Therefore, the Applicant is not entitled to the benefits of superannuation of age upto 60 years. The Respondents have also denied of receipt of any application dated 22-4-1998 of the Applicant. It is stated that the Applicant is not entitled to get the minimum pension as he has not completed 10 years of service, as required under sub Rule 2(b) of Rules 1969 of Railway Services) Pension Rules, 1993 but as per the Rule 69 of pension Rules, 1993, the applicant is entitled to get gratuity and, accordingly, a sum of **Rs.13,151/-** towards service gratuity and gratuity has been sanctioned in favour of the Applicant vide letter dated 30.9.1997 under Annexure-R/3. Finally, it has been prayed by the Respondents that since the applicant had not possessed ten years of regular service, he is not entitled to get the minimum pension and the application is liable to be rejected.

4. vide order dated 18-07-2002, of this Tribunal, it was directed to the learned ASC Mr. Patnaik to produce the service records such as casual register, service book etc. of the Applicant which he had produced during the hearing.

5. Having heard Mr. Mishra, learned Counsel for the Applicant and Mr. S. R. Patnaik, learned Additional Standing Counsel for the Respondents/Railways, I have looked into the service records produced by the Respondents. On going through the service records of the Applicant it is revealed that the Applicant had worked in the railways on casual basis in the following fashion:-



i)	1959	...	223½ days
ii)	1960	...	172 days
iii)	1961	...	235½ days
iv)	1962	...	178 days,
v)	1966	...	49 days
vi)	1967	...	<u>27 days</u> <u>885 days</u>

Mr. Patnaik, learned ASC has also produced the yearly report containing the particulars of the services of the Applicant which goes to show that the applicant had also worked for some days in the following years:-

i)	1988	...	108 days
ii)	1989	...	<u>119 days</u> <u>227 days</u>

It is also evident from the records that the Applicant faced a departmental examination on 30.6.1988 conducted by the DMO/KUR and found fit for B/O NE vide DMO/KUR No.NA/1269 dated 30.10.1988/2-7-1988 as per the certificate given by the PWI of SE Railways at Khurda. It appears from Annexure-R/3 that the applicant was given temporary status from 24-1-1990 and absorbed in regular establishment w.e.f. Y

24-4-1995 and faced superannuation on 31-08-1997. It is also not in dispute that for getting minimum pension ten years of service is required. But no reason has been given by the Respondents as to why he was not allowed to work continuously, and as to why temporary status was not given to him earlier as to why he was not given conferment of temporary status earlier. However, all the Government servants have a right to get pension and pension is a property right as has been held by the Hon'ble Supreme Court of India in very many decisions. A Government servant always expects and it is also his legitimate expectation that by virtue of rendering service and spending his youth, during his old age for sustenance of his and his family's livelihood, the Govt. will provide him some sort of aid in lieu as pension. Right to life is a fundamental right as enshrined under Article 21 of the Constitution of India. It is also minimum required on the part of the Railways/appropriate authorities to take care of such of the employees like the Applicant to make some Rules/issue some instructions for providing at least the minimum pension on their retirement from Railways when they are old and ailing and thereby unable to maintain their livelihood.

6. A similar matter came up for consideration before this Tribunal in OA No. 581 of 1996 (SACHI PRUSTY VRS. UNION OF INDIA AND OTHERS) and this Tribunal (after taking note of the decision of the Hon'ble High Court of Orissa rendered in OJC No. 2047/1991 disposed of on 24-3-1993 of SETTLEMENT CLASS-IV

JOB CONTRACT EMPLOYEES UNION, BALASORE VRS. STATE OF ORISSA  
AND OTHERS and the decision of the Hon'ble Apex Court of  
India rendered in the case of YASHWANT HARI KATAKKAR VRS.  
UNION OF INDIA AND OTHERS reported in 1995 AIR SCW 370)  
on 24th day of April, 2002 directed as follows:-

"In view of the discussions made above, there is no basis/grounds to differ from the view already taken by the Central Administrative Tribunal, Ernakulam and Madras Benches. Therefore, taking into consideration the decisions rendered by the Hon'ble Supreme Court of India, Hon'ble High Court of Orissa and our Ernakulam and Madras Benches, it is directed that the Respondents, for the purpose of calculating the pensionary benefit of the Applicant, so much of his earlier service period shall be reckoned, even if there had been breaks in his employment, so as to make him eligible for the minimum pension."

7. There is no ground to differ from the view already taken in the case of Sachi Prusty (supra). It is, therefore, directed that the Respondents, for the purpose of calculating the pensionary benefits, so much of his earlier service period shall be reckoned; even if there had been breaks in his employment, so as to make him eligible for pension. The necessity of giving this direction has been felt because, if the service rendered after regularisation and 50% after temporary status alone, shall be counted for pensionary benefits then the applicant would be denied the same because to earn pension ten years minimum service is necessary which the applicant had not put in after temporary status and regularisation as he had retired before completing this period having been appointed four decades back. The whole exercise shall be completed by the Respondents for grant of the minimum pension.

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to the applicant, within a period of 120 days from the date of receipt of a copy of this order. In the result, therefore, with the observations and directions made above, this Original Application is partly allowed. There shall be no order as to costs.

*Manoranjan Mohanty*  
(MANORANJAN MOHANTY) 11/10/2002

MEMBER (JUDICIAL)



KNM/CM.