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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 63 OF 1998

Cuttack, this the 17th day of August, 2000

Bimbadhar Swain

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.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som,
(SOMNATH SOM)

17.8.2000
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 63 OF 1998
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

Bimbadhar Swain, aged about 59 years,
son of late Kunja Swain,
Vill-Damka, P.O-Baichua,
P.S-Tangi, Dist.Cuttack....

Applicant

Advocates for applicant - M/s R.N.Mohanty
B.N.Rath

Vrs.

1. Union of India, represented through General Manager,
South Eastern Railway, Cuttack.
2. Senior Divisional Accounts Officer, South Eastern
Railway, Khurda Road, PO-Jatni, Dist.Khurda.
3. Senior Divisional Personnel Officer, South Eastern
Railway, Khurda Road, PO-Jatni, Dist. Khurda
.....

Respondents

Advocate for respondents - Mr.Ashok
Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application the petitioner has
prayed for a direction to the respondents to pay him
pension and DCRG along with arrear financial benefits from
the date of his retirement. The respondents have filed
counter opposing the prayer of the applicant. It is not
necessary to repeat all the averments made by both parties
in the pleadings because these will be discussed at the
time of considering the submissions made by the learned
counsel of both sides. We have heard the learned counsel of
both sides and have also perused the records.

S.SOM

2. The admitted position is that the applicant worked as casual labourer from 25.3.1966 to 20.4.1971 and from 8.6.1986 to 6.11.1986, 24.6.1987 to 20.10.1987, 24.6.1988 to 20.10.1988, 24.6.1989 to 23.10.1989 and 10.11.1989 to 31.12.1996. According to the applicant he was regularised in service from 10.11.1989 and he superannuated on 31.12.1996. According to the respondents the applicant was given temporary status on 10.11.1989 and was regularised on 2.10.1996 and he superannuated on 31.12.1996. The respondents have stated that according to the instructions 50% of the period of service from the date of acquiring temporary status till the date of regularisation and 100% of the service from the date of regularisation to the date of superannuation have to be taken as pensionable service. According to the respondents, taking the applicant's date of acquiring temporary status on 10.11.1989 and his regularisation on 2.10.1996 and his superannuation on 31.12.1996, the applicant has put only 3 years, 5 months and 11 days as pensionable service and therefore he is not entitled to pension for which ten years of qualifying pensionable service is required. Even granting for argument sake the applicant's version that he was regularised from 10.11.1989 by the time of his superannuation on 31.12.1996 the applicant has not completed ten years of qualifying service.

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The applicant has not stated as to when he was conferred with temporary status. In view of this, the period of service prior to 10.11.1989 cannot be counted as pensionable service. In view of this, we hold that the applicant's prayer for granting him pension is without any

merit.

3. As regards other claims, the respondents have stated that the applicant was paid service gratuity of Rs.5923/- on 18.3.1997 and payment of CGEIS of Rs.20/- and leave salary of Rs.13,896/- have also been passed for payment. The learned counsel for the respondents has drawn our attention to Annexure-3 filed by the applicant himself along with his OA in which it has been stated that the applicant is not eligible for pension and DCRG as he has not rendered minimum 10 years of qualifying service and five years of qualifying service respectively and therefore only service gratuity of Rs. 5923/- has been sanctioned to him. From the pleadings of the parties it is not clear whether the departmental authorities have rightly determined that the applicant is not entitled to retirement gratuity but is only entitled to service gratuity. This is because in the service certificate issued by Senior Divisional Accounts Officer, Khurda Road at the time of superannuation of the applicant which is at Annexure-2 the period of service has been mentioned as from 10.11.1989 to 31.12.1996. This prima facie would indicate that the applicant must have been regularised on 10.11.1989. This is because a casual labourer is not a Railway servant according to the definition of "Railway servant". A casual labourer with temporary status is also not a Railway servant though he gets some additional benefits. This is because the temporary status is conferred on a casual labourer irrespective of availability of post. In other words, temporary status is not conferred against any particular post. In view of this, the certificate showing

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that he has rendered service under the Railways from 10.11.1989 to 31.12.1996 might be that he has been regularised from 10.11.1989. As we have already mentioned ~~that~~ even then the applicant is not entitled to pension. But with regard to gratuity the situation would be different. The respondents have enclosed at Annexure-R/3 the relevant rule dealing with retirement gratuity and service gratuity. This is Rule 70 of Railway Services (Pension) Rules, 1993. Rule 70 lays down that in the case of a Railway servant who has completed five years of qualifying service and has become eligible for service gratuity or pension under Rule 69, shall, on his retirement, be granted retirement gratuity equal to one-fourth of his emoluments for each completed six monthly period of qualifying service subject to a maximum of sixteen and one-half times the emoluments. From the above rule it is clear that a Railway servant is entitled to either retirement gratuity or service gratuity or in case of death, death gratuity. Death gratuity is dealt with in sub-rule (b) of Rule 70 with which we are not concerned in the present case. From Annexure-3 it appears that the applicant has been granted service gratuity of Rs.5923/-.

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In case the applicant has been regularised from 10.11.1989 then by the time of his retirement on 31.12.1996 he has put in more than five years of qualifying service and therefore he would have been entitled to retirement gratuity. The respondents have not explained in their counter nor could the learned counsel for the respondents explain during hearing of the matter as to why the applicant's service has been reckoned from 10.11.1989 when according to the

respondents he was regularised only on 2.10.1996. In view of the ambiguity on the point which in the absence of appropriate pleadings we are unable to resolve, we direct respondent no.3 to check up the Service Book of the applicant once again and determine if the applicant was regularised with effect from 10.11.1989 or he was only granted temporary status on 10.11.1989. In case he was actually regularised from 10.11.1989 which is suggested by the Service Certificate at Annexure-3, then the applicant would be entitled to retirement gratuity and in that event the retirement gratuity should be calculated and paid to him. This entire exercise should be completed within a period of 90 (ninety) days from the date of receipt of copy of this order.

4. In the result, therefore, the Original Application is disposed of in terms of the observation and direction above but without any order as to costs.


(G.NARASIMHAM)

MEMBER(JUDICIAL)


(SOMNATH SOM)

VICE-CHAIRMAN

17.8.2000

August 17, 2000/AN/PS