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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.134 OF 1999
Cuttack this the 4th day of February/2002

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Sri Kellu @ Kellu Samantray, aged about 59 years,
Son of Brahmachari Samantray, At-Gadamotari,
PO-Motari, P.S. Delanga, Dist - Puri

...

Applicant

By the Advocates

M/s.U.N.Mishra
P.K.Mohanty
R.K.Pradhan

-VERSUS-

1. Union of India represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta-700 043, West Bengal
2. The Divisional Railway Manager, South Eastern Railway, Khurda Road Division, At-Jatni, PO-Jatni, Dist-Khurda
Senior Personal Officer (Welfare)
South Eastern Railway, Khurda Division,
At-Jatni, PO-Jatni, Dist-Khurda
4. Divisional Personal Officer, South Eastern Railway, Khurda Road Division, At-Jatni, PO-Jatni, Dist-Khurda

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Respondents

By the Advocates

Mr.B.K. Bal
Addl.Standing Counsel

ORDER

MR.SOMNATH SOM, VICE-CHAIRMAN: In this Original Application the petitioner has prayed for allowing him gratuity, taking into consideration his previous service. The 2nd prayer is to revise his pension and to allow him revised scale of pay on the basis of 5th Pay Commission Report.

2. The case of the applicant is that he was initially appointed as Gangman in 1958, as a casual labourer under PWI, Khurda Road and was drawing Rs.52/- per month. After working

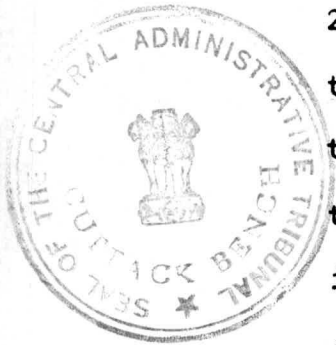


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as such for five years under PWI, Khurda Road, he was transferred to PWI, Barang where he continued as Gangman and his service papers were prepared. His service has been counted from 1967 and his previous service of about 9 years from 1958 to 1967 have been omitted. He has stated that even though he was working as a Gangman, he has been shown in the Service Certificate as Waterman. His grievance is that he has not been granted gratuity for the entire period of his service and pension has not been provided as per his last pay. It has been stated by the applicant that his pay should have been fixed as Gangman and he should have been paid pension on the basis of 5th Pay Commissions' Pay scale. It has been further submitted that his pay fixation has been erroneously done. He was appointed in the higher scale and after medically decategorisation because of failing in his eye-sight he was put in a lower scale. His pension has been fixed on the basis of initial pay in the reverted post. He has stated that by his reversion from B-I Category to C-I category because of failing in his eye sight, his gratuity amount has been reduced. He has further stated that as he is a 4th Grade railway servant and he had been appointed in the year 1958, he is entitled to retire after attaining the age of 60 years, but this has not been done. He has asked for salary, leave salary, pension etc. on the basis of his deemed service upto the age of 60 years. In the context of the above, the applicant has approached the Tribunal with the prayers referred to earlier.

3. Respondents in their counter have stated that the applicant retired ^{on superannuation} as Gang Waterman on 28.2.1998 after attaining

the age of 58 years. It is stated that applicant was initially engaged as temporary Gangman under P.W.I., Khurda Road on 24.11.1967 in the scale of Rs.70-85/-. He was transferred to Barang as Gangman under P.W.I., Barang w.e.f. 24.9.1968. After decategorisation he was posted as Waterman in order dated 23.3.1992 and he reported for duty on 6.4.1992. Subsequently he was posted as Gang Waterman w.e.f. 6.4.1992 in the scale of Rs.750-940/-. He was permanently absorbed in the Railway Establishment on 6.4.1992 and was confirmed on 6.4.1993. Finally he attained superannuation on 28.2.1998. Respondents have stated that service of the applicant from 24.11.1967 to 28.2.1998 has been taken into account for the purpose of calculating his pension. This period comes to 30 years 3 months and 5 days. Under the Rules 50% of temporary service for the period from 24.11.1967 to 5.4.1992 i.e., 12 years 3 months and 2 days have been taken into account and thus his entitled qualifying service comes to 18 years 3 days/18 years. Accordingly pension calculation has been made and pension, commutation and D.C.R.G. have been paid to him. Respondents have stated that 100% of his regular service and 50% of the service after getting Temporary Status till regularisation has been taken into account according to Rules and there is no mistake in it. Respondents have further stated that the claim of the applicant that he had worked from 1958 is not correct nor is it supported by any document filed by the applicant. Respondents have also denied that the pension was fixed on the basis of initial of this scale. It is stated that initial of the scale in which the applicant was at the



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time of his retirement was Rs.2550/- whereas his pay at the time of leaving service was Rs.3195/-, as is seen from the Annexure-A/3 enclosed by the applicant himself. Respondents have further stated that the applicant is not entitled to continue upto 60 years of age, because the age of superannuation was increased to 60 years in order dated 13.5.1998, but the retirement of the applicant on superannuation took place before that date, i.e. on 28.2.1998. On the above grounds respondents have opposed the prayer of the applicant.

4. Applicant in his rejoinder has reiterated his averment with regard to service, as stated by him from 1958. He has also stated that his regularisation from 1992 was wrongly done. Other averments in the rejoinder are reiteration of his averments as made in the O.A.

5. I have heard Shri U.N.Mishra, learned counsel for the petitioner and Shri B.K.Bal, learned Addl.Standing Counsel for the respondents. On the direction of the Bench, Shri Bal has produced the Service Book of the applicant in original and I have also perused the same.

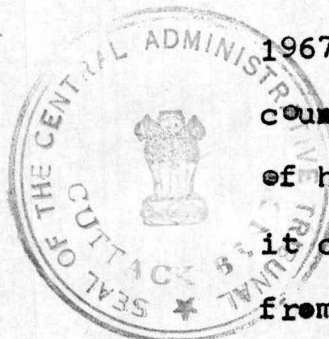
6. Before considering the grievance of the applicant with regard to alleged payment of pension and gratuity at the reduced rate, two points urged by the learned counsel for the petitioner can be disposed of first.

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Applicant has stated that he is entitled to continue till the attainment of 60 years of age. This contention is without any merit and the same is rejected, because at the time the applicant retired on superannuation on 28.2.1998, the age of superannuation was 58 years and the applicant's date of birth being 11.2.1940 as is seen from the Service

Book, he was rightly retired on 28.2.1998 on attaining the age of 59 years. Increase in the age of superannuation from 58 to 60 came on 13.5.1998 after the applicant superannuated and therefore, he is not entitled to get the said benefit, of continuing in service upto the age of 60 years.

The second point is with regard to alleged non counting of his service from 1958 to 1967. On a reference made to Service Book I found that applicant's date of first appointment has been noted as 24.11.1967. There is no record in the Service Book that he had worked as casual labourer from 1958. Along with this Original Application the petitioner has enclosed no document in support of his contention that from 1958 to 1967 he had worked as casual labourer. During hearing, learned counsel for the petitioner submitted that there is no record of his service from 1958 to 1967 with him. In view of this, it cannot be held that the applicant was a casual labourer from 1958 to 1967. This contention is accordingly held to be without any merit and the same is, therefore, rejected.

7. The next point for consideration is whether his service from 24.11.1967 to 28.2.1998 has been correctly computed for the purpose of qualifying service towards pension and gratuity. In this regard the distinction made in the Rules between the temporary railway servants and casual labourers with temporary status will have to be noted. The term Temporary Railway Servants has been defined in Para-1501 (Chapter-XV) of Indian Railway Establishment Manual, Vol-I (89 Edn.) and this definition specifically provides that the term 'Temporary Railway Servant' does not include Casual Labourer with Temporary Status. Thus casual labourer with temporary status is not a



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temporary railway servant. Casual labourers on being conferred temporary status are eligible to entitlements and privileges which have been laid down in Paragraph-2005 of Indian Railway Establishment Manual, Vol.II (Revised Edn.99) of which the earlier Number was Paragraph-2411. It is not necessary to refer to all the provisions mentioned in Paragraph-2005, which has been quoted in full in O.A.200/94 decided by the Full Bench on 11.10.2001. This Paragraph specifically provides that casual labourers will be eligible to count only half the period of service rendered by them after attaining temporary status and before regular absorption. As such the action of the departmental authorities in taking into account as qualifying service the half of the period of service of the applicant as casual labourer with temporary status till his regularisation is strictly in accordance with rules. Under the Rules 100% of his service after regularisation has also been taken into account. Therefore, the action of the respondents in this regard is legally unassailable.

From the Service Book it is seen that at the time of his appointment as casual labourer with temporary status, the applicant was appointed in an authorised scale of pay. I also find from the Service Book that his leave accounts are also maintained from 24.11.1967 onwards till his superannuation on 28.2.1998. It was submitted at the time of argument that this would show that applicant was regularised from 24.11.1967. I am unable to accept this position, because, Rule 2005 specifically provides that no temporary posts need be created to accommodate casual labourers who acquire



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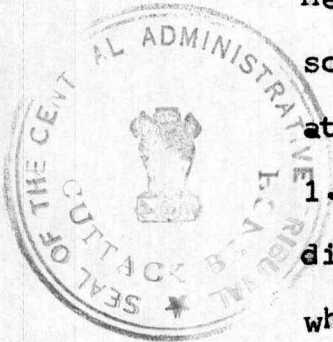
temporary status for conferment of attended benefits, like scales of pay, increment etc. Therefore, the fact that the applicant was getting a regular scale of pay and increment when he was casual labourer with temporary status does not prove that he was an employee of the regular Establishment of the Railway. As regards leave, it is also provided that casual labourers who have attained temporary status will be entitled to carryforward leaves at their credit to the new posts on absorption in the regular service. This shows that a casual labourer with temporary status has the leave entitlement which he can carryforward on his absorption in the regular Establishment. From this it appears that just because the applicant got regular scale of pay from 24.11.1967 and acquired leave, it cannot be held that he automatically came over to the regular Establishment. From the Service Book I find that the applicant was regularised on 6.4.1992 and was confirmed on 6.4.1993. This also shows that before regularisation on 6.4.1992 the applicant was only a casual labourer with temporary status. In view of this I hold that the qualifying service for the purpose of pension has been correctly calculated.

The last aspect is about his pay. Apparently immediately before his retirement at the time of his service verification it was noticed that he was declared medically unfit for the post of Gangman vide Medical Certificate dated 6.4.1981. It is, however, noted that inspite of being declared medically unfit the applicant continued in the post of Gangman till 5.4.1992, the date immediately preceding



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the date of his regularisation. It further appears from Page-33 of the Service Book that on 1.1.1986, his pay was fixed in the scale of Rs.775-1025/- at the level of Rs.941/- and he got only increment and his pay as on 1.1.1992 was Rs.1025/-. On 6.4.1992 he has been shown medically decategorised and fitted in the scale of Rs.750-940/-. It is necessary to note that this refixation of his pay has come about after immediately prior to his retirement and the relevant endorsement in the Service Book shows that this refixation of pay was made in order dated 23.2.1998. The learned counsel for the petitioner had stated that his pay was reduced because of his medical decategorisation and I find that this is so. He was fitted in/after medical decategorisation in a lower scale w.e.f. 6.4.1992 and in the process his pay was fixed at the maximum of the scale at Rs.940/- even though as on 1.1.1992 he was getting Rs.1025/-. Under the rules, the difference should have been paid to him as personal pay, which does not seem to have been done in the instant case. Had this been done ^{then} with coming into force of the 5th Pay Commissions Report, then his pay would have been fixed at a higher level. It is difficult for me to compute what it would have been,? In view of this I dispose of this aspect of the grievance of the applicant with a direction to Respondents 2, 3 and 4 to refix the pay of the applicant as on 6.4.1992 in accordance with rules within a period of 90 days from the date of receipt of copy of this order. In case his pay on such refixation stands increased, then the applicant will be entitled to higher level of pension and other terminal benefits. In that event such higher level



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of pensionary benefits and terminal benefits should be fixed within a period of another 90 (ninty) days from the expiry of earlier period of 90 days.

In the result, O.A. is disposed of as per observation and direction made above. No costs.



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(SOMNATH SOM)
VICE-CHAIRMAN
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