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O.A.NO.317 OF 2001

108. ORDER DATED 24-07-2002.

Since after retirement (on attaining the age of superannuation/of 60 years w.e.f. 31-12-2002 from Rly. Service as Senior Gangman) his pension/pensionary dues were not paid by the Railways/Respondents, the Applicant has come up in this Original Application u/s.19 of the Administrative Tribunals Act, 1985 for a direction to the Respondents to pay him his pension taking into consideration his entire period of service w.e.f. 6-6-1975 till 31.12.2000 as qualifying service for the purpose of pension.

2. The facts which are not in dispute are that the Applicant entered into service in the Railways (on casual basis) from 06-06-1975. Accordingly, he was allowed to work as such with intermittent breaks till 23-10-1989. Accordingly, as per the directions of the Hon'ble Apex Court in India in the case of Inderpal Yadav and others vrs. Union of India and others (1985 (2) SCC 648) and Dakshin Railway Employees Union, Trivandrum Division vrs. General Manager, South Eastern Railway and others (AIR 1987 SC 1153), the Applicant was conferred with temporary status w.e.f. 11-05-1990 as CPC Gangman. Thereafter, his service was regularised w.e.f. 29-6-1994 and was confirmed in the post of Gangman on 29.6.1995. Consequently, he was promoted to the post of Sr. Gangman w.e.f. 4.7.1997 and finally retired from Railway service w.e.f. 31.12.2000.

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3. It is the case of the Respondents in their counter (filed on 3rd April, 2002) that after the superannuation of the Applicant from Railway service, his service gratuity has been calculated to be paid to him (as per Annexure-R/1 to the counter) but he is not entitled to get the pension due to fall short of the required period of ten years qualifying regular service; even as per the rules after calculating /taking into consideration 50% of casual service and 100% regular service; which comes to 8 years, 6 months and 25½ days only. As such, according to Rule 69(1) of Railway Services (Pension) Rules, 1993, since the applicant did not render 10 years minimum qualifying service, he is not entitled to get the pension.

4. In this connection, it is to be noted that one has to realise that the Applicant's precious period of early life devoted in the service of the establishment will be wholly wasted and the Applicant at the old age, when he became proweess, by virtue of the technical rules is allowed to move with begging bowls for sustenance of himself and his family members. The family of the applicant which had settled down and accommodated its needs to the emoluments received by the bread winner, will face economic ruination if the pension is denied by virtue of the technical rules, even after serving the Railways for more than two decades. Therefore, whenever, the Railways are required to make laws it must do so consistently with a view to securing social

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and economic freedom so essential for the establishment of an egalitarian society. However, the issues at hand, are no more res-integra, in view of the pronouncement of judge-made-laws by the Hon'ble Apex Court of India in the case of YASHWANT HARI KATA KKAR VRS. UNION OF INDIA AND OTHERS (1995) AIR SCW 370) and by the Hon'ble High Court of Orissa in OJC NO. 2047 OF 1991 decided on 24-3-1992 (SETTLEMENT CLASS-IV JOB CONTRACT EMPLOYEES UNION, BALASORE VRS. STATE OF ORISSA AND OTHERS). For the sake of brevity, the directions of the Hon'ble High Court of Orissa in the case of Settlement Class-IV Job Contract Employees Union (supra) are extracted below;


.....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 the pensionary benefits, most of the present incumbents would be denied the same because to earn pension ten 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.

Taking into consideration the decisions, referred to above, this Bench of the Tribunal has also in the case of SACHI PRUSTY VRS. UNION OF INDIA AND OTHERS (OA. NO. 581/1996 disposed of on 24-4-2002) had taken the view that the Applicant (Sachi Prusty) should be paid the minimum pension taking into consideration so much of his earlier service period, even if there had been breaks in his employment for counting the minimum years of qualifying service.

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5. There is no reason to differ from the view already taken in the case of Sachi Prusty V rs. UOI and others (supra). In this view of the matter, the Respondents are hereby directed to take into consideration the somuch of the earlier service period of the Applicant even if there had been breaks in his employment for counting the minimum period of qualifying service to make him eligible to get the minimum pension. Since the petitioner has been suffering from 31.12.2000, after retirement on superannuation, the Respondents are hereby directed to pay the petitioner ^{current} his minimum/pension from the end of August, 2002 and arrears of pension of the Applicant be calculated and paid to him within a period of 145 days from the date of receipt of a copy of this order. In the result, therefore, this Original Application is allowed. No costs.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 24/07/2002

KNM/CM.

LATER- DT. 24-7-2002.

Learned Counsel for the Applicant undertakes to furnish the required postages for service of copies of this order on the Respondents by Regd. Post with AD by 30.7.2002. ~~On~~ Furnishing the required postages, copies of this

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be sent to the Respondents.

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24.07.2002
MEMBER (JUDICIAL)