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Order dated 6.6.2003

Non-payment of pensionary benefits to the applicant, by the Railways, is the subject matter of dispute, in this Original Application under Section 19 of the Administrative Tribunals Act, 1985. As it appears, the Respondents-Railways have held the applicant to be not entitled to pension as he falls short of rendering 10 years of regular service; which, as per the Railway Rules, is the minimum qualifying service for a Railway employee to get the pension.

2. Heard Shri S.R.Patnaik, the learned counsel appearing on behalf of the applicant and Shri R.C.Rath, the learned Standing Counsel (on whom a copy of this O.A. has been served) appearing on behalf of the Respondents-Railways.

AFR

3. It is submitted by the learned counsel for the applicant that the services rendered by the applicant on casual basis should be taken into account for the purpose of granting him minimum pension. In this connection Shri Patnaik drew my notice to a decision of this Bench rendered in (a) the case of Sachi Prusty vs. Union of India reported in 95 (103) CLT Page-5(ATC) and (b) the case of Jogi Swain vs. Union of India (O.A.No.317/01 disposed of on 24.7.2002); wherein similar issue was raised and answered.

4. Shri Rath, the learned Standing Counsel for the

Respondents, on the other hand, submitted that according to Rule-69(1) of the Railway Services (Pension) Rules, 1993, the applicant having not acquired the minimum period of 10 years of qualifying service, he is not entitled to pension. Shri Rath also submitted that in accordance with the aforesaid Rules, 50% of casual service, with temporary status, till regularisation plus the total period of service rendered by the applicant in the regular Establishment of the Railways has to be taken into account in order to determine the minimum period of 10 years of qualifying service for the purpose of granting pension and the applicant, in the instant case, having not attained the minimum period of 10 years qualifying service, he is not entitled to pension.

5. 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 prowess, by virtue of the technical rules; is asked to move with begging bowls for sustenance of himself and his family members and, thereby, not only he but the family of the applicant are also deprived of the rights under Article 21 of the Constitution of India at the old age. Therefore, the Railways should appropriately modulate its pension rules, keeping in mind the judicial pronouncements made (i) by the Hon'ble Apex Court of India rendered in the case of Yashwant Hari Kata Kkar vs. Union of India & Ors. reported in (1995) AIR SCW 370 and (ii) by the Hon'ble High Court of Orissa rendered in O.J.C. No.2047 of 1991 decided on 24.3.1992 (in the case

of Settlement Class-IV Job Contract Employees Union, Balasore vs. State of Orissa & Ors.) reported in 95(2008) CLT 137.(Hon'ble B.L.Hansaria was party to both the cases), It would be, in the aptness of things to quote the relevant portion of the decision rendered by Hon'ble Justice B.L. Hansaria in the Hon'ble High Court of Orissa, in the case of Settlement Class-IV Job Contract Employees Union(Supra), as under :-

> "...For the purpose of calculating the pensionary benefits, somuch 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".

AFR

6. Aforesaid view was also taken by this Tribunal in the cases of Sachi Prusty and Jogi Singh (Supra), wherein the Railways were directed to take into account so much of their earlier service period, rendered by the applicants therein, to make them eligible to get the minimum pension.

7. The sole intention of the judicial pronouncement made earlier was only to grant minimum pension to such of the railway employees, who served the Railways far longer period than the minimum requirement.

8. In the aforesaid premises, this O.A. is disposed of with direction to Respondents-Railways to examine the case of the applicant in the light of the observations made above and pass necessary orders on his representation(which is said to have been pending

with the authorities) and pass necessary orders expeditiously to remove the indigent condition of the retired railway employee (as the applicant, in the instant case). I hope and trust, the Railways will take an affirmative view in the matter. No costs.

9. Send copies of this order, along with copies of this O.A., to Respondents and free copies of this order be handed over to the learned counsel for both the parties.

AFR

06/06/2023

MEMBER(JUDICIAL)