

11
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 1331 OF 2004

Cuttack, this the 30th day of August, 2007

Harihar Sahoo

.....

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 sent to the Principal Bench of the Tribunal or
not? *yes*.


(N.D.RAGHAVAN)
VICE-CHAIRMAN

12 → CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 1331 OF 2004

Cuttack, this the 30th day of August, 2007

CORAM:

HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

....

Harihar Sahoo, aged about 60 years, son of late Srinibas Sahoo, At-Meramundali, P.S.Motanga, P.O.Nimabahali, Dist.Dhenkanal..... Applicant

Advocates for applicant - M/s Laxman Pradhan, Anjan
Ku.Pradhan & D.P.Das

Vrs.

1. Union of India, represented through General Manager, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist.Khurda.
2. Divisional Manager, East Coast Railways, Khurda Road Division, At/PO-Jatni, Dist.Khurda.
3. Senior Divisional personnel Officer, East Coast Railway, Khurda Road, At/PO-Jatni, Dist.Khurda..... Respondents

Advocates for Respondent No.1 - None
Advocate for Respondents 2 and 3 - M/s S.K.Ojha, A.K.Sahoo &
B.K.Jena

.....
ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

1. Brief facts of the applicant's case are that he was initially appointed as a Gangman w.e.f. 27.6.1987. During the course of his employment on 22.12.1996 at about 08.50 hours, he sustained injuries on his left leg below the knee joint and was admitted in the S.C.B.Medical College & Hospital, Cuttack and remained as an indoor patient till 07.02.1997 and his left leg was amputated from below the knee joint. In support of his said medical treatment the applicant has filed at Annexure-1, the discharge certificate. Subsequently the applicant was examined by



13 the Railway Medical Board on 01.05.1997 for computation of invalidation. Copy of the counter foil and the injury report dated 1.5.1997 are filed at Annexure 2. Thereafter the Medical Board of the Railway examined the applicant and declared him unfit for any Railway service w.e.f. 28.5.1997. Copy of the report of the Medical Board dated 9.7.1997 is filed at Annexure 3 series. Consequent upon the report of the Medical Board, the Railway authorities by office order No. 74 dated 03.02.1998 (Annexure 4) terminated the applicant's services w.e.f. 28.5.1997.

1.1 It is the grievance of the applicant that before terminating his services, the Railway authorities did not call for his option as to whether he was willing to accept any alternative employment as provided under Rule 17 of the Railway Services (Pension) Rules, 1993, that he was not granted invalid pension under Rule 55 of the Railway Services (Pension) Rules, 1993 after termination of his services, and that the Railway authorities did not consider his request for grant of invalid pension on the plea that he had not completed the minimum qualifying service of 10 years. It is also the grievance of the applicant that the Railway authorities acted illegally in terminating his services w.e.f. 28.5.1997 by issuing office order No.74 dated 03.02.1998 and that though he had completed 9 years and 11 months of service and was entitled to the pension as per the Master Circular No.54, the Railway authorities did not grant him pension.



1.2 In the context of the above, the applicant has filed the Original Application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:

“i) Order/directing the Respondents to grant invalid Pension to the applicant as per the Rule 17 and 55 of the Railway Service (Pension) Rules, 1993, treating the termination of the applicant from railway service with effect from 03.02.1998 when the order was passed vide Annexure-4, but not from 28.5.1997 as recommended by the Board vide Annexure-1 series and quash the Annexure-4;


Secondly in alternative the applicant's qualifying service of 9 years and 11 month may be rounded off as 10 years as per provision 22 of the Master Circular No.54 on qualifying service for pensionary purpose (Annexure 6) and Board's letter No. F(E) III/90 PNR 34 dtd.25.10.90 and 7.6.93.”

2. Respondent Nos. 2 and 3 have filed a counter disputing the averments contained in the O.A. and opposing the prayer of the applicant. They have stated that the applicant was engaged for 59 days from 24.6.1987 to 20.10.1987 and for 109 days from 24.6.1988 to 20.10.1988 with retrenchment after the end of the said two spells and thereafter he was re-engaged during the year 1990 on Temporary Labour Requisition (TLR) sanction only for the purpose of patrolling in the side of Railway Track during monsoon period. Thereafter, the applicant was re-engaged as Casual Gangman in the authorized pay scale of Rs.775-1025/- w.e.f. 20.3.1991 and his services were regularized w.e.f. 16.7.1994 after he was screened and declared medically fit in B-1 category against the available vacant permanent post of Gangman in the pay scale of Rs.775-1025/-. It



13

has been stated in the counter that 50% of total casual service from 20.3.1991 to 15.7.1994 and 100% of the regular service from 16.7.1994 to 28.5.1997 were taken into account for determining the qualifying service for the purpose of pension and gratuity and the net qualifying service having been determined at 4 years, 5 months and 8 days as against the minimum qualifying service of 10 years, the applicant was not granted pension. The said Respondents have stated that Item 22 of Master Circular No.24 is not applicable to the case of the applicant. In paragraph 9 of the counter, the said Respondents have stated that the averments contained in paragraphs 4.2 to 4.5 of the O.A. are matter of records. That as per the decision of the Medical Board, the applicant was invalid for railway services in all categories w.e.f. 28.5.1997 and therefore, there was no scope to offer him any alternative service in the Railways. That as the applicant did not complete minimum 10 years of qualifying service, he was not granted invalid pension. That the applicant having been declared invalid medically for all categories of Railway service w.e.f. 28.5.1997 by the Railway Medical Board and having admittedly not performed any duty after 28.5.1997 and further having not objected to the same, he cannot be said to have a right to challenge the termination of service w.e.f. 28.5.1997 as per office order dated 03.02.1998. With the aforesaid averments, Respondent Nos. 2 and 3 have prayed for dismissal of the O.A.



16

- 5 -

3. The applicant has not filed rejoinder disputing the averments contained in the counter.

4. The Original Application was listed for hearing ^{- intervalia hd.} on 21.6.2007 when the learned counsel for the parties ^{- the applicants and the Respondents, hd.} did not appear on account of purported resolutions ¹passed by the CAT Bar Association, Cuttack, for abstention from Court work. In this connection, I would like to refer to the decision of the Hon'ble Supreme Court in the case of Ramon Services Pvt.Ltd. v. Subhash Kapoor and others, JT 2000 (Suppl.2) SC 546, wherein Their Lordships, in paragraphs 24, 27 and 28 of the judgment, have held that no advocate can take it for granted that he will appear in the court according to his whims and fancies or conveniences. It would be against professional ethics for a lawyer to abstain from the court when the cause of his client is called for hearing or further proceedings. In appropriate cases the court itself can pass effective orders for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. Inaction will surely contribute to the erosion of ethics and values in the legal profession and the defaulting Courts may also be contributory to the contempt of the Hon'ble Apex Court. Keeping in view the case law laid down by the Hon'ble Supreme Court and this being an year-old matter pertaining to the year 2004, the materials available on record were perused and order was reserved.



14

-6-

5. Before going into the merits of the matter, M.A. No.103 of 2005 filed by the applicant for condonation of delay, if any, in filing the O.A. is taken up for consideration. The Respondents have not filed any objection to the said M.A. It is pertinent to mention here that subsequent to the filing of the O.A., the applicant filed the said Misc. Application stating that after termination of his services on medical ground he had approached the concerned authorities who were pleased to give assurance to look into his case. But when no final decision was taken by the authorities and he was contemplating to approach the Tribunal in the matter in the year 1998 he fell ill and after recovery from illness in 2004 he could file the O.A. He has thus submitted that the delay, if any, was neither deliberate nor intentional. Considering the facts and circumstances of the case, more particularly the principles that pension is a recurring right and that the non-grant of pension, if due and admissible, is a continuing cause of action, I have no hesitation to admit the O.A. and proceed to decide the same on merits. MA No. 103 of 2005 is disposed of accordingly.

5. From the pleadings of the parties, the following points arise for consideration:

- (i) Whether by office order No. 74 dated 3.2.1998 the services of the applicant could be terminated with retrospective effect, i.e., from 28.5.1997 when he was



found medically unfit for Railway service in all categories?

(ii) Whether the applicant had put in 9 years and 11 months of service which have to be rounded off to 10 years minimum qualifying service for pension/invalid pension?

(iii) Whether the applicant is entitled to any relief?

6. Point No.(i): Admittedly, the applicant was a regular employee in the Railways. In paragraph 4(ii), (iii) & (iv) of the O.A., the applicant has stated that on 22.12.1996 during the course of his employment at about 8.50 hours he sustained injuries on his left leg below the knee joint and was admitted in the S.C.B.Medical College & Hospital, Cuttack and he remained as an indoor patient till 7.2.1997 and his left leg was amputated from below the knee joint. Subsequently he was admitted in the S.E.Railway Hospital, Khurda Road, and was discharged. Thereafter, he was examined by the Railway Medical Board for computation of invalidation and for examination as to his fitness in Railway service. After due examination, the Medical Board declared him invalid/unfit in all categories of Railway service w.e.f. 28.5.1997. Thereafter, Office Order NO.74 dated 3.2.1998 was issued by the Respondent-Railways terminating his service w.e.f. 28.5.1997. In support of all these statements, the applicant has filed the relevant documents issued by the S.C.B.Medical College & Hospital, Cuttack, the Medical Department of the S.E.Railways, the counter foil issued by the Medical Board on 17.7.1997 declaring the applicant medically unfit in all



19
-8-
categories of Railway service, and the report dated 9.7.1997 assessing the applicant's LOEC at 40%. The Respondent-Railways, in reply to the above averments made by the applicant, have stated in paragraph 9 of the counter as follows:

"9. That in reply to Para 4.2 to 4.5 of the Original Application, it is humbly submitted that the averments of these paragraphs are matter of records and hence no comment is necessary. However, any thing beyond the records is not admitted by the present Respondents."

It is thus clear that the Respondent-Railways have admitted the facts that the applicant had sustained the injury in the course of discharge of his duties on 22.12.1996; that the applicant had undergone treatment not only at the SCB Medical College & Hospital, Cuttack but also at the Railway Hospital; that his left leg was amputated from below the knee joint; that the applicant's loss of earning capacity was assessed at 40% by the Railway Medical Board; and that the Railway Medical Board, on examination, declared the applicant unfit in all categories of Railway service w.e.f. 28.5.1997. The Respondent-Railways have also not disputed any of the documents filed by the applicant at Annexures-1 to 3,

7. In the context of the above admitted facts of the case, it is to be considered as to whether Annexure 4, the order dated 3.2.1998 terminating the services of the applicant with effect from 28.5.1997 is legally valid. The applicant's grievance is that his services could not have been terminated with effect from 28.5.1997 by an order issued by the Respondent-Railways on 3.2.1998 (Annexure 4). The Respondents, in their counter, have tried to justify



20

-9-

their order dated 3.2.1998 terminating the applicant's services w.e.f. 28.5.1997 on the ground that the applicant neither performed any duty nor was he allowed by the Respondents to continue in Railway service beyond 28.5.1997 when he was declared unfit in all categories of services. Except making this bald reply, the Respondents have not filed any Rule showing that with effect from the date when a Railway employee is found medically unfit in all categories of Railway service, he ceases to be a Railway employee from that particular date and an order can be issued subsequently terminating his services from that date. It is common knowledge that an order or decision made by the executive authority takes effect only prospectively. The applicant's entitlement to continue as a Railway employee could not have been taken away w.e.f. 28.5.1997 by the Respondent-Railways by issuing an order on 3.2.1998 (Annexure 4). Therefore, the order of termination of services of the applicant should, in all fairness, take effect from the date of its issue, i.e., 3.2.1998, and the applicant is entitled to get his pay and allowances up to 3.2.1998.

8. It is next to be considered as to what should be the pay and allowances of the applicant up to 3.2.1998. The Respondents have stated that the applicant did not perform any duties w.e.f. 28.5.1997 and the applicant has not refuted the said statement of the Respondents by filing a rejoinder. When admittedly the applicant, on account of his having sustained injuries in the course of discharge of his duties, was declared medically unfit in all categories of Railway service with effect from 28.5.1997 and the order of termination of service was issued on 3.2.1998, the Respondent-Railways should have



2/ considered the grant of Disability Leave in favour of the applicant and allowed him to continue in service up to 3.2.1998.

9. Point No. (ii): The applicant has stated that he was initially appointed as a Gangman in Class IV(D) category w.e.f. 27.6.1987 and on the basis of that he has claimed to have put in 9 years and 11 months of service as on 28.5.1997 and 10 years and 5 months as on 3.2.1998. The applicant has not produced any document showing that he was appointed as Gangman Group D in the Railways w.e.f. 27.6.1987. The Respondents, in their counter, have clearly given the service particulars of the applicant and have stated that the applicant was initially engaged from 24.6.1987 to 20.10.1987 for a period of 59 days whereafter he was retrenched. Again he was re-engaged from 24.6.1988 to 20.10.1988 for a period of 109 days and faced retrenchment. Thereafter he was engaged as a Casual Gangman w.e.f. 20.3.1991 in the pay scale of Rs.775-1025/- at the minimum rate of Rs.775/- p.m. His service was regularized from 16.7.1994 after the applicant was screened and declared medically fit in B-1 category against the available vacant permanent post of Gangman. The Respondents have submitted that 50% of Casual Service with temporary status from 20.3.1991 to 15.7.1994 and 100% of his regular service from 16.7.1994 till the date of termination of service, i.e., 28.5.1997, come to 04 years 05 months and 08 days and that, therefore, the applicant is not entitled to pension. The applicant has not refuted this statement of the Respondent by filing a rejoinder. Even by taking the date of termination of service of the applicant as



22
'3.2.1998', the applicant cannot also be held to have put in the minimum 10 years of qualifying service.

10. Point No. (iii): The applicant has prayed for a direction to the Respondents to grant him invalid pension as per Rules 17 and 55 of the Railway Services (Pension) Rules, 1993 treating termination of his service w.e.f. 3.2.1998. The applicant's alternative prayer is for a direction to the Respondents to take his qualifying service as 9 years and 11 months to be rounded off to 10 years, as per provision 22 of the Master Circular No. 54, for grant of pension. The Respondents have stated that Rule 17 of the Railway Services (Pension) Rules, 1993 has no application to the present case and that the applicant having not put in the minimum 10 years of qualifying service, is not entitled to 'invalid pension' as provided in Rule 55 of the Railway Services (Pension) Rules, 1993. In order to examine the rival contentions, I have gone through the provisions contained in Rules 17 and 55 of the Railway Services (Pension) Rules, 1993. Rule 17, inter alia, provides that if a railway servant is medically unfit for his post but is retained in service in an alternative appointment and subsequently becomes entitled to receive retirement gratuity or pension, he shall be given the option of accepting either of the gratuity or pension which he would normally be granted with reference to his total service in both the spells of his service taken together, or the sum of gratuity or pension which he would have been granted if he had been medically invalidated out of service instead of being retained in an alternative appointment at the end of the first spell of his service and the retirement gratuity or pension which he would



22

normally have been granted for the second spell of this service rendered in the alternative appointment. From these provisions of Rule 17, I do not find that the applicant's case is covered thereunder, as has been rightly contended by the Respondents.

11. Rule 55 of the Railway Services (Pension) Rules, 1993, inter alia, provides that 'invalid pension' may be granted to a railway servant who retires from service on account of any bodily or mental infirmity which permanently incapacitates him for the service. It is to be examined as to whether under Rule 55 the Respondents should have granted 'invalid pension' to the applicant. The Respondents' stand is that for getting 'invalid pension' in terms of Rule 55, a railway servant must put in minimum 10 years of qualifying service, and that the applicant having not completed 10 years of qualifying service, is not entitled to 'invalid pension'. After going through the Railway Services (Pension) Rules, 1993, I do not find a provision therein that a railway servant, who is found unfit for further service on account of physical infirmity before putting in at least 10 years service, is eligible to 'invalid pension'. As has been found in the earlier paragraph, the applicant did not put in the minimum 10 years of qualifying service and therefore, I hold that the applicant is not entitled to 'invalid pension'.

12. Before going to reject the claim of the applicant to get 'invalid pension' or 'pension', I thought it fit and proper, in the facts and circumstances of the case, to examine the case of the applicant with reference to the Railway Servants (Extraordinary Pension) Rules, 1993. After going through the



provisions contained in the said Rules, I find that 'extraordinary pension' is admissible to a Railway servant when he is injured or dies as a result of accidents arising out of in the course of his employment and for getting such 'disability pension' the Railway servant is not required to put in the minimum 10 years of qualifying service. In view of the admitted fact of the case that the applicant had sustained injury on 22.12.1996 in the course of discharge of his duties and his left leg from below the knee was amputated and consequently he was declared unfit in all categories of Railway service and his services were terminated, I have no hesitation to observe that the applicant is entitled to 'disability pension' in accordance with the Railway Services (Extraordinary Pension) Rules, 1993. But the fact remains that the applicant has not claimed 'disability pension' in his Original Application and therefore, the Respondent has not got an opportunity to give their reply thereto. Therefore, while restraining from giving a positive direction to the Respondents to grant 'disability pension' to the applicant, I feel that ends of justice would be met if a direction is given to the Respondents to consider the case of the applicant for grant of 'disability pension' in accordance with the Railway Services (Extraordinary Pension) Rules, 1993 and take a decision in the matter within a stipulated period.

13. In view of my findings/discussions recorded above, I direct the Respondents to treat that the applicant's services were terminated w.e.f. 3.2.1998 and grant him all consequential service and financial benefits from 28.5.1997 to 3.2.1998 and if necessary, by granting him Disability Leave for the

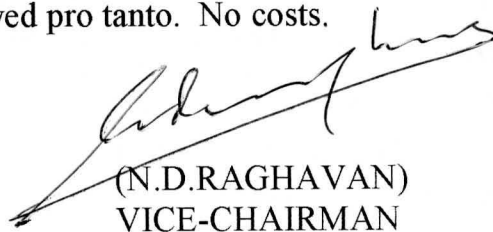


27

- 14 -

period from 28.5.1997 to 3.2.1998. The Respondents are also directed to depute a Welfare Inspector/responsible officer to the applicant for the purpose of collection and completion of all documents to consider the case of the applicant for grant of 'disability pension' under the Railway Services (Extraordinary Pension) Rules, 1993 and take a final decision thereon and communicate the same to the applicant. All the above exercise shall be completed by the Respondents within a period of 90 (ninety) days from the date of receipt of copy of this order.

14. In the result, the O. A. is allowed pro tanto. No costs.


(N.D. RAGHAVAN)
VICE-CHAIRMAN

PPS

fix for pronouncement
on 30-08-07 at 1030AM.
ade.
290807