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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 26 of 2006
Cuttack, this the 30th day of May, 2008

Golakha Mohanty Applicant
-Versus-
Union of India & Ors. Respondents.

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not?
2. WHETHER it be circulated to all the Benches of the Tribunal or not?

Chapatis
(C.R.MOHAPATRA)
MEMBER(JUDL.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
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C O R A M:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER(ADMN.)

Sri Golakha Mohanty, aged about 62 years, son of Late Maguni Mohanty, Vill/PO- Belapada, P.S. Motong, Dist. Dhenkanal. A retired Senior Track-Man, S.E.Railway (Now E.Co.Railway) P.Way, Dhenkanal.

.....Applicant

For the Applicant- M/s. P.K.Chand,D.Satpathy,.J.Mohanty.

Vs.

1. Union of India represented through the General Manager, East Coast Railways, Chandrasekharpur, Bhubaneswar, Khurda.
2. The General Manager, South Eastern Railway, Garden Reach, Kolkata.
3. Railway Pension Adalat-2004, Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, Jatni, Dist. Khurda.
4. Divisional Railway Manager (P), East Coast Railway, Khurda Road, Jatni, Dist-Khurda.
5. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

..... Respondents

Advocates for the Respondents – Mr. B.B.Patnaik.

ORDER

HON'BLE MR. C.R.MOHAPATRA, MEMBER(ADMN.)

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“ to quash the order dated 11/18.11.2004 at Annexure-A/3 and to direct the respondents to calculate and pay the pension to the applicant by fixing his temporary status after 120 days from the date of applicant's initial date of casual engagement i.e. 26.06.1987 as per provisions enumerated in Railway Establishment Manual, and further be pleased to direct the respondents to calculate and pay the pension and retirement benefits of the applicant from the date of retirement by taking into consideration the post service of the applicant as CPC Gangman from July, 1962 to 1967 with all arrears.”

2. Respondents have filed counter opposing the stand of the applicant.

3. We have heard Mr. P.K.Chand, Ld. Counsel for the applicant and Mr. B.B.Pattanaik, Ld. Railway Advocate and perused the materials placed on record as also the relevant Rules on the subject.

4. Relying on the averments made in the O.A., the Ld. Counsel for the applicant submitted that the applicant was



initially engaged as a C.P.C. Gangman in July, 1962 and continued in that post for five years, Thereafter, he was again appointed as Casual labourer on 26.6.1987 and was, subsequently appointed as a temporary Gangman on 10.05.1990. His service as a Gangman was regularized w.e.f. 17.12.1994 and he retired on superannuation w.e.f. 31.05.2001. Since he was not given any pension he made a representation which was rejected vide Annexure-A/3 on the ground of not possessing 10 years minimum qualifying service. He was informed that he had only 7 years 10 months and 10 days of service. The applicant contends that his 5 years service from 1962 to 1967 and 1987 to 2001 which ought to have been taken into account have not been taken into account by the concerned authorities. He further contends that even if 50% of casual service is added to the regular service, he would have got the benefit of 10 years of service and could have got pension. According to the applicant he could have been given temporary status w.e.f. 26.9.1987 which would have given him a qualifying service of 13 years 8 months and 5 days whereas the authorities conferred him temporary status only on 10.05.1990, i.e. after 3 years of his casual service.

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5. Relying on the counter, Ld. Counsel for the Respondents argued that the applicant was engaged for 122 days only during Monsoon Patrolling from 24.6.1989 to 23.10.1989. Prior to that his engagement during Monsoon Patrolling was in broken spells and also was less than 120 days. He was conferred temporary status on 10.5.1990 followed by permanent absorption on 17.12.1994. After being promoted to the post of Sr. Gangman on 12.12.1998, the applicant finally retired on superannuation on 31.5.2001. Before proceeding further in the matter it is profitable to quote Rule 31 of Railway Services (Pension) Rules 1993, relied on by Respondents, which stipulates as under:

"in respect of a Rly-Servant in service on or after 22nd day of August, 1968, half the service paid from contingencies shall be taken into account for calculating Pensionary benefits on absorption in regular employment. " In the Foot Note-2, of Rule-31, it has been stated that " the expression ABSORPTION IN REGULAR EMPLOYMENT means absorption against regular post".

They have also cited the Railway Board's Circular dated 14.10.1980, which is produced below:

" As a result of representation from the recognized Labour Unions and certain other quarters, the Ministry of Rlys. had been considering the demand that the period of service in the case of causal labour (i.e. other than



casual labours employed on projects) after their attainment of temporary status, on completion of 120 days of continuous service, should be counted as qualifying service for pensionary benefits, if the same is followed by their absorption in service as regular Rly. Employees. The matter has been considered in detail in consultation with the Ministry of Home Affairs (Dept. of Personnel and Administrative Reforms) & the Ministry of Finance keeping in view of the fact that the aforesaid category of employee is on their attainment of temporary status in practice enjoy more privileges as admissible to temporary employee such as they are paid in regular scales of pay and also earn Increments, contribute to P.F. etc., the Ministry of Rlys. have decided, with the approval of the President, that the benefits of such service rendered by them as temporary employees before they are regularly appointed, should be conceded in them as provided in the Ministry of Finance's O.M.No.F. 12(1)-SV/68, dt-14.5.68 (copy enclosed for ready reference). The concession of counting half of the above service as qualifying for pensionary benefits, as per the O.A. of 14.5.68, would be made applicable to casual labour on the Rlys. who have attained temporary status. The weightage of past service would be limited from 01.01.1961 in terms of condition(s) of O.M.ibid. Past cases of retirement before the date of letter will not be re-opened".

6. I have gone through the relevant Rules, decisions of the Hon'ble High Court of Andhra Pradesh in the case of **General Manager, South Central Railway, Secunderabad and Another v Shaik Abdul Khader**, 2004-I-LLJ 714 and OA No. 604 of 2006 disposed of on 05.03.2008 (**Sudarsan @ sudarsan Behera** v



Union of India and others) on the subject as also the decision of the Hon'ble Supreme Court in the case of **Indian Drugs and Pharmaceuticals Ltd v Workmen, Indian Drugs & Pharmaceuticals Ltd.**, (2007) 1 SCC 408 on law of precedent, relied on by Learned Counsel for the Applicant. The relevant Rules on the subject are Rules 150 (i), 2001(i), 2002 and 2005 of the Indian Railway Establishment Manual. I find that taking into consideration all the above Rules and various judge-made-laws including the decision of Gujarat High Court in **Rukhiben Rupabhai v Union of India and others**, the Hon'ble Supreme Court did not endorse the proposition held in the cases of Shaik Abdul Khader (supra) and Sudarsan Behera (Supra) in the case of **General Manager, North West Railway and others v Chanda Devi**, (2008) 1 SCC (L&S) 399. In the above premises, it is held that the decisions cited by the Applicant, are no more a precedent and, the same is of no help to the Applicant.

However, I have gone through the original records produced by Learned Counsel appearing for the Respondents pursuant to the direction of this Tribunal. It is seen from the endorsement made at page 41 of the service book that the applicant was medically declared fit in Bee-one vide letter dated

25.06.1988. It is also seen that there is an endorsement made at page 45 of the Service Book by the P. Way Inspector, S.E. Railway, Dhenkanal that "As per the AEN-BBS's No. E/6/II/107 dated 09.09.1987 he is hereby admitted in the revised scale of pay in scale Rs.775-1025/- (RPS) on completion of 120 days in different spells with effect from 26.06.1987 in terms of Railway Board's Letter No. E(NG)II-80/CL/25 dated 14.5.1984. Similarly at page 39 of the service book the Applicant has been shown as Tr. Gangman, carrying the scale of pay of Rs. 775-1025/- allowing him annual increment of Rs.12/- w.e.f. 01.05.1992 raising his pay to Rs.799/- p.m. and he was **confirmed as Gangman w.e.f. 17.12.1995** as is reflected in page 45 of the service book. It is also seen from page 38 of the service book that the applicant was promoted to the Sr. Gangman w.e.f. 01.08.1998. In view of the above, I find that the dates disclosed in the counter are not in accordance with the service record.

7. As per the Rules, a casual labour is entitled to CPC scale only after conferment of temporary status and conferment of temporary status is made after completion of 120 days of casual service. It is also not in dispute that medical fitness is

one of the pre-requisite conditions before one is taken to regular establishment of the railway/regularized/confirmed. From the record it is now conclusively established that the Applicant was allowed **CPC scale of pay** of Rs.775-1025/- (RPS) on completion of 120 days in different spells **with effect from 26.06.1987**. and was declared **medically fit w.e.f. 25.6.1988** and **in 1992** he was shown to be a **Jr. Gangman**, carrying the scale of pay of Rs. 775-1025/- allowing him annual increment at the rte of Rs.12/- w.e.f. 01.05.1992 raising his pay to Rs.799/- p.m. and he was **confirmed** as Gangman w.e.f. **17.12.1995** and was promoted to the Sr. Gangman w.e.f. 01.08.1998.

8. It is not in dispute that a Railway employee is entitled to pension provided he has 10 years of qualifying service to his credit. So far as casual/temporary status holder employees are concerned, relevant rules/instruction of the Railways unequivocally speaks that 50% of the period from the date of temporary status to regularization and 100% of regular service shall be taken into consideration for calculating the qualifying period of service for pension. As discussed above, now it is clear that the Applicant is entitled to count 50% of service **with effect from 26.06.1987** i.e. the date of granting the CPC Scale, in other

words conferring temporary status on Applicant and 100% service from the date of regularization i.e. **16.12.1994** as **disclosed by the Respondents in their counter** till retirement/31.05.2001. Hence, the total period of qualifying service of the Applicant would come to more than 10 years. Accordingly, the Respondents are hereby directed to recalculate the qualifying service of the Applicant in the light of the direction made above and take further action as per Rules to release the pension and pensionary dues of the Applicant at an early date, preferably by the end of June, 2008.

9. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(C.R. MOHAPATRA)
MEMBER(ADMN.)

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