

13
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.284 OF 2006
Cuttack this the 24th day of November, 2008

Bana Bhoi Applicant
Vrs.
Union of India and others Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B. of CAT or not?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. GAUR)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.284 OF 2006

Cuttack this the 24th day of November, 2008

CORAM:

THE HON'BLE SHRI A.K.GAUR, JUDICIAL MEMBER
AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...

Bana Bhoi, aged about 64 years, son of late Anadi Bhoi, resident of Vill-Birapratappur, PS-Chandanpur, Dist-Puri

...Applicant

By the Advocates: M/s.R.K.Samant Singhar

S.Das

A.K.Mallick

-VERSUS-

1. Union of India represented through General Manager, East Coast Railway, Rail Vihar, At/PO/PS-Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. The Divisional Railway Manager, East Coast Railways, Khurda Road Division, At/PO/PS-Jatni, Dist-Khurda
3. The Sr.Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO/PS-Jatni, Dist-Khurda
4. The Section Engineer (Open Line), East Coast Railway, Khurda Road Division, At/PO/PS-Jatni, Dist-Khurda

...Respondents

By the Advocates: Mr.B.K.Mohapatra

ORDER

SHRI A.K.GAUR, JUDICIAL MEMBER:

By means of this Original Application, the applicant has prayed for grant of pension and other retiral dues.

2. The facts in brief are that the applicant was initially engaged as casual labourer. Subsequently, in pursuance of the notification made by Respondent No.3, the applicant was re-engaged under the Respondent No.5 in the year 1986. After completion of 120 days of casual service, the applicant was conferred with temporary status
- 42

and granted CPC scale of pay. On 10.7.1990, the applicant, while working as Trackman was taken to regular establishment and was extended all benefits and privileges as admissible to a regular employee. According to the applicant, he was regularized in service on 7.12.1994 and retired after attaining the age of superannuation on 30.6.2002 as Sr.Trackman. The sole grievance of the applicant is that although he was granted temporary status by the Respondents, but the Respondents have arbitrarily denied him the pensionary benefits. The applicant, based on the service certificate, which is stated to have been received by him after his retirement, made representation to the Divisional Railway Manager, East Coast Railway, Khurda Road on 8.11.2002, but no heed was paid to the same by the Respondents. He submitted several representations thereafter, but received no fruitful result. Hence, this Original Application.

3. By filing a counter reply the Respondents have denied the claim of the applicant and submitted that the applicant was engaged for 108 days in the year 1962 as casual labourer under different TLR sanction posts, 201 days in the year 1963 and 160 days in the year 1964. Those engagements were made for a specific period of time on daily rate basis on broken spells. Considering the past engagement of the applicant, in pursuance of the circular of the Railway Board, the competent authority granted temporary status to the applicant with effect from 10.7.1990 and he continued to

discharge his duties as CPC Gangman up to 6.12.1994 when the applicant was duly screened and empanelled for the post of Gangman from 1.6.1994, whereafter the AEN Headquarters, Khurda Road issued provisional appointment letter in October, 1994 in favour of the applicant. It is stated that the applicant was posted as permanent Gangman in Gang No.4 on regular basis with effect from 7.12.1994 and confirmed as such on 7.12.1995. The applicant retired from railway service with effect from 30.6.2002. According to Respondents, under Rule 31 of Railway Services (Pension) Rules, 1993, in respect of a railway servant in service on or after 22.8.1968, 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 a regular post. According to the Railway Board's circular dated 14.10.1980, only half of the service from the date of attaining temporary status to the date of regularization can be counted as qualifying service for pension. The applicant has been screened and posted as regular Gangman with effect from 7.12.1994. Further the Respondents have stated that even after adding 50% of temporary status service to the service rendered by the applicant after regularization, the same could not exceed 9 years 9 months rounded off to 10 years and as such the applicant is not entitled to pension or family pension. The

applicant's service has been calculated keeping in view the circulars of the Railway Board issued from time to time, as under:

1.	Total length of service rendered by the applicant from 10.7.1990 to 30.6.2002	Year 11	Month 11	Days 20
2(a)	Less 50% of temporary service from 10.7.90 to 6.12.94	(-)02	02	13
(b)	Less non-qualifying service Due to absent & LWP (Leave Without Pay)	(-)00	02	02
	TOTAL QUALIFYING SERVICE OR SAY	09 09 Years & 05 months	07	05

Thus on the date of retirement, the applicant possessed a net qualifying service of 9 years 7 months and 5 days. Under sub-rule (1) of Rule 69 of Railway Services (Pension) Rules, 1993, one has to possess minimum 10 years of qualifying service so as to make him entitle to pensionary benefits. They have stated that in case of railway servant retiring before completing the qualifying service of 10 years, the amount of service gratuity shall be calculated @ half month's emoluments for every completed 6 monthly period of service. The applicant, in terms of the aforesaid rules is not at all entitled for pension or pensionary benefits. He is eligible only to service gratuity in terms of Rule 69 (Annexure-R/4) as a result of which DCRG amounting to Rs.22,436/- and service gratuity amounting to Rs.44,872/- totaling to Rs.67,208/- has been passed by the Finance Wing out of which an amount of Rs.15,560/- has been deducted towards Railways dues, such as, excess payment

✓

drawn during his service period. The leave salary and last wages have already been paid to the applicant.

4. The applicant, by filing rejoinder to the counter, has submitted that he was directly given temporary appointment in the post of Gangman in authorized scale of Rs.775-1025/- with effect from 10.7.1990 against the substantive post and worked continuously in that capacity. It has also been submitted that the plea taken by the Respondents in their counter that the applicant while working as CPC casual labour, acquired temporary status on 10.7.1990 is without any basis. According to applicant, considering the past engagement, the competent authority conferred on him the temporary status and granted CPC scale from 10.7.1990. If that be so, how the applicant acquired the temporary status when he was not in service from the year 1964 to 10.7.1990.

5. We have heard Shri R.K.Samant Singhar, learned counsel for the applicant and Shri B.K.Mohapatra, learned counsel for the Respondents. It has been vehemently argued by the learned counsel for the applicant that law is well settled and according to Rule 20 of Railway Service (Pension) Rules, active service of the Railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating capacity provided that officiating or temporary status is followed without interruption by substantive appointment in the same or in other service or post. The learned counsel for the Respondents, on

the other hand submitted that since the applicant was granted CPC scale of pay and after availability of post on regular basis, the applicant has been screened as a regular Gangman with effect from 7.12.1994. Considering his service after attaining temporary status, according to his seniority, he has been appointed to the regular post after due screening.

6. We have carefully seen the record and found that even after adding 50% of temporary status service rendered by the applicant up to the date of his regularization, it does not exceed 9 years and 7 months and for grant of pensionary benefits 10 years qualifying service is a must. Keeping in view the circulars of the Railway Board, the competent authority has rightly calculated the total qualifying service rendered by the applicant as 9 years 7 months and 5 days and this period does not qualify the applicant for grant of pensionary benefits. Under Rule 69 of Railway Service (Pension) Rules, 1993, one has to possess minimum 10 years qualifying service. We have also noticed that the Respondents have paid the gratuity to the applicant to the tune of Rs.67,308/- out of which an amount of Rs.15,560/- has been deducted towards railway dues on account of excess payment drawn during service period. The learned counsel for the applicant has also placed reliance on Annexure-A/4 filed along with the rejoinder in order to buttress his contention that in the record of the Railways in Column No.5 the total period of railway service of the applicant has been

mentioned as 11 years 11 months and 20 days and as such the Respondents have illegally denied the benefit of pension to the applicant. We have carefully considered this crucial aspect and noticed from the record that after considering the service of the applicant after attaining temporary status, according to his seniority, the applicant has been appointed to the regular post after due screening. But even after adding 50% of temporary status service under the rules to the service rendered after regularization, the total service of the applicant does not cover the qualifying period of service. In our considered view, the Respondents are wholly justified in not granting pensionary benefits to the applicant. The contention of the learned counsel for the applicant that the applicant had worked for a period of 11 years 11 months and 20 days is wholly unfounded and does not ^{inspire}~~inspire~~ confidence. As per Estt.Sl.No.2005, casual labour including project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit is admissible only after their absorption in regular employment. In the case of Union of India & Ors. vs. G.Radhakrishna Panickkar and Ors. etc. etc., 1998(3)AISLJ 271 and in the case of the Director General, Council of Scientific and Industrial Research vs. Dr.R.Narayan Swami and ors., Civil Appeal

No.576 of 1995 (arising out of SLP © No.6524 of 1994 decided on 21.2.1995), the Rules/Scheme framed by the Railways for counting 50% of the casual period with temporary status and 100% of service from the date of regularization till the date of retirement on superannuation was the subject matter of challenge and while deciding the matter the same had been upheld by the Hon'ble Supreme Court in the case of Union of India and Ors. vs. G.Radhakrishna Panickar (supra). Therefore, law has been settled on the issue that 50% of the service after acquiring temporary status and 100% of service after regularization till retirement on superannuation shall be counted for the purpose of pension and pensionary benefits. From the particulars given by the Respondents, it is seen that the applicant attained temporary status on 10.7.1990 and was regularized on 7.12.1994. Therefore, he could not complete 10 years of qualifying service on the date of superannuation to be eligible for pension/pensionary benefits.

7. Having regard to what has been discussed above, the O.A. being devoid of merit is dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. GAUR)
JUDICIAL MEMBER