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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.456 of 2006
Cuttack, this the 03rd day of April, 2009

Hari Parida Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.456 of 2006
Cuttack, this the 03rd day of April, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

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

Hari Parida, aged about 66 years, Son of Late Khetra Parida, permanent resident of Village Chhakadipur, PO. Biribari, PS Tangi, Dist. Khurda.

.....Applicant

By Advocate : M/s.R.K.Samantasinghar, S.Das,
A.K.Mallik, P.K.Routray.

- Versus -

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. The Divisional Railway, Manager, East Coast Railway, Khurda Road Division, At/Po/Ps-Jatni, Dist. Khurda.
3. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po/Ps-Jatni, Dist. Khurda.
4. Assistant Engineer (South), KUR, East Coast Railway, Khurda Road, Division, At/Po/Ps-Jatni, Dist. Khurda.
5. Section Engineer (P.N.I), East Coast Railway, Kalupadaghat, At/Po-Kalupadaghat, PS-Tangi, Dist. Khurda.

....Respondents

By Advocate - Mr. B.K.Mohapatra.

O R D E R

Per- MR.C.R.MOHAPATRA, MEMBER (A):-

The claim of the Applicant in this Original Application is to direct the Respondents to take into consideration the entire period of his casual service and temporary status period followed

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27 by regularization for calculating the payment of pension and all other pensionary dues.

2. Respondents opposed the contentions of the applicant by stating that there is no rule to take into the period of casual service of an employee. According to the Respondents as per Railway Board Estt.Srl.No.239/80 the applicant is entitled to count only 50% of his service from the date of accruing of the temporary status till regularization and 100% of service from the date of regularization till retirement on attaining the age of superannuation. They have stated that the applicant was engaged as casual labourer w.e.f. 30.6.1986. Thereafter he was given temporary status w.e.f. 30.10.1986 and regularized as Gangman w.e.f. 6.4.1994. While working as such, he retired from service w.e.f. 31.3.1998 on reaching the age of superannuation. Further stand of the Respondent is that as per sub rule 1 of Rule 69 of Railway Services (Pension) Rules, 1993 (RSPR, 1993) a railway employee is entitled to pension provided he has had minimum ten years of qualifying regular service. Since the Applicant had not got ten years regular service to his credit, he was sanctioned and paid only to the entitled dues after his retirement but no pension.

3. By filing rejoinder, it has been stated by the Applicant that the casual period of service of the Applicant from 1959 till

reengagement has totally been ignored by the Respondents while calculating the qualifying period of service for grant of pension and pensionary dues to the Applicant. Further it has been contended by him that the Applicant was a Gr. D employee of railway and as such, he ought to have been retired on reaching the age of 60 years instead of 58 years as provided in the rules. If additional years are taken into consideration then the applicant is entitled to pension and pensionary benefits after his retirement. But for no reason the applicant was retired at the age of 58 years.

4. Learned Counsel appearing for parties have reiterated their stand taken in their respective pleadings and having heard them perused the materials placed on record.

5. Learned Counsel for the applicant laid emphasis on the retirement of the applicant at the age of 58 years instead of 60 years not by way of punishment finding him guilty either in any criminal or disciplinary proceedings ever initiated against him. As such, according to him he was entitled to count those two years towards the qualifying service besides being entitled to wages. He has further contended that as per the decision of this Tribunal earlier rendered in several cases, the Respondents ought to have taken into consideration such of the short fall period from the casual period of service so as to entitle him to earn pension to sustain his livelihood.

As such, according to him, injustice was caused in the decision making process of the matter of granting the pension and pensionary benefits which needs interference by this Tribunal. This was opposed by the learned counsel for the respondents by stating that it is too late in the day for the applicant to contend that he was retired at the age of 58 years instead of 60 years as provided in the rules. If he was retired from service prematurely, not even by way of punishment or review, he could have agitated the same firstly by filing representation against such premature retirement and failing to remedy his grievance through representations he could have approached this Tribunal in separate OA. Having not done so, he is estopped to raise such question in this OA which pertains to payment pension and pensionary dues by calculating his entire period of service starting from casual engagement till retirement.

6. Considered the various submissions made by parties. In view of the decision of the Hon'ble Apex Court in the case of **General Manager, North West Railway and others v Chanda Devi**, (2008) 1 SCC (L&S) 399 we find no irregularity or illegality in the matter of calculation of the period of service for grant of pension and pensionary benefit to the Applicant. Hence this prayer is held to be without any merit.

7. In so far as retirement of the applicant at the age of 58 years is concerned, it is seen that for the first time the applicant raised the same as one of the grounds in this OA. The Respondents have also not offered their comments in their counter. However, by filing MA applicant sought amendment to the OA by inserting in the prayer portion that "taking into account additional two years towards age of retirement and qualifying service". This was strongly opposed by the Respondents by stating that the Applicant is not entitled to the benefit of the retirement age as the said rule enhancing the age of retirement up-to 60 years came into force w.e.f. 13.5.1998 and by that time the Applicant superannuated from service on 31.3.1998. As such, according to Respondents, the Applicant was not entitled to the benefit of the said rules. Besides the above, it has been alleged that amendment can be allowed provided there would be no change in the nature and character of the main OA. According to them in case the MA is allowed then virtually there would be two different and distinct prayers in one OA which is not permissible under the rules. Hence, they have prayed for dismissal of MA.

8. It reveals from record that after 23rd September, 2008 granting time to the Respondents to file objection if any and objection having been filed by the Respondents, no step has been

taken by the Applicant to press on his amendment application although meantime several adjournments had taken place. Thatapart, we are of the opinion that in case the amendment is allowed there would be multiplicity of relief in one Original Application which is not permissible as per the Rules.

9. In view of the above, we dismiss this OA. No costs.

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(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

Knm,ps