

7


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.


Original Application No.530 of 2006  
Cuttack, this the 20<sup>th</sup> day of May, 2009

Labanya Acharya .... 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.)

8

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.No.530 of 2006

Cuttack, this the 20<sup>th</sup> day of May, 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)

.....

Labanya Acharya, aged about 63 years, wife of Late Pratap Chandra Acharya retired as Sr.Traffic Waterman (Sr.TWM) under taton Manager, Brahmapur at present residing at C/o.Shri K.N.Behera, Abhiram Nagar (Opposite to Ganjam Law College), PO. Engineering School, Berhampur, Dist. Ganjam, PIN-760010.

.....Applicant

Advocate for Applicant: Mr.Achintya Das.

-Versus-

1. Union of India service through General Manager, E.Co.Railway, Bhubaneswar, Pin 751 023.
2. Divisional Railway Manager, E.Co.Railway, Khurda Road, Po. Jatni, Dist. Khurda, PIN-752050.
3. Sr. Divisional Commercial Manager, E.Co.Railway, Khurda Road, PO. Jatni, Dist. Khurda, PIN-752 050.
4. Sr. Divisonal Personnel Officer, E.Co.Railway, Khurda Road, PO. Jatni, Dist. Khurda, PIN 752 050.
5. Sr. Divisional Finance Manger, E.Co.Railway, Khurda Road, PO. Jatni, Dist. Khurda, PIN 752050.

....Respondents

Advocate for Respondents: Ms.S.L.Patnaik.

O R D E R

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

According to the Applicant on premature death of the husband of the applicant while working in the Railway, she was appointed as a substitute in Gr. D category/Hot Weather Water Woman on 09.04.1976 and completed 120 or more service as on 31.02.1982. Thereafter, vide Office order dated 14.8.1984 he was empanelled for regular absorption in Group D post in Commercial Department. She attended the pre-recruitment medical examination and passed the medical examination in B 1 category vide Medical

L

9 Certificate dated 13/17.12.1990. The name of applicant was placed in the panel at Sl.No.46 and she was engaged to work against an existing vacancy of Waterman at BAM w.e.f. 6.3.1992. Vide order under Annexure-A/2 dated 20.11.1992, the Station Superintendent, Berhampur Railway Station informed the Sr. Divisional Commercial Manager Khurda Road that Shri B.Surya Rao, Substitute Panel No.114 has joined on 28.3.1992 and completed three months' regular service. In response to the letter dated 2.12.1993 of the Sr. Divisional Personnel Officer, Khurda Road, on 07.12.1993, the applicant appeared before the competent authority for screening. On 29.10.1995 applicant was absorbed on regular basis as Junior Waterman in the Railway and finally she retired from the Railway service on reaching the age of superannuation on 30.04.2003. She having not been allowed pension, <sup>has</sup> ~~she~~ approached this Tribunal in the present Original Application filed under section 19 of the A.T.Act, 1985 seeking direction to the Respondents to grant her monthly pension.

2. While admitting the factual aspects of the matter enumerated above it has been stated by the Respondents in their counter that as per Rules, a Railway employee is entitled to pension after retirement provided he/she completes ten years of regular service by the time of his/her retirement. The Respondents have admitted in their counter as also in the written note of submission that the Applicant was empanelled for absorption against regular vacancy in the year 1984 and she was medically examined in 1990 but as there was no Group D vacancy available in the Commercial Department of the Railway, the Applicant was regularized vide order under Annexure-R/6 dated 20.12.1995. Their stand is that by the

2

10  
time of the retirement on 30.04.2003, the applicant had only completed 7 years, 6 months and 1 day regular qualifying service and as such, he was not entitled to pension in terms of Chapter II, Rule 69 of Railway Services (Pension) Rules, 1993.

3. It has been contended by the Learned Counsel for the Applicant that after completion of 120 days, in term of extant rule a casual labour is entitled to temporary status and after conferment of temporary status such casual labour is empanelled for regularization in Gr. D post of course after being declared medically fit. His further contention is that as per the rules/instructions, fifty per cent of temporary service is to be taken into consideration for counting the pension of an employee after retirement. His contention is that as the applicant has undisputedly completed 120 days as on 31.07.1982, thereafter empanelled for regular appointment in Gr. D post on 14.08.1984, medically examined in 1990, the Respondents, while calculating the total period of service of applicant for calculation of pension ought to have taken into consideration 50% service of applicant from 31.7.1982 till regularization on 29.10.1995 and 100% of regular service from the date of regular service till retirement on 30.04.2003. Further contention of the Applicant's counsel is that there was no reason not to regularize the applicant soon after she was declared medically fit in the year 1990. In other words his contention is that if the applicant is not treated as a temporary status holder employee w.e.f. 31.07.1982, she should be treated as a regular employee w.e.f. 1990 i.e. the date when she was declared medically fit for the purpose of calculating the period for grant of pension non-payment of which the applicant is facing immense difficulty for

L



survival even after dedicated service from 09.04.1976. To buttress his claim he has relied on the decision of the Hon'ble Supreme Court in the case of **Yashwant Hari Katakhar v Union of India and others**, 1996 SCC (L&S) 464.


On the other hand, Learned Counsel for the Respondents opposed the contention of the Applicant by stating that there is no record that the applicant had ever been conferred with temporary status. She has contended that if the Applicant has any grievance in this regard, she could have agitated the same before her authority while in service. Having not done so, this OA is liable to be rejected.

4. Having given our anxious thought to the rival submissions of the parties, perused the materials placed on record. We have also gone through the decision of the Hon'ble Apex Court in the case of Yashwant Hari Katakhar (supra). Needless to state that law is well settled that pension and pensionary benefits are being granted to a retired employee for the survival of himself/herself and other dependent family members. This is a peculiar case where though the applicant has been in Railway service since 1976 she has been left with no remedy, according to the Respondents for not having ten years regular service as required under rules for getting pension. At the same time we cannot close our eyes to the fact that in very many cases in the past it has been brought to our notice by the Railways/Respondents that only casual employees having temporary status before being taken to regular establishment medical examination one has to be declared fit medically in other words medical examination is a pre-condition for temporary status holder employee of the Railway. In the instant case the applicant, according

2

to the Respondents, was examined medically and found fit in the year 1990 but due to non-availability of vacancy she was not regularized and as such, in all fairness it can be presumed that the applicant was a temporary status holder employee at least w.e.f. the date she was declared medically fit. As a result of this, in terms of the Rules/Instructions of the Railway Board, the Applicant is entitled to count 50% of her temporary status period of service for the purpose of counting qualifying service for pension.

5. In the light of the discussions made above, the Respondents are hereby directed to reconsider the case of the Applicant for grant of pension and pass a reasoned order within a period of 45(forty five) days of receipt of copy of this order. OA is accordingly disposed of. No costs.

  
(JUSTICE K.THANKAPPAN)  
MEMBER (JUDICIAL)

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