

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.


Original Application No. 605 of 2006


Cuttack, this the 29<sup>th</sup> day of August, 2008

Paria @ Paria Champati .... 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.)

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.No. 605 of 2006

Cuttack, this the 27<sup>th</sup> day of August, 2008

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)

Paria @ Paria Champati, aged about 65 years, Son of Bika Champati, permanent resident of Village Biribandha, Po.Kuha, PS-Air Field, Dist. Khurda.

.....Applicant.

Legal practitioner : M/s.R.K.Samantasinghar, Sanjeet Das, A.K.Mallik, Counsel

- Versus -

1. Union of India represented through General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.Khurda.
2. The Divisional Railway Manager, E.Co.Railway, Khurda Road Division, At/Po/Ps-Jatni, Dist. Khurda.
3. The Sr. Divisional Personnel Officer, E.Co. Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
4. The Assistant Engineer (Settl) KUR, Engineering Department, Khurda Road Division, E.CO.Railway, Khurda Road, At/Po/Ps.Jatni, Dist. Khurda.
5. The Permanent Way Inspector Office of P.Way Inspector, Khurda Road Division, E.Co.Railway, Khurda, At/Po/Ps-Jatni, Dist. Khurda.

....Respondents

Legal Practitioner: Mr. M.K.Das, Counsel.

L

ORDER

MR. C.R. MOHAPATRA, MEMBER (ADMN.):-

A retired Sr. Gangman coming under the category of Class IV employee of the Railway, by filing this Original Application U/s.19 of the Administrative Tribunals Act, 1985 has prayed for issuance of direction to the Respondents to grant him pension and pensionary benefits by taking into consideration his entire period of service starting from casual service in the year 1959 till retirement i. e 30.06.2001 as a regular Sr. Gangman of the Railway.

2. Respondents in their counter contested the case of the Applicant *inter alia* stating that the Applicant is not entitled to pension as one is entitled to pension provided he has minimum ten years of qualifying service at his credit. The Applicant lacks such qualifying service of ten years even after taking into consideration 50% of temporary status service w.e.f. 10.05.1990 to 12.06.1995 and 100% regular service with effect from 12.06.1995 till retirement i.e. on 30.06.2001 excluding 08 days service of leave without pay which comes to 08 years 06 months and 26 days of service. Accordingly, Respondents substantiated their stand of not granting pension to the Applicant.



3. Learned counsel for the Applicant by producing copy of the service book and the information received under RTI Act through rejoinder has controverted the stand of the Respondents that the Applicant was granted temporary status only on 10.05.1990. According to him, as per the scheme under Annexure-R/1 a casual employee is entitled to authorized/CPC scale only after conferment of temporary status. As the Applicant was given authorized scale w.e.f. 12.08.1987 counting the period of temporary status w.e.f. 10.05.1990 is unjustified. He has therefore, prayed that the Applicant is entitled to count full period of service w.e.f. 12.08.1987 till his retirement as qualifying service entitling him to pension and pensionary benefits which has illegally been denied to him. This was objected to by the Learned Counsel for the Respondents by stating that this is a mere presumption and on presumption benefit of pension cannot be allowed to an employee. He also submitted that the date of grant of authorized pay is not the critical date for conferment of temporary status and in the present case temporary status has been given to the applicant only on 10.05.1990 and the applicant was regularized w.e.f. 12.06.1995 and retired from service on 30.06.2001.

2

9  
-4-

4. After giving due consideration to various arguments advanced by the parties we have perused the materials placed on record vis-à-vis the Rules/instructions issued by the Railway Board on the subject. It is not in dispute that a Railway employee is entitled to pension provided he has 10 years of qualifying service at 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. Therefore, the request for counting the total period of service for the purpose is held to be without any merit in view of the decision of the Hon'ble Apex Court rendered in the case of **General Manager, North West Railway and others v Chanda Devi**, (2008) 1 SCC (L&S) 399. Hence this prayer of the Applicant is rejected.

5. Next question comes for consideration as to whether 12.08.1987 is the date of conferment of temporary status or 10.05.1990. Annexure-R/1 makes it clear that a casual employee of the railway is also entitled the privilege of authorized scale and increment etc. only after conferment of temporary status.

2



- 5 - 10

Undisputed document under Annexure-A/5 clearly establishes that the Applicant's first date of appointment is 12.08.1987 and with effect from that date he was granted the authorized scale of pay. As such as per the scheme under Annexure-R/1, we do not have an iota of doubt to hold that 12.08.1987 is the date of conferment of temporary status on the applicant and not 10.05.1990 as stated by the Respondents. As a result, Applicant is entitled to count 50% of service from 12.08.1987 to 12.06.1995 and 100% till retirement i.e. 30.06.2001. On arithmetical calculation of the period it comes to 09 years, 11 months and 18 days of qualifying service of the Applicant which also falls short of 10 years qualifying service of the Applicant to get pension. But sub rule 3 of Rule 69 of the Railway Services (Pension) Rules, 1993 envisages that 'in calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service.' Thus, the Applicant would have 10 years qualifying service so as to earn pension and other pensionary benefits.

6. In the above view of the matter, we find force in the contention of the Applicant that there has been miscarriage of

L

-6-11

justice in the decision making process of matter thereby depriving the Applicant pension after his retirement. The Applicant is out of any means of livelihood since 30.06.2001. In the said premises, the Respondents are hereby directed to examine the matter in the light of the discussions made above and grant the benefits as aforesaid within a period of 60 (sixty) days from the date of receipt of this order; failing which the Applicant would be entitled to interest at the rate of 6% per annum on the entire arrear dues which shall be born by the person responsible for the delay.

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

Thankappan

(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

Mohapatra

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