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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application Nos.632 & 635 of 2006
Cuttack, this the 31st day of July, 2009

Gatia @ Gatia Jena & Anr. Applicants
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.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 632 & 635 of 2006
Cuttack, this the 31st day of July, 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)

OA No. 632 of 2006

Gatia @ Gatia Jena, aged about 65 years, Son of Late Arakhita Jena, permanent resident of At/Po. Taraboi, PS-Jatni, Dist. Khurda.

.....Applicant

By Advocate : M/s.R.K.Samantasinghar, S.Das, A.K.Mallik
- Versus -

1. Union of India represented through General Manager, East Coast Railway, Rail Vihar, PO/PS-Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. The Divisional Railway Manager, East Coast Railway, Khurda Divison, At/Po/PS-Jatni, Dist. Khurda.
3. Senior Divisional Personnel Officer, E.Co.Railway, Khurda Road Division, At/Po/Ps-Jatni, Dist. Khurda.
4. The permanent Way Inspector cum Section Engineer, Khurda Road Division, East Coast Railway, At/Po/Ps-Jatni, Dist. Khurda.

....Respondents

By Advocate : Mr.B.K.Mohapatra

OA No. 635 of 2006

Kailash Das, aged about 65 years, son of Late Sanatan Das of village Patapada, PO. Argul, PS Jatni, Dist. Khurda.

.....Applicant

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

- Versus -

1. Union of India represented through General Manager, East Coast Railway, Rail Vihar, PO/PS-Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. The Divisional Railway Manager, East Coast Railway, Khurda Divison, At/Po/PS-Jatni, Dist. Khurda.
3. Senior Divisional Personnel Officer, E.Co.Railway, Khurda Road Division, At/Po/Ps-Jatni, Dist. Khurda.
4. The Assistant Engineer (Settl.) KUR, Engineering Department, Khurda Road Division, East Coast Railway, Khurda Road, At/Po/Ps-Jatni, Dist. Khurda.

4. The permanent Way Inspector cum Section Engineer, Khurda Road Division, East Coast Railway, At/Po/Ps-Jatni, Dist. Khurda.

....Respondents

By Advocate :Mr.B.K.Mohapatra

O R D E R

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

Though the above two OAs were heard one after the other, since common question of fact and law are involved in both the OAs, we proceed to decide both the OAs in this common order.

2. Gatia @ Gatia Jena is the Applicant in OA No. 632/2006. While he was working as Senior Trackman under the Section Engineer (P.Way), E.Co.Rly, Khuda Road, on attaining the age of superannuation he retired from service w.e.f. 28.2.2001. According to him, on completion of 120 days of casual service, he was conferred with the temporary status with effect from 03.07.1987 and was granted CPC Scale. While continuing as such, the Applicant was taken to the regular establishment on 10.05.1990 as a Trackman. Thereafter, he was promoted to the post of Senior Trackman and on reaching the age of superannuation retired from service with effect from 28.02.2001. Though he had completed the minimum ten years of regular service he was not paid his pension and pensionary dues after his retirement. Hence, on relying on the service certificate granted by the authorities under Annexure-A/2 he seeks direction to the Respondents to take into consideration the casual service period and the temporary status period or the full service period of the applicant from 10.5.1990 till retirement and grant him the pensionary and all other pension dues from the date of retirement.

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3. By filing counter, Respondents dispute the date of regularization mentioned by the Applicant. According to the Respondents, the Applicant was granted temporary status thereby CPC scale with effect from 02.07.1987 as a casual monsoon patrolman. But he did not work continuously. Therefore, continuity of service was granted to the applicant with effect from 10.05.1990 and accordingly, the applicant was conferred with temporary status and CPC scale with effect from 10.05.1990 up to 05.04.1996. While working as such, he was regularized in the post of Gangman w.e.f. 06.04.1996. By efflux of time he was promoted to the post of Sr. Trackman and retired from service w.e.f. 28.2.2001. Further it has been asserted that as per Rules minimum period of 10 years regular service is required for grant of pension and Pensionary benefits to a retired Railway servant. They have further stated that as per Rules/instruction of the Railway Board 50% of temporary service and 100% of regular service is reckoned for calculating the qualifying service. Casual service period of the employees is not countable for calculating the qualifying period of service. Since the period of service even after taking into consideration 50% temporary status period and 100% from the date of regularization till retirement is short of the minimum period of ten years qualifying service, no pension was granted to the applicant after his retirement. Accordingly, Respondents prayed for dismissal of this OA.

4. Similarly it is contended by the Applicant in OA No. 635 of 2006 that after completion of 120 days of casual service he was granted temporary status and CPC scale w.e.f. 02.08.1987. While working as such, he was taken to regular establishment as Trackman

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w.e.f. 10.05.1990. In course of time, he was promoted to the post of Sr. Trackman and on reaching the age of superannuation he retired from service w.e.f. 28.02.2001. In support of the above contention he relied on the service certificate granted by the Respondents under Annexure-A/2. Hence, by filing this OA he sought direction to the Respondents to take into consideration the temporary status service and past casual service starting from 1963 till 08.06.1995 for pensionary benefits and pass appropriate orders granting pension and gratuity to the applicant if necessary by quashing the service certificate granted by the Respondents under Annexure-A/2.

5. In the counter, the Respondents opposed the contentions of the Applicant. According to the Respondents the applicant was granted CPC scale with effect from 02.08.1987. Thereafter, he continued to be engaged in broken spell against TLR sanction post available from time to time till 09.05.1990. He was given temporary appointment in the post of Gangman with effect from 10.05.1990 and regularization w.e.f. 26.07.1995 and while working Sr. Gangman carrying the scale of Rs.2650-4,000/- he retired from service on reaching the age of superannuation w.e.f. 28.2.2001. According to the Respondents for getting pension one has to complete minimum period of ten years regular service. As per the rules/Railway Board instruction 50% of the temporary status period of service and 100% of regular service of a casual employee are countable for calculating the minimum period of service for grant of pension and pensionary dues. Since the applicant had only eight years of regular service counted in the manner provided in the rules/Railway Board's instructions, he

was not sanctioned the pension and pensionary dues. Respondents, therefore, prayed for dismissal of this OA.

6. Heard the parties at length and perused the materials placed on record. By placing reliance on the service certificates filed in both the OAs as Annexure-A/2 and the copies of some of the pages of the service books filed along with the rejoinder, the Applicants have produced no documents in support of their plea that they were regularized not from the dates disclosed by the Respondents in their counter but from the dates given by them in their OAs. Grant of temporary status, regularization and promotion are not being made in vacuum. There must be some orders while granting such of the benefits. But the Applicant except bald allegation failed to produce any relevant document in support of their pleas. The dates disclosed in the service certificate do not show the dates of regularization disclosed by the applicant in their OAs. It only refers to the period of service put in by the applicants from the date of temporary status till retirement. In view of the above, we find no reason to take any contrary view than what has been averred by the Respondents in their counter in regard to the dates of grant of temporary status, regularization etc. of the applicants. The instruction of the Railway Board providing the manner of calculation of the period of service has not been challenged by the Applicants in this OA. Therefore, we find no infirmity in calculating the period of service of the applicants for grant of pension.

7. So far as the prayers of the applicants for calculating the qualifying service of the applicants by taking into consideration the entire period of casual service till attainment of temporary status

thereby regularization are concerned, we are not inclined to accept this prayer 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 negating similar prayer made by the Applicants therein.

8. In view of the discussions made above, we find no infirmity in the decision making process of non-granting the pension to the Applicants. Accordingly, both the OAs stand dismissed by leaving the parties to ^lbar their own costs.

Kappan
(JUSTICE K.THANKAPPAN)

MEMBER (JUDICIAL)

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