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O.A.No.634 of 2006

ORDER DATED 3rd April 2009

CORAM:

Hon'ble Mr.Justice K.Thankappan, Judicial Member

And

Hon'ble Mr.C.R.Mohapatra, Administrative Member

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Heard Mr.R.K.Samantasinghar, learned counsel for the applicant and Mr.B.K.Mohapatra, learned counsel for the Respondents.

2. In this Original Application the applicant calls in question the pension calculation made by the Respondents, whereby and whereunder pension has been denied to him on the ground of his not having put in the qualifying period of pensionable service.

3. Mr.Samantasinghar, learned counsel for the applicant contended that the stand taken by the Respondents in the counter that the applicant had to further complete 120 days of work even after grant of CPC Scale is not correct and that apart, the calculation made as per Annexure R/2, which shows that temporary status was granted w.e.f. 25.11.1989 and the applicant was absorbed in regular establishment w.e.f. 8.6.1994, cannot be considered as correct. The above contention is based on the service records/certificates of the applicant, which show that the applicant was assigned the CPC Scale w.e.f. 10.07.1987 and continued up to 7.6.1994 on temporary basis and he was absorbed in regular service with effect from 8.6.1994 and finally retired on superannuation w.e.f. 31.03.2001. If the assignment of temporary status on allowing the CPC Scale w.e.f. 10.07.1987 is taken into account, the applicant is entitled for counting half of his temporary service from 10.07.1987 to 7.6.1994 for the purpose of pension. Further it was submitted that from the calculation made by the Respondents with reference to the leave records/accounts, it would show that the



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applicant was on leave or absented from service for 9 ½ days only. If the calculation is made correctly, the applicant has got a qualifying period of pensionable service.

3. In reply to the above contentions, Mr.B.K.Mohapatra, learned counsel for the Respondents, relying on the counter affidavit for and on behalf of the Respondents, submitted that the contention of the applicant that he was granted temporary status w.e.f. 10.7.1987 is not correct in as much as his service records show that he was granted temporary status only w.e.f. 25.11.1989 on his having put in 120 days of casual service. The learned counsel further submitted that the applicant did not complete 120 days of continuous work as on 10.7.1987 and therefore, could not be taken to have been granted temporary status w.e.f. 10.7.1987. Hence the applicant is not entitled for the calculation of any period of temporary service prior to 25.11.1989.

4. We have already considered the question regarding grant of CPC scale of pay which would entitle a casual employee to have temporary status. If temporary status was granted to the applicant w.e.f. 10.7.1987, i.e., the date of allowing him CPC scale of pay, and he was regularly absorbed by the Railways w.e.f. 8.6.1994 and retired on superannuation w.e.f. 31.3.2001, the applicant is entitled to count 50% of the period of his casual service with temporary status from 10.7.1987 to 7.6.1994 and 100% of regular service from 8.6.1994 to 31.3.2001 when he retired on superannuation. Even if 9 ½ days of non-qualifying service, as per the calculation sheet at Annexure R/2, is deducted, the applicant is also found to have put in more than 10 years of pensionable service, which is the minimum qualifying period of service for getting retirement pension under the rules. With regard to his grievance

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relating to non-payment of gratuity, the applicant has already filed representation as per Annexure A/3 which still remains to be considered by the Respondent-authorities.

5. In the above view of the matter, this Tribunal disposes of the O.A. with direction to the respondents to consider the case of the applicant for granting him pension by taking into account his casual service with temporary status w.e.f. 10.7.1987 up to 7.6.1994 and regular service from 8.6.1994 to 31.3.2001, i.e., the date of his retirement on superannuation, and pass a speaking and reasoned order as early as possible, at any rate within 90 (ninety) days from the date of receipt of copy of this order. The Respondents are also directed to consider the applicant's representation at Annexure A/3 regarding payment of gratuity and pass appropriate orders within the period as stipulated above. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER