

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O.A.NO. 671 OF 2002

Cuttack, this the 23<sup>rd</sup> day of September, 2004

GIDU PRATAP.

....

APPLICANT.

-Versus-

UNION OF INDIA & ORS.

....

RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *Yes.*

*Manoranjan Mohanty*  
(Manoranjan Mohanty)  
Member (Judicial) 23/09/04

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O.A.NO. 671 OF 2002

Cuttack, this the 23<sup>rd</sup> day of Sept., 2004.

CORAM:

THE HONOURABLE MR. MANORAN JAN MOHANTY, MEMBER (JUDL.)

....

SRI GIDU PRATAP, aged about 61 years,  
Son of Udayanath Pratap, retired  
Khalasi Helper, Section Engineer  
(Works), S.E. Railway, Cuttack,  
permanent resident of Village:  
Barimul, PO: Barithengarh,  
Ps: Badachana, Dist. Jajpur.

.... Applicant.

By legal practitioner: Mr. N.R. Routray,  
Advocate.

:Versus:

1. Union of India represented through  
the General Manager, S.E. Railway,  
Garden Reach, Kolkata-43,
2. Divisional Railway Manager,  
S.E. Railway, At/Po/Ps: Jatni,  
Dist. Khurda.
3. Senior Divisional Personnel Officer,  
S.E. Railway, At/Po/Ps: Jatni, Dist. Khurda.
4. A.E.N, South Eastern Railway, At/Po: Station  
Bazar, Town/Dist. Cuttack.

.... Respondents.

By legal practitioner: Mr. D.N. Mishra  
&

Mr. R.C. Rath,  
Standing Counsel (Rlys.)

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O R D E R

MR. MANORAN JAN MOHANTY, MEMBER (JUDICIAL):

Non-payment of pension to the Applicant, a retired Khalasi/Helper of Railways, is the subject matter of this Original Application filed under section 19 of the Administrative Tribunals Act, 1985.

2. Applicant, whose date of birth has been shown to be 01-07-1942 in the records, served the Rlys. on Casual basis for some time; before his name was taken to record on 04-08-1986 and, ultimately, he was given temporary status on 10-11-1989; taken to regular establishment on 06-07-1995 and, on attaining the age of superannuation, retired from Railway services on 30-06-2002. Although the Applicant retired from regular pensionable establishment of Railways (being a confirmed Railway employee for seven years, eleven months and 25 days, he having served as such from 06-07-1994 to 30.06.2002) no pensionary benefits are being paid to him and, in the said premises, he has filed this Original Application. However, the document under Annexure-2 to the OA goes to show that the following amounts have already been sanctioned in his favour on his retirement; such as:-

D.C.R.G.	....	Rs. 22,436.00
Service gratuity	....	Rs. 44,872.00
TOTAL:		Rs. 67,368.00

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3. In the counter filed by the Respondents, it has been disclosed that to become eligible to get pension, one has to serve in a pensionable establishment for at least ten years and that the Applicant having rendered pensionable period of services in the Railways for seven years, eleven months and twenty five days (from 06-07-1994 to 30-06-2002) and he having served there before in the casual establishment of the Railways (with temporary status from 10-11-1989 to 05-07-1995) for a period of four years, seven months and twenty five days; he was entitled to get 50% benefit of the said temporary status period towards pensionable service and that, therefore, the Applicant had to his credit (7 years, 11 months and 25 days PLUS 2 years, 3 months & 27½ days) total 10 years, 3 months and 22½ days to his credit, but he having non-qualifying service of 281 days he is to get benefit of only 9 years, 6 months and 11 ½ days of pensionable service and as such, he was not allowed the minimum pensionary benefits. The Respondents have also given the break-up service rendered by the Applicant in the Railways.

4. Having heard the learned counsel for both the parties (in presence of the Officers of the Railways) and having perused the materials placed by them (i.e. the records of the establishment of the Railways from

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their Khurda Road Office, Cuttack Office and Dhenkanal Office) with the aid and assistance of the respective officers, it is seen that the Applicant is fall-short of five months and 19½ days of qualifying service in order to be eligible for the minimum pension.

5. On perusal of the records, it is also seen that even though Applicant was having enough casual leaves to his credit, instead of granting him the same (when he was stationed at Dhenkanal, where he was not only remaining on leave, on medical grounds frequently, but also was found medically decategorised requiring his replacement to Cuttack from Dhenkanal), he had been granted "leave without pay", which has placed him in short-fall of qualifying service. It appears, the personnel officer did not guide him (the sick Applicant) properly.

6. The peculiarity of the case is that even though the Applicant had dedicated service to the Railways for more than the required period of service for grant of pension; due to his ignorance/noncooperation of the staff of Personnel Department/technicality of the Rules, he has been debarred of getting minimum pension. It is pertinent at this stage to mention here that pension is not a bounty to be paid to the retired Govt. servant. The provision of pension has been enunciated by the Government by keeping in mind that at the old age, after dedicating energy and youth for the nation,

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particular department, a citizen should not be allowed to move; when, to say, he is crippled due to old age; with begging bowls to maintain his day-to-day livelihood alongwith his dependants. By virtue of the technical rule of law of the Railways, here is a case where the Applicant is going to lose his entire service period and, thereby, allowing him to starve, which is not the motto of the scheme.

7. In the above view of the matter, the case of the Applicant is hereby remanded to the <sup>who</sup> Respondents/are hereby directed to use their good offices (if necessary by obtaining clearance of the appropriate Authority/Railway Board) to reconsider the case of the Applicant for granting him minimum pension/pensionary benefits by taking into consideration the fact that the Applicant was having a large period of his service as unspent casual leave (during the period he spent at Dhenkanal; where he was, undisputedly, sick and had to be <sup>to his credit</sup> medically de-categorised) (which were lapsed) and that he had rendered casual service for many years; which is countable as per the decisions rendered by the Hon'ble High Court of Orissa in the case of SETTLEMENT CLASS IV JOB CONTRACT EMPLOYEES UNION, BALASORE vs. STATE OF ORISSA AND OTHERS (rendered in OJC No. 2047/1991 disposed of on 24-03-1992) and by the Hon'ble Apex Court of India



rendered in the case of YASHWANT HARI KATAKKAR vs. UNION OF INDIA AND OTHERS ( reported in 1995 AIR SCW 370) for granting minimum pension to the Applicant, in order to see that the Applicant is not allowed to move with begging bowls at this old age and should not depend on others for sustenance of his livelihood. The Respondents should note that once the benefit of unspent Casual Leave period is given to the Applicant in the peculiar circumstances of this case, he can get the benefit of Rule 69(3) of Railway Services (Pension) Rules, 1993; which reads as follows:-

"AMOUNT OF PENSION:

(1)    xx    xx    xx.

(2)    xx    xx    xx.

(3)    In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as completed one half year and reckoned as qualifying service".

Attention has also been drawn by the learned counsel for the Applicant to the case of General Manager, South Central Railway, Rail Nilayam Secunderabad, A.P. and another Vs. Shaik Abdul Khader rendered in WP No. 10837 of 2001 disposed of on 23.6.2003 of the Andhra Pradesh High Court (reported in 2004(2)ATJ 23) ;wherein, while confirming the orders of the Hyderabad Bench of the Central Administrative Tribunal, in a similar matter, Hon'ble A.P. High Court, the/ directed that the Applicant therein to be entitled to count full service for the period of temporary status till regularisation for the purpose of pension and half

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of the service before the period of temporary status.

8. In view of the settled position of law, this Original Application is allowed in terms of the of the observations and directions made above. The Respondents should grant the benefit of his unspent Casual leave period (of his various years spent at Dhenkanal) by diverting the L.W.P. etc. period as C.L. towards pensionable period and then grant him necessary benefits available under Rule 69(3) of the Railway Pension Rules, 1993 for granting him minimum pension; which should be granted to him within a period of 120 days from the date of receipt of a copy of this order. No costs.

*Manoranjan Mohanty* 23/09/04  
(MANORAN JAN MOHANTY)  
MEMBER (JUDICIAL)