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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 752 OF 2002
Cuttack this the 25th day of June, 2003

Naran Nayak

...

Applicant(s)

-VERSUS-

Union of India & Others ...

Respondent(s)

FOR INSTRUCTIONS

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

(S. R. MOHANTY)
(JUDGE)

(E.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 752 OF 2002
Cuttack this the 25th day of June/2003

CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN

THE HON'BLE MR. M.R. MOHANTY, MEMBER (JUDICIAL)

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Sri Naran Nayak, aged about 62 years,
S/o. Bhubana Nayak, At-Birigadia, PO-Rambhila,
PS - Bhadrak(R) Dist-Bhadrak

...

By the Advocates

Applicant

M/s. K.K. Sahoo
H.N. Panda

-VERSUS-

1. Union of India represented through the General Manager (General) South Eastern Railway, Garden Reach, Calcutta-43
2. Divisional Railway Manager (Personnel), South Eastern Railway, Khurda Division, At-Khurda Road, PO-Jatani, Dist-Khurda
3. Senior Divisional Personnel Officer, South Eastern Railway, At-Khurda Road Division, PO-Jatani, Dist-Khurda

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Respondents

By the Advocates

Mr. R.C. Rath, S.C.

O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Applicant (Shri Naran Nayak) has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, challenging the inaction of the Respondents-Department in treating his continuous service from 10.5.1990 to 31.10.2000 as qualifying service for the purpose of pension and other retiral benefits.

2. It is the case of the applicant, as disclosed in his application that he retired from railway service on

31.10.2000 while working as Senior Trackman under the Respondent No.3. As per his averments made in this O.A., the applicant started his career as casual labour (Khalasi) w.e.f. 24.12.1964 and worked as such till 9.5.1990 in various spells. It is the case of the applicant that he having worked continuously from 10.5.1990 till 31.10.2000 he is entitled to get the service benefits at par with the regular employees of the Railways. Therefore, the applicant has prayed that his period of service from 10.5.1990 to 31.10.2000 should be counted as qualifying service.

In support of his claim the applicant has referred to a decision rendered by the Ernakulam Bench of this Tribunal in the case of P.Narayan vs. Union of India & Ors. reported in (1989) 9 A.T.C. 95 (Ernakulam) (O.A.No. 605/92 disposed of on 29.3.1993) and basing on this, the applicant argued that the Respondents-Department, taking note of the aforesaid judgment should have granted the relief as prayed for by him in this Original Application.

3. The Respondents-Department have contested the application by filing their counter. They have submitted that a casual labour is not a Railway servant; he is a workman under the provisions of I.D. Act. However, under Chapter - 20 of the Railway Establishment Manual, holding temporary status the casual labours have been granted some privileges in the matter of absorption in the regular cadre of the Railways. They have stated that after a casual ^{labourer} holding temporary status is taken to regular establishment of the Railways, 50% of his service rendered as such is

counted towards qualifying service. The above scheme issued under Establishment Sl. No.239/80, was the subject matter of challenge before the Hon'ble Apex Court, but was upheld by their lordships (AIR 1998 SC 2037). The Respondents have further stated that some of the retired railway employees had filed Original Application Nos.565/95, 488/2000 and 23/2001 before this Tribunal claiming counting of entire casual service for the purpose of pensionary benefits and the Tribunal, relying on the decision of the Apex Court(Supra), did not interfere in the matter. On merits of the case the Respondents have submitted that the applicant was initially engaged as casual Gangman w.e.f. 24.5.1968. He was conferred with temporary status w.e.f. 10.5.1990 as C.P.C. Gangman and after being screened he was taken to the regular establishment of the Railways w.e.f. 6.7.1995 and subsequently his services were confirmed w.e.f. 1.9.1996. It is the case of the Respondents-Railways that the applicant, having retired on superannuation w.e.f. 31.10.2000 had a gross service from 10.5.1990 to 31.10.2000 (i.e., 10 years, 5 months and 21 days) and accordingly, the net qualifying service, (50% of service rendered w.e.f. 10.5.1990 to 30.8.1995 as casual labour with temporary status plus the full period of regular service from 01.09.1995 till 31.10.2000 (less 27 days leave without pay)) works out to 07 years, 8 months and 29 days and/or 07.5 yrs^{for} pension purposes. The Respondents have further stated that keeping in view Estt.Srl.No.239/80 for the purpose of pensionary benefits, it was found that the applicant fell short of minimum period of 10 years of qualifying service as per Rule 69(2)(b) of Rly.Service (Pension)Rules, 1993 and thus no pension was payable to him. He was entitled to

terminal gratuity only. Rebutting the claim of the applicant that he had continuous casual service starting with his career, the Respondents have stated that till attainment of temporary status, the applicant's casual engagement was not continuous and therefore, they have prayed for dismissal of this Original Application.

5. I have heard the learned counsel for both the sides and also perused the relevant materials placed before me.

6. From the facts of the case it reveals that the applicant had continuous service from 10.5.1990 till 31.10.2000 after he was granted temporary status w.e.f. 10.5.1990. He was screened and appointed against a regular post only w.e.f. 1.9.1995. Thus the applicant had rendered continuous service in two phases, i.e., one casual service with temporary status rendered from 10.5.1990 to 31.8.1995 and the second phase from 1.9.1995 to 31.10.2000 as a regular railway servant. Law is well settled that only 50% of casual service with temporary status (w.e.f. the date temporary status was granted till the date of regularisation) is to be taken into account as qualifying service for the purpose of pensionary benefits. This Bench has been taking this view consistently in very many cases already disposed of by ~~it~~ earlier. In this view of the matter, I see no reasons to take a different view from the view already taken in O.A.Nos.565/95, 23/01 and 488/02. I have also taken note of the decisions in the case of D.G. Council of Scientific & Industrial Research vs. K. Narayan Swamy & Ors. as cited by the Respondents, wherein the Hon'ble Supreme Court held that the period of temporary service could not be counted for the purpose of qualifying service.

7. Having regard to the aforestated facts and circumstances of the case, I hold that the applicant has not been able to make out a case for any of the reliefs prayed for by him. The O.A. is, therefore, held to be without any merit and the same is accordingly dismissed, leaving the parties to bear their own costs.


(B.N. SOM)
VICE_CHAIRMAN

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