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O.A. No. 282/07

ORDER DATED 25<sup>th</sup> JULY, 2008

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Heard Mr. R.K. Samantsinghar, Ld. Counsel appearing for the applicant and Mr. D.K. Behera, Ld. Counsel for the Respondents.

2. The short question coming up for determination in this Original Application is whether the applicant is entitled for counting his service from 11.07.87 to 10.05.1990 along with the admitted regular service by the department or not.

3. Mr. R.K. Samantsinghar, Ld. Counsel appearing for the applicant sums up the arguments on the following line. As the applicant was engaged as a casual labourer in the Railwas from 1986 onwards and from 11.07.1987 onwards, he was paid a pay scale (though the admitted service of the applicant, as per the records of the department is from 10.05.1990) the entire service ought to have been counted for his pensionable service. To substantiate this contention the Ld. Counsel relied on Annexures-A/6 and A/7. As per Annexure-A/6, the service records kept by the department <sup>show</sup> that the date of the 1<sup>st</sup> appointment of the applicant is of 11.07.1987 and the said document would also show that he was appointed in a pay scale of Rs.775 – 1025/-. The document further shows that the

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61

DR account also opened in the name of the applicant. It was also brought to the notice of this Tribunal that as per Annexure-A/7 the noting in the entry in the regular service as 10.05.1990 is a mistake committed by the department. If this records are laid down, according to the Counsel for the Applicant, the applicant is entitled for counting of entire service from 11.07.1987 to his retirement date.

4. Mr. D.K. Behera, Ld. Counsel for the Respondents relying on the counter affidavit submits that the entries in the Annexure-A/6 is wrong entry either mistakenly recorded by the authority who was in charge of the Section. Further the Counsel submits that once Annexure-A/7 was issued the applicant had not raised any objection during the time of his retirement. He has ~~raised~~ this objection ~~only~~ because of the application not allowable, according to him.

5. Going through the rival contentions and the documents produced before this Tribunal and also considering the events this Tribunal is of the view that the applicant is entitled for the benefit which he claims in the O.A. Admittedly, Annexure-A/6 is kept by the authorities rather the department held where the applicant is working. Apart from that Annexure-A/6 would show that the applicant was drawing a pay scale of Rs.775-1025/- and that was not objected by any body in the department side. The question now considered is that confirmation of the temporary status of the applicant is lead back to 11.07.87 or to 10.05.1990. As per records now made

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12

available to this Tribunal and on the events contained in the O.A this Tribunal is of the view that even if the Respondents have got an objection regarding the entry made in Annexure-A/6 is a mistake, This Tribunal is not in a position to accept the counter, ~~and~~ the additional counter to that entry. As all the records are kept by the department the employee was not in a position to verify the records except when his service is effected. In the above circumstances this Tribunal is of the view that this O.A <sup>can be</sup> ~~is~~ allowed. Consequently the Annexures-A/2 and A/3 are hereby quashed and the Respondents, especially Respondent No.3 is directed to reconsidered the entire matter afresh and pass appropriate orders with regard to the counting of the period of service of the applicant w.e.f. 11.07.87 to the real retirement date i.e. 31.10.01. On the basis of the above the concerned payments shall be <sup>calculated</sup> ~~collected~~ and all other retireal benefits be <sup>counted</sup> ~~collected~~ and the monetary benefits shall be disbursed to the applicant within a reasonable period at any rate from 60 days from the date of receipt of this order. No order as to costs.

L. K. Appan  
MEMBER (J)