11

OA No.215 of 2008

Purna Nag .... Applicant

Versus

Union of India & Others .... Respondents

Order dated: 09/03/2010

C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....

According to the Applicant, in the year 1964 he entered to the service of the erstwhile South Eastern Railway as Gangman. During his employment he met with an accident on 03.01.1984. Thereafter, vide order dated 17.02.1988 he was called for screening for absorption in alternative post and on the basis of the recommendation of the screening committee the applicant was issued notice as to why his service shall not be terminated. Applicant sought voluntary retirement and on acceptance of his request, he retired from service voluntarily w.e.f. 31.5.1998. Since he was not sanctioned the Pension/ Pensionery dues, he approached this Tribunal by filing OA No.244 of 2007. By order dated 1st September, 2007, this Tribunal disposed of the matter directing the Respondents to re-examine/reconsider the claim of the applicant on the basis of the relevant service records of the applicant and take a view with regard to the claim of the applicant for getting pension or *ex gratia* payment in term of the RBE 19/1998 or Disability Pension in terms of the R.S. (Extraordinary Pension) Rules, 1993 an d communicate the decision to the applicant within a period of three months from the date of receipt of a copy of this order. As it appears, the Respondents rejected the claim of applicant and communicated the reasons of rejection to the applicant under Annexure-A/5 dated 28.02.2008 which reads as under:

> "(1) You were appointed as Casual Labour on 6.8.1971 in CPC Scale and were regularized w.e.f. 28.10.1983 vide ADEN/BLGR"s O.O. No.116/83 dtd.11.10.83 after passing requisite medical examination in B-1 category vide ADMO/JSG's M.C.No.056605/JSG/055 dtd.26.10.83.

12

(2) As per your application dated 13.08.84 you had intimated that you had received an injury on your leg at SBP station on 3.1.84 while you were not on duty and you were undergoing treatment of Burla Medical College & Hospital/Burla. Accordingly, you were sanctioned 120 days LAP from 2.1.84 o 30.4.84, and 198 days LHAP from 1.5.84 to 14.11.84. **No further leave could be granted in your favour since there was no leave left at your credit**.

(3) As per your request a BN-129 medical memo was issued for Special Medical examination consequent upon the medical examination you have been declared as unfit in B1&B2 medical categories, but fit in C1 and below, with prostheses in sedentary job vide DMO/CKP's medical certificate No.B1/SPL/87/44 dtd 21.09.87. Accordingly you were called for screening on 17.2.88 for alternative absorption. As per recommendation of the screening committee you were issued a notice as to why your service should not be terminated vide AEN/BLGR's letter No.E/15 dtd 15.3.88. You have subsequently accepted the notice for voluntary retirement and were accordingly allowed to retire w.e.f. 31.5.88 from Rly service on medical ground vide AEN/BLGR's O.O.No.66/88 dtd. 23.5.88.

(4) You have completed the following duration of qualifying services prior to Voluntary retirement on medical grounds:-

	Year	Month	day
(a) From 6.8.71 to 27.10.83 as Casual Labour service (half of which shall count for Qualifying service for Pensionary benefit as per Estt.Srl.No. 239/80.	06	01	11
(b) Regular service from 28.10.83 To 31.5.88 after deducting non-qualifying service of 3 years 7 Months 25 days only.	Nil	11	08
	07	00	19

In terms of Rule 623 of MOPR 1950 a Rly servant has to complete 10 years of qualifying service in order to be eligible for pension. It is seen that you are not eligible for pension since you have not completed 10(ten) years of qualifying service prior to your retirement. The reply in this regard issued vide this office letter dtd.19.8.07 annexed at Annexure-A-3 of your OA stating that on-payment of pension in your favour was due to you not having opted for the same was erroneously issued and the error is sincerely regretted. It is however, iterated that non-payment of pension in your favour is actually due to the fact that you are ineligible for the same on account of not having completed the requisite ten years of qualifying service prior to your retirement. You may note that since your injury had not occurred during he course of duty and that you had accepted voluntary retirement from Railway Service subsequent to your medical de-categorization, your case shall be covered by the normal Railway Pension Rules."

Being aggrieved by the order of rejection, he has approached this Tribunal in this second round of litigation seeking to quash the order under Annexure-A/5 dated 28.2.2008 and to direct the Respondents to grant pension and pay the arrear pension.

2. Respondents filed their counter emphasizing/reiterating the stand taken in the order of rejection under Annexure-A/5 and praying for dismissal of this OA. Applicant has also filed rejoinder to justify that non-payment of pension and pensionary benefits is not a legal and benevolent act on the part of the Respondents.

3. Heard Learned Counsel for both sides in *extenso* and perused the materials placed on record. It is mainly contended by the Learned Counsel for the Applicant that there has been no proper application of mind of the authorities/Respondents in taking decision that the qualifying period is short of ten years in the case of the applicant. It was contended by him that the applicant met with an accident on 03.01.1984 and was under treatment at Burla Medical College and Hospital, Burla from 03.02.1984. He lost one of his legs. He was allowed 120 LAP from 2.1.84 to 30.4.1984 and 198 days LHAP from 1.5.84 to 14.11.1984. No further leave was granted to him since there was no leave left at the credit of the applicant. Relying on the instructions of the Railway Board under Annexure-A/7 it was contended by Learned Counsel for the Applicant though discretion was available with the competent authority to allow the applicant extra ordinary leave on account of medical ground for the purpose of counting the said period for pension and although the leave of the applicant was on medical ground, the authorities, for the best reason known to them counted the rest of the period of his absence as non-qualifying service for which he has been deprived of his rightful dues of pension. No opportunity or reason was afforded/given for not treating the

period of his absence as extraordinary leave for counting the period of his leave towards pension. Accordingly, Learned Counsel for the applicant requested for issuing direction to the Respondents to count the period of absence of the applicant by grant of extra ordinary leave and count the same for grant of pension. On the other hand, it was contended by Learned Counsel appearing for the Respondents that the applicant due to injury in his leg had to undergo medical treatment for a long period. He was sanctioned LAP w.e.f. 02.01.1984 to 30.04.1984 and LHAP w.e.f. 1.5.1984 to 14.11.1984. As per the request of applicant BN -129 medical memo was issued for special medical examination. Consequent upon medical examination, the applicant was declared unfit in C1 and below with prosthesis in sedentary job. Accordingly, applicant was called for screening committee on 17.2.1988 for alternative absorption. Based on the report of the said screening committee, the applicant was issued with a notice dated 15.3.88 for termination of his service. Applicant tendered application for voluntary retirement on medical ground. Therefore, in order to determine the qualifying service which the applicant has rendered half period of casual service from 6.8.71 to 27.3.1983 and regular service from 28.10.83 to 31.5.1988 was taken into consideration. As the total period of qualifying service of applicant falls short of 10 years, he was not sanctioned the pension. By relying on Rule 505 it was stated by him that since no request was received from the applicant within the specified period of 30 days of the expiry of the period of his LAP and LHAP, he was not entitled to claim for grant of extra ordinary leave for the rest of the periods. He also by relying on the Rule 530 (2) (e) has argued that as the applicant was not suffering from one of the diseases specified in the aforesaid rules, he cannot claim grant of extraordinary leave for the rest of the periods.

4. Having given thoughtful consideration to the rival submissions of the parties, perused the materials placed on record including the rules cited by them. However before expressing any opinion on the merit of the matter, it is worthwhile to quote the relevant portion of the Railway Board's instructions which are stated herein below:

> "*17. Counting of the extraordinary leave* –
> The competent authority has discretion to allow the extraordinary leave to count for pension (i) if it is taken on medical ground (ii) if it is taken due to inability of the person concerned to join or rejoin duty due to civil commotion or natural calamity and (iii) if it is taken for prosecuting higher scientific and technical studies. The extraordinary leave granted on medical certificate started counting as qualifying serving for pension in all cases with effect from 22.9.1973. On or after 18.2.1986 extraordinary leave sanctioned for higher scientific and technical studies shall count as qualifying service for pension."
>
> *505. Conversion of one kind of leave into another:-(*A) At the request of a railway servant made before he ceases to be in service, the authority which granted him leave may convert it retrospectively into leave of a different kind which was due and admissible to him at the time the leave was granted, but the railway servant cannot claim such conversion as a matter of right.
>
> Provided that no such request shall be considered unless received by such authority, or any other autority7 designated in this behalf, within a period of 30 days of the concerned Railway servant joining his duty on the expiry of the relevant spell of leave availed of by him (Railway Board's letter No. F(E)III/97/LE1/1, dated 5-2-1998)."
>
> *529. Leave not due to temporary Railway employees-* Subject to the provisions of clause (i) and clause (iii) to rule 528, leave not due may be granted to temporary railway servants who are suffering from TB, Leprosy, cancer or mental illness for a period not exceeding 360 days during the entire service on medical certificate if the railway servant concerned has put in at least one year's railway service.
>
> Provided that the post from which the railway servant proceeds on leave is likely to last till his return to duty; and the request for leave is supported by a medical certificate.
>
> *Note* –Leave not due under Rules 528 and 529 is leave admissible under the Rules and where it can be granted, the grant of Extraordinary Leave under Rule 530 will be irregular unless specifically applied for by the Railway servant in writing."
>
> *530. Extraordinary Leave ((1) extraordinary leave may be granted to a railway servant in special circumstances-*

(a) When no other leave is admissible; and

(b) When other leave is admissible but the railway servant applies in writing for the grant of extraordinary leave;

(2) Unless, the President in view of the exceptional circumstances of the case otherwise determines, no temporary railway servant shall be granted extraordinary leave on any one occasion in excess of the following limits:-

....."

5. It is not the case of the Respondents that the Applicant was a temporary railway servant. It has been admitted by the Respondents that no leave was in credit of the Applicant. Fact remains that the leave of the Applicant was on medical ground. In that event the case of the applicant is fully covered by rule 17 and 530 reproduced above. Rule 505 relied on by the Respondents has no application as the applicant does not want conversion of his leave from one kind to other. Similarly Rule 529 speaks about the temporary railway employees. At no point of time the applicant was informed that as there was no leave to his credit and the rest of the periods would be treated as non-qualifying service; especially when non-sanction of extra ordinary leave has the evil consequence of denying him his right to livelihood after his retirement. As such non-sanction of the extraordinary leave when the Respondents were aware that the absence of applicant was on medical ground cannot be countenanced in law. Besides the above, the Respondents while accepting and allowing the prayer of the applicant to go on voluntary retirement on medical invalidation had specifically ordered in Annexue-R/5 dated 23.5.1988 that the applicant is deemed to have been retired on the AN of 31.5.1988 from service with full benefits on medical ground. As such, the Respondents are estopped to deny the applicant to count the period of service as qualifying for grant of pension. Further, once period of service is treated as non-qualifying, the said period ought not to have been taken by the Respondents for any purpose whereas in the order of rejection they have taken such period but excluded the same for counting pension.

6. In this view of the matter, I am of the considered view that there has been miscarriage of justice in the decision making process while passing the order of rejection under Annexure-A/5. Hence the said order is hereby quashed. The Respondents are directed to treat the period of medical leave of the applicant as extraordinary leave countable towards pensionable service of the Applicant and accordingly recalculate the period and consider the same for grant of the pension to the Applicant. The entire exercise shall be completed within a period of 60 days from the date of receipt of this order.

7. In the result, this OA stands allowed to the extent indicated above. No costs.

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