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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.766 of 2010
Cuttack, this the 17th day of July, 2014

N. Naik Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?


(R.C.Misra)
Member (Admn.)


(A.K.Patnaik)
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH, CUTTACK

O. A. No. 766 of 2010

Cuttack this the day of July, 2014

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THE HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)
THE HON'BLE MR. R.C.MISRA, MEMBER (ADMN.)

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Naran Naik, aged about 70 years, S/o. Late Bhubana Naik,
Village-Borigadia, Po.Boral Pokhari, Dist. Bhadrak.

...Applicant

(Advocates: M/s.S.B.Jena, S.Bhera)

VERSUS

Union of India represented through -

1. The General Manager, East Coast Railway, Rail Vihar,
Po.Chandrasekharpur, Bhubaneswar-23.
2. Divisional Railway Manager, East Coast Railway, Khurda
Road, At/Po.Jatni, Dist. Khurda.
3. Chief Permanent Way Inspector, East Coast Railway,
Bhadrak, At/Po/Dist. Bhadrak.
4. FA & CAO, East Coast Railway, Khurda Road, Po. Jatni,
Dist. Khurda.

... Respondents

Advocate: Mr. P.C. Panda

ORDER

A.K. PATNAIK, MEMBER (JUDICIAL):

This OA has been filed by the applicant seeking for direction to the Respondents (Railway) ~~either~~ to count his entire past service with effect from 24.12.1964 till 01.05.1990 for the purpose of counting the qualifying service towards sanction of pension and pensionary benefits and accordingly direct the

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Respondents to sanction and pay him pension and all other pensionary dues w.e.f. November, 2000, *inter alia* stating therein that he joined the Railway in the year 1964 as Khalasi and worked as such till 10.05.1990. Thereafter, while working in the railway on such casual basis intermittently, temporary status was conferred on him w.e.f. 10.05.1990 and after putting nearly about 36 years of service, on reaching the age of superannuation, he retired from Railway Service w.e.f 31.10.2000. In this connection he has also placed reliance on some of the decisions of this Bench.

2. Respondents (Railway) by filing counter contested the matter and have prayed that this OA being devoid of any merit is liable to be dismissed *inter alia* stating therein that the applicant was initially engaged, on daily wage basis, in the Railway w.e.f 22.7.1986 and was disengaged w.e.f. 17.11.1986 and once again engaged on such daily rated casual labourer w.e.f. 06.07.1987 to 20.10.1987 and 24.06.1989 to 23.10.1989. He was granted temporary status with authorized scale of pay w.e.f. 10.05.1990 and as a temporary status holder casual employee; he was regularized on 01.05.1995 and subsequently confirmed on 01.09.1996. As per the Rules, ten years qualifying service is required for sanction of payment. After taking into consideration 50% service from the date of conferment of temporary status till regularization and 100% from the date of regularization till

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retirement, it was found that the applicant had only 07 (seven) years and 08 (six) months and 28 days qualifying service to his credit. Therefore, the service gratuity to the extent admissible to him was sanctioned and paid to him, as per Rules. It has further been stated that the decisions of this Bench relied on by the Applicant have no application as the applicant in the instant case got temporary status only on 10.05.1990 and regularized on 01.05.1995 and subsequently confirmed on 01.09.1996. Further direction of this Tribunal to take such of the shortfall service from the casual employment, as directed by this Tribunal in some of the cases have been reversed by the Hon'ble High Court of Orissa in order dated 9th April, 2010 in WP (C) No. 2136, 6474, 3136 and 5266 of 2002. Accordingly, Respondents have prayed for dismissal of this OA.

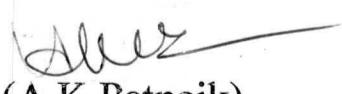
3. Heard Mr. S.B.Jena, Learned Counsel for the Applicant and Mr. P.C. Panda, Learned panel counsel for the Railway (Respondents) and perused the records. We do not find any whisper in the entire pleadings disputing the dates of conferment of temporary status, regularization and confirmation, as stated by the Respondents. No material has also been filed by the applicant that the calculation of the qualifying service made by the Respondents was in any manner wrong. It is also not the case or prayer of the

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applicant that though as per rules he was entitled to temporary status and regularization prior to the date(s) he was granted the same but the Respondents did not do the same. Calculation of qualifying service by taking into consideration 50% from temporary status till regularization and 100% from the date of regularization till retirement has also got the approval of the Hon'ble High Court of Orissa in the above case. We also find that the decisions of this Bench relied on by the applicant have no application as the facts of those cases are different and distinct to the present OA. It is trite law that sympathy and sentiment cannot be a ground for exercising the judicial discretion which otherwise is not entitled to under rules, by the Applicant and, therefore, applying the above principle, we hold that completion of more than 36 years' service which includes casual period of service cannot be a ground to direct the Respondents to sanction minimum pension in favour of the applicant, de hors the Rules and judicial pronouncements on the subject. For the reasons discussed above, we find no merit in this OA which is accordingly dismissed. There shall be no order as to costs.


(R.C.Misra)
Member (Admn.)


(A.K.Patnaik)
Member (Judicial)