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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 907 OF 2010
Cuttack, this the 19th Day of February, 2013


Smt. Pakamani Jena Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No


(R.C. MISRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO.907 OF 2010

Cuttack the 19th day of February, 2013

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

Smt. Pakamani Jena,
aged about 62 years,
W/o. Late Rama Chandra Jena,
At-Nuagan, P.O- Mulising,
Dist-Balasore.

...Applicants

(Advocates: M/s-K.K. Swain, P.N. Mohanty, S.Ch. Devdash, U. Chhotray,
P.K. Mohapatra Mr. A.C. Behera)

VERSUS

Union of India Represented through

1. Divisional railway Manager,
South Eastern Railway.
Kharagpur, At/Po-Kharagpur,
In the State of West Bengal.
2. Senior Divisional Personnel Officer,
South Eastern Railway.
Kharagpur, At/Po-Kharagpur,
In the State of West Bengal.

... Respondents

(Advocate: Mr. S.K. Ojha)



ORDER

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

The applicant in this case is one Smt. Pakamani Jena who has approached this Tribunal with a prayer that even though this Tribunal in O.A. No.243/2000 in their order dated 20.01.2002 gave a specific direction to the Railway Authorities that the applicant's period of qualifying service of pension should be rounded up to 10 years as per the Railway Pension Rules, 1950, the authorities in their speaking order has decided the matter in contravention of the observations of this Tribunal and denied family pension to her. Therefore, a specific prayer has been made that Annexure-A/3 which is impugned communication by the Railway authorities should be quashed and family pension should be granted to the applicant.

2. It will be relevant here to mention the short facts in this case. The applicant's husband late Rama Chandra Jena was appointed as Casual Labourer on 07.04.1970 and his services were regularized w.e.f. 21.12.1984. He ^{was he} subsequently declared medically unfit and terminated on 23.02.1988. He had approached this Tribunal in O.A. No.243/2000 with a prayer for release of admissible pension. This Tribunal considered his prayer and came to a conclusion that his regular service period came to three years, three months and eleven days. 100% of this period will count as pensionable service. In so far as the period of 07.04.1970 to 20.12.1984 is concerned, this would pertain to the period of casual labourer with temporary status and this will be computed as 14 years, 08 months and 14 days. A period 01 year 08 months and 02 days would be deducted from this because this period was leave

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without pay and thus his net casual service came to 13 years 00 month and 12 days. According to the Rules 50% of this came to 06 years, 06 months and 06 days and therefore the total pensionable service would worked out to 09 years, 09 months and 17 days. The Railway authorities had taken a stand in this context that as this falls short of the minimum qualifying pensionable service for 10 years, therefore the applicant has not been granted any pension. This Tribunal had also come to a finding that the case of the applicant would be governed by the Manual of Railway Pension Rules, 1950 and Rule 401 of the Manual will decide the matter of qualifying service. Reliance was put on Railway Board's circular dated 15.04.1987, the gist of which has been printed in page 488 of B.S. Mainee's Railway Establishment Rules and Labour Laws (21st Edition). This clearly stated that Railway servant who has completed 09 years and 09 months and above service but less than 10 years will be deemed to have completed 20 six monthly periods of qualifying service and will be eligible for pension. This Tribunal came to a conclusion that the case of the applicant was to be governed by this Rule and in view of the same the Respondents were directed to examine the entitlement of the applicant for pension in the light of the above cited provision within a period of 60 (sixty) days from the date of receipt of copy of the order.

3. This Tribunal had also pointed out one more ground on which the petition has been allowed. This Tribunal found that the applicant was on leave without pay in regular service for three months. Under Rule 420(iii) of the Manual of Railway Pension Rules, 1950 this period of

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extraordinary leave will be counted towards pensionary benefits at the discretion of the competent authority if it is taken on medical certificate. In view of that it was also directed by this Tribunal that the competent authority should examine the period of extraordinary leave under the relevant rules and take a view as to whether this period would count towards pensionary benefits.

4. At this stage the applicant has come to this Tribunal challenging the orders passed by the Senior Divisional Personnel Officer, South Eastern Railway (Respondent No.2) on 18.06.2002 (Annexure-R/1) which has been passed in pursuance of the directives in O.A. No.243/2000. The Ld. Counsel for the applicant has submitted that the Tribunal has already come to a finding regarding the qualifying service of the applicant for pensionary benefits and therefore the order dated 18.06.2002 has contravened the orders of the Tribunal by coming to a different conclusion. On the other hand the Ld. Counsel for the Respondents has submitted that even after a long lapse of time this order was never challenged by the applicant and therefore, no relief can be granted after the expiry of such a long period of time. Secondly, he has also pleaded that even if the rule has been made to the effect that the period of 09 years and 09 months be taken as 10 years as qualifying service, the applicant cannot get benefit of such decision, as the circular came into force w.e.f. 25.10.1990 vide Board's letter dated 25.10.1990 a photocopy of which has been submitted by the Ld. Counsel for the Respondents. He has argued that the case of the applicant has been duly examined in compliance of the orders of the Tribunal in O.A. No.243/2000 and the applicant has been considered

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ineligible for pension/family pension as per the relevant circulars of the Railways.

5. I have heard the Ld. Counsel for both the parties and examined the documents on record. On going through the impugned order dated 18.06.2002 (Annexure-R/1) passed by the Senior Divisional Personnel Officer, South Eastern Railway, Kharagpur (Respondent No2), I find that the order deals with the period of leave without pay. It has been decided that since the applicant did not submit medical certificate for the period leave without pay, the none qualifying service period from 16.04.1985 to 11.05.1987 cannot be treated as qualifying service for the purpose of pension. It is relevant here to mention that the Tribunal had given a specific direction for examination of the entitlement of the applicant as per the Railway Board's Circular dated 15.04.1987 in which it has mentioned that the case of the Railway servant who has completed 09 years and 09 months and above service but less than 10 years will be deemed to have completed 20 six monthly periods of qualifying service. Even though, the Respondents were directed to examine the case of the applicant in terms of that circular in the speaking order, no such examination has been made. Regarding the submission of the Ld. Counsel of the Respondents that this circular came into effect on 25.10.1990, it is mentioned that a specific mention had been made in the order of the Tribunal in the previous O.A. that this circular came into effect vide the Railway Board's letter dated 15.04.1987. Whatever be the case, it was incumbent of the Respondents in the previous O.A. to examine the issue exactly in accordance with the directions of the Tribunal. It appears from a plain reading of the impugned

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order that the direction has not been scrupulously followed. The Tribunal in its order in the earlier O.A. had mentioned the period of leave without pay to be counted towards pensionary benefits if it is taken on medical certificate as one more ground on which the petition has to be allowed. It is admitted that this examination has been done in the speaking order dated 18.06.2002 but regarding the other directions of the Tribunal there has been no examination in this order. Therefore, I find the speaking order dated 18.06.2002 highly inadequate and not governing the points of examination that were laid down by the previous orders of the Tribunal.

6. In view of the detailed discussions made above, the order dated 18.06.2002 is quashed and the matter is remitted back to the Respondents for a detailed examination of the case of the applicant with specific relevance to the earlier orders of this Tribunal in O.A. No.243/2000. This examination may be completed within a period of 60 (Sixty) days from the date of receipt of the copy of this order and decision may be communicated to the applicant. This O.A. is disposed of in the light of the above observation and direction.


(R.C. MISRA)
MEMBER(A)