

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 579/2012

Cuttack this the 10th day of August, 2016

CORAM

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

Jalandhar @ Jaladhar Satrusalya, aged about 69 years, S/o Late Shri Balaji, retired Gangman under PWI/SE Railway (now East Coast Railway), Berhampur, permanent resident of Village Routarapalli, PO Badakul, Via Balugaon, District Khurda.

...Applicant

By the Advocate: Mr. N.R. Routray

-VERSUS-

- 1- Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, District Khurda.
- 2- Divisional Railway Manager, East Coast Railway, Khurda Road Division, AT/PO Jatni, District Khurda.
- 3- Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO Jatni, District Khurda.
- 4- Senior Divisional Financial Manager, East Coast Railway, Kghurda Road Division, At/PO Jatni, District Khurda.

...Respondents

By the Advocate(s)-Mr. S.K. Ojha

ORDER

R.C.MISRA, MEMBER(A):

The applicant in this O.A. is a retired employee of the East Coast Railway and has approached this Tribunal making following reliefs:

"(a) To quash the order of rejection dtd. 29.09.2010 under Annexure A-10.

(b) And to direct the respondents to grant minimum pension by computing 100% of the entire period from 24.07.1987 to 23.07.1996 as per order under Annexure A-11.

And pass any other appropriate order as deems proper and fit in the interest of justice."

2. The applicant was initially appointed as a Gangman in the South Eastern Railways and was granted temporary status on 24.7.1987. He was brought-over to regular establishment of the Railways on 24.7.1996. He retired from service on 28.2.2002 on attaining the age of superannuation. At the time of retirement, the



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respondents paid to him only his service gratuity. The applicant had filed OA 165/2008 before this Tribunal making a prayer for release of his pension but subsequently he had withdrawn this O.A. He again filed **OA No. 262/2008** being aggrieved by the inaction of the respondents to grant the minimum pension as claimed by him. The respondents in their counter affidavit in that OA submitted that competent authority had conferred temporary status in the CPC scale on the applicant from 24.7.1987. The Tribunal disposed of this OA directing the respondents to make a thorough investigation into the records to find out the position of the applicant for the period from 1987 to 1990 and consider his entitlement on the result of such investigation and pass a reasoned order communicating the same to applicant. In compliance of the direction of the Tribunal, respondents passed a reasoned order dated 26.3.2010 in which they communicated the decision that since the applicant had a total qualifying service of 8 ½ years only which falls short of the minimum qualifying service of 10 years, he was not entitled for pension. The applicant further agitated the matter before this Tribunal by filing **OA No. 201/2010**. This O.A. was disposed of by the Tribunal by order dated 4.5.2010 in which, respondent Nos. 1 and 3 were directed to give applicant a personal hearing and also an opportunity to submit documents which were in his possession "to establish the claim that he had rendered the minimum qualifying service to be entitled for pension." A further direction was issued that after personal hearing and examination of the documents produced, a reasoned order be passed by respondents within a period of 60 days of the receipt of copy of the order. The applicant subsequently



made a detailed representation to respondent No. 3 who also asked the applicant to meet him personally on 30.6.2010. After hearing him and examining documents produced by him, respondent No. 3 passed a detailed speaking order on 29.9.2010 rejecting the claim of applicant giving rise to further grievance on the part of applicant, thereupon, he has challenged this order by filing this O.A.

3. The respondent-authorities in their counter affidavit, have submitted that temporary status was conferred on applicant on 24.7.1987. However, his service was dis-continued and he was re-engaged on 21.6.1990 and accordingly, he was given temporary status from 21.6.1990 only. After completion of one year temporary status service, he was also sanctioned annual increment. But, for the period from 24.7.1987 till the order 1990, he was not sanctioned any increment since his engagement during this period was not continuous. On 24.7.1996, he was regularized as Junior Gangman in the scale of Rs. 775-1025 and finally, he retired from service on 28.2.2002 on reaching age of superannuation as Senior Trackman. The respondents have contended that even after adding 50% of temporary status service to regular period of service, his qualifying service has not exceeded 9 years and 9 months and, therefore, he is not entitled to receive pension. In a detailed calculation-sheet, respondents have submitted that total length of service from 21.6.1990 to 28.2.2002 is 11 years 8 months and 7 days and from that 50% of service from the date of attaining temporary status till regularization i.e. 21.6.1990 to 23.7.1996 coming to a period of 3 years and 16 days ⁰ which has to be deducted from total length of service. Again non-qualifying service due to absence etc. ^{ing} comes ⁰ to 3 months too, shall have to be deducted. In the end, the total period of qualifying service in case of the applicant

[Signature]

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would come to 8 years 4 months and 21 days which may be rounded off to 8 ½ years only. This period falls short of the minimum qualifying period of service for sanction of pension. Applicant is eligible for service Gratuity and DCRG which have already been paid by the Railways. While disposing of OA No. 262/2008 filed by the applicant, this Tribunal had directed respondents to make a thorough investigation to find out the position of applicant for the period from 1987 to 1990. In obedience to orders of the Tribunal in **OA No. 201/2010**, the applicant was granted a personal hearing by the respondents. In course of personal hearing, the applicant could not produce any document regarding his work particulars rendered during the period from 1987 to 1990. But, the respondents made a thorough search in the office and found his record of service as a Casual Labourer bearing No. 031361. On examination of records, the respondents found that applicant from 24.7.1987 to 23.10.1989 had rendered casual service in broken spells for a period of 360 days. In obedience to the orders of the Tribunal, the respondents took into account half of this period i.e. 180 days while calculating qualifying period of service in respect of the applicant. Earlier, they had calculated qualifying period as 8 years 4 months and 21 days. Now, they added 6 months on the basis of calculation of work in broken spells from 24.7.1987 to 20.6.1990. Thereafter, they have reached the figure of total qualifying service as 8 years 10 months and 21 days which still falls short of the required qualifying service for the purpose of grant of pension. ^{if} ^{even} if respondents rounded off the qualifying service to 9 years even then the minimum period is not met. Therefore, the respondents communicated this position to the applicant by the impugned order dated 29.9.2010.



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4. The respondents have further submitted that the applicant's conduct is also not above board since he had withdrawn **OA No. 165/2008** because the respondents in their counter affidavit submitted before the Tribunal that the documents produced by the applicant were forged. The applicant did not approach the Court of Law with clean hands and was not entitled to any relief. However, as per the South Eastern Railways Estt. Sl.No. 239/1980, only $\frac{1}{2}$ of the service from the date of attaining temporary status up to the date of regularization without a break, can be counted as qualifying service for pension.

5. The applicant has filed a rejoinder in which he has pleaded that the Principal Bench of this Tribunal in their order dated 26.5.2014 passed in OA no. 2639/2013 has directed the Railway-respondents to count the entire 100% temporary status casual service and 50% of casual service as qualifying period for the purpose of pension. The applicant also refers to the order of Hon'ble High Court of Odisha in **W.P.C. No. 1561/2009** in support of his case. He has contended that the applicant is similarly situated and should get the same relief.

6. Having heard the learned counsels of both sides, I have also perused the records. I have also perused the written notes filed by the learned counsels of both sides. The first thing that strikes me about the matter is that the same subject has been agitated in earlier litigations filed by the applicant before this Tribunal. The matter for examination in the present case is the order dated 29.9.2010 passed by the respondent-authorities in obedience to the earlier orders of the Tribunal dated 4.5.2010 passed in **O.A. No. 201/2010**. In compliance of the orders of the Tribunal in **O.A. No. 262/2008**, the respondents have also made investigation into the records to



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find out the position of the applicant for the period from 1987 to 1990. While giving a personal hearing to the applicant, the respondents could not get any documents from him with regard to his working during the same period but, the respondents have made efforts to verify the records of the applicant and found that he had rendered 360 days of casual service in the CPC scale in broken spells. Thereafter, $\frac{1}{2}$ of this period i.e. 180 days were added to the period of qualifying service which was determined as 8 years 10 months and 21 days rounded off to 9 years. Still, there was a short fall of the minimum period of 10 years of qualifying service for the purpose of pension. The order dated 29.9.2010 is found to be a very detailed order in which all the steps taken by the respondents with regard to the examination of the case of the applicant, have been reflected in a transparent manner. Finally, the applicant has been intimated that he is not entitled for monthly pension as he has only 9 years of qualifying service even after considering the casual service from 24.7.1987 and that he has already been paid service gratuity in lieu of pension in addition to normal retirement gratuity. I, therefore, do not find any deficiency in the impugned order. However, the learned counsel for the applicant has cited a decision of the Hon'ble High Court of **Odisha in W.P.C. No. 1561/2009** decided on 29.6.2011 and has claimed relief on the basis of this judgment. I have gone through this judgment and I have found that the orders of the Tribunal in **O.A. No. 605/2006** were challenged in this Writ Petition before the Hon'ble High Court. The case of the applicant in that O.A. was that the applicant was given the authorized scale of pay w.e.f. 12.8.1987 and, therefore, counting the period of temporary service w.e.f. 10.5.1990 was unjustified. The Tribunal in that case had come to a conclusion that it would be deemed that the



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applicant was conferred with temporary status from 12.8.1987. The Hon'ble High Court of Odisha has decided the matter by upholding the decision of the Tribunal in that matter. In fact, the Hon'ble High Court has also relied upon the calculation of the Accounts Department of the Railways, who had determined the qualifying period of service as 11 years 1 month and 20 days. Apparently, the facts of the present OA are different and the applicant cannot claim any relief on the basis of the above mentioned judgment of the Odisha High Court. With regard to the disputed point of the working of the applicant between the years 1987 to 1990 the respondents in obedience to the direction of this Tribunal made a thorough search of the service records of the applicant in this case and found that applicant worked for 360 days during this period in broken spells. Accordingly, respondents added 6 months to the calculation of qualifying service and even then, requirement of minimum qualifying service was not met. I, therefore, wonder which part of the grievance of the applicant is required to be further verified. The records revealed that the respondents have shown due diligence in verifying the service records and have taken a decision on the basis of the records available with them. They have also given a personal hearing to the applicant so that he can put forth his grievance in effective manner before the authorities. The learned counsel for the respondents in the written note of submissions, have cited judgments of Hon'ble Apex Court in the case of **General Manager, North West Railway and Ors. Vs. Chandra Devi and Ors.** reported in 2008 (1) SCC (L&S) 399 as well as in the case of **United Bank of India Vs. Piyush Kanti Nandi and Ors.** reported in 2009 (2) SCC (L&S) 534. The Hon'ble Apex Court decided that the qualifying service must be confined to the actual service rendered to the



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Department by the employee. The benefit of 50% temporary status has been extended on the basis of Board's Instructions circulate vide Estt. Sl.no. 239/1980. I would further like to observe that the service record of the applicant is the deciding factor for determination of his entitlement with regard to pension and other benefits. The learned counsel for applicant has not been able to point-out where actually respondents have gone wrong in the calculation of qualifying service in respect of applicant and which statutory rules or the executive instructions have been violated. The matter also has been agitated number of times and after repeated examinations, the respondent-authorities have not been able to find out any record which will justify any relief to the applicant. Even after the addition of further period of 180 days of qualifying service between 1987 to 1990, the applicant is not able to qualify for the sanction of pension. The principles of natural justice have also been complied with since the respondents have allowed a personal hearing to the applicant in obedience to the orders of this Tribunal. I, therefore, do not find any justification to interfere with the decision communicated by the respondents vide letter dated 29.09.2010 (Annex.A/10) of this O.A. The O.A. being devoid of merit, is therefore, dismissed with no order as to costs.



(R.C.MISRA)
Member(A)