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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.735 of 2012

Cuttack this the 07th day of August, 2014

CORAM:

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

Madhaba Pradhan
 Aged about 58 years
 Son of late Banamali Pradhan
 Head Trackman
 Under Senior Section Engineer (P.Way),
 East Coast Railway,
 At/PO/Town-Talcher
 Dist-Angul
 Permanent resident of Vill-Krushnachandrapur
 PO-Makundpur,
 PS-Jenapur
 Dist-Jajpur,
 Odisha

...Applicant

By the Advocate(s)-M/s.N.R.Routray
 S.Mishra
 T.K.Chaudhury
 S.K.Mohanty

-VERSUS-

Union of India represented through

1. The General Manager
 East Coast Railway
 E.Co.R.Sadan
 Chandrasekharpur
 Bhubaneswar
 Dist-Khurda
2. Divisional Railway Manager
 East Coast Railway
 Khurda Road Division

Routray

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At/PO-Jatni
Dist-Khurda

3. Senior Divisional Personnel Officer
East Coast Railway
Khurda Road Division
At/PO-Jatni
Dist-Khurda
4. Asst.Divisional Engineer
East Coast Railway
At/PO/Town/Dist-Dhenkanal
5. Senior Section Engineer (P.Way),
East Coast Railway
At/PO/Town-Talcher
Dist-Angul

...Respondents

By the Advocate(s)-Mr.R.S.Behera

ORDER

R.C.MISRA, MEMBER(A):

Applicant is an employee of the East Coast Railways and is working as Head Trackman under the Senior Section Engineer at Talcher in the District of Angul. He has approached this Tribunal being aggrieved with the order of rejection dated 28.10.2011 (Annexure-A/6) wherein his option dated 08.04.2011 for the Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (in short LARSGESS) has been rejected on the ground that his applicant was not forwarded through ADEN/DNK. In the circumstances, applicant has prayed for quashing the order of rejection dated 28.10.2011 with further prayer for direction to be issued to Respondent-Railways to



accept the option dated 08.04.2011 and provide an appointment in favour of his son under LARSGESS.

2. Shortly stated, the facts of the case are that applicant having been appointed under the S.E.Railway was granted Temporary Status on 08.08.1986 as a Gangman. His services were regularized with effect from 30.06.1994. The Railway Board brought out RBE No.4/2004 known as Safety Related Retirement Scheme for Drivers and Gangman. In this RBE, a scheme was communicated that the employees having completed 33 years of qualifying service and between the age of 50 and 57 may seek retirement. It was further communicated therein that if an employee is found suitable for benefit of the Scheme, one of the wards will be considered for appointment in the lowest recruitment grade of the respective category for which, the employee seeks retirement. After a few years, the Railway Board issued RBE No.131/2010 dated 10.09.2010 incorporating a scheme known as LARSGESS which in effect amended the earlier provision of the scheme issued under RBE No.4/2004. According to current scheme, those who have completed 20 years of qualifying service for pension and are between the age of 50 - 57 are eligible to obtain the benefit of the scheme. The Respondent No.3, i.e., Senior Divisional Personnel Officer, East Coast railway, Khurda Road Division, vide his order dated 09.03.2011 invited options from eligible candidates. In response to this, applicant ^{Sent} his option dated 08.04.2011 to Respondent No.3 through Respondent No.5, who is Senior Section Engineer, East Coast Railway, Talcher. Respondent No.5 having received

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the application forwarded the same along with the service records of the applicant to Respondent No.3 for consideration under the said scheme. However, Respondent No.5 calculated the qualifying years of service as 19 years 22 days by taking into account the Temporary Status period as 10.11.1989 instead of 08.08.1986. Since the application was not acted upon by the Respondent No.3, applicant submitted further representation and thereafter, he filed O.A.No.680/12 challenging the inaction on the part of Respondent No.3 in considering his option/ application. However, having come to know that his application has been rejected, applicant withdrew O.A.No.680/12 and the Tribunal granted him opportunity to file a proper application challenging the order of rejection. The claim of the applicant is that he was granted Temporary Status on 08.08.1986 and as such 50% of service from that date till the date of regularization i.e., 30.06.2004 should be computed as qualifying service for counting the length of service. However, Respondent No.5 took into account the date of conferment of temporary status as 10.05.1989. Therefore, according to Respondents, qualifying period of the applicant fell short of the prescribed 20 years. Further, in the order dated 28.10.2011 filed at Annexure-A/6, it has been notified that the applicant is not eligible on the ground that his "application has not been forwarded through ADEN/DNKL". It is to be noted here that ADEN/DNKL has been arrayed as Respondent No.4 in this case.



3. Respondents in their counter reply have pleaded that the applicant was granted Temporary Status only on 10.11.1989 and not on 08.08.1986. Therefore, he has not completed the minimum period of 20 years of qualifying service which is required as per RBE No.131/10. Moreover, the age of applicant's son is below 18 years on the cut-off date for assessment of eligibility, i.e., 30.6.2011. On these grounds, according to Respondents, the application for the scheme was rejected.

4. Having heard the learned counsel for both the sides, we have perused the records.

5. Learned counsel for the applicant has brought to our notice that in the order dated 28.10.2011, the reason for rejection of his application is mentioned as "application is not forwarded through ADEN/DNKL". His submission is that if the application was rejected, it should have been rejected on merit and the ground of such rejection should have been mentioned accordingly. In the present case, the application has been rejected on the ground of non-fulfillment of some official formalities. He has already mentioned in the O.A that his option for the scheme was forwarded by Respondent No.5 to Respondent No.3. However, it appears that Respondent No.4, ADEN/DKNL has been left out. This is an omission for which applicant should not be blamed. Therefore, it is the prayer of the applicant that his application should be considered on the basis of merit and not on the basis of some technicality.



6. On the other hand, Shri R.S.Behera, learned Panel Counsel for the Railways has contended that applicant does not fulfill the requirements under the scheme as contained in RBE No.131/10. We find that the contentions made by the learned counsel for the applicant are fair and acceptable. He has submitted that he is not making out any case on merits of the matter, but only praying that the orders should be passed by the Respondents based on merit. Upon perusal of order dated 28.10.2011, under the heading "Engineering Department (Ineligible application Nos.17) [at Sl.No.9], we find that the application in respect of the applicant, has been considered "Not eligible" on the ground that his "application is not forwarded through ADEN/DNKL", i.e., Respondent No.4. Applicant, obviously, cannot be held responsible for this lapse, because it is not understood why Respondent No.5 did send the application directly to Respondent No.3 instead of routing it through Respondent No.4. We are also in agreement with the submission made by the learned counsel that the application of the applicant should have been considered on merit and within the four corner of the provisions of the scheme.

7. In the facts and circumstances as stated above, it is required that Respondent No.3 should consider the case of the applicant on the basis of merits rather than on the basis of some technicality. Accordingly, dated 28.10.2011 (Annexure-A/6) to the extent it concerns the applicant is quashed and the matter is remitted back to Respondent No.3, with a direction that he should consider the case of the applicant

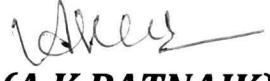


for eligibility under the provisions of the scheme and as per the extant rules and guidelines and communicate the decision to the applicant in a speaking order within a period of 30 days from the date of receipt of this order.

Ordered accordingly.

With the aforesaid observation and direction, the O.A. is disposed of. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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