

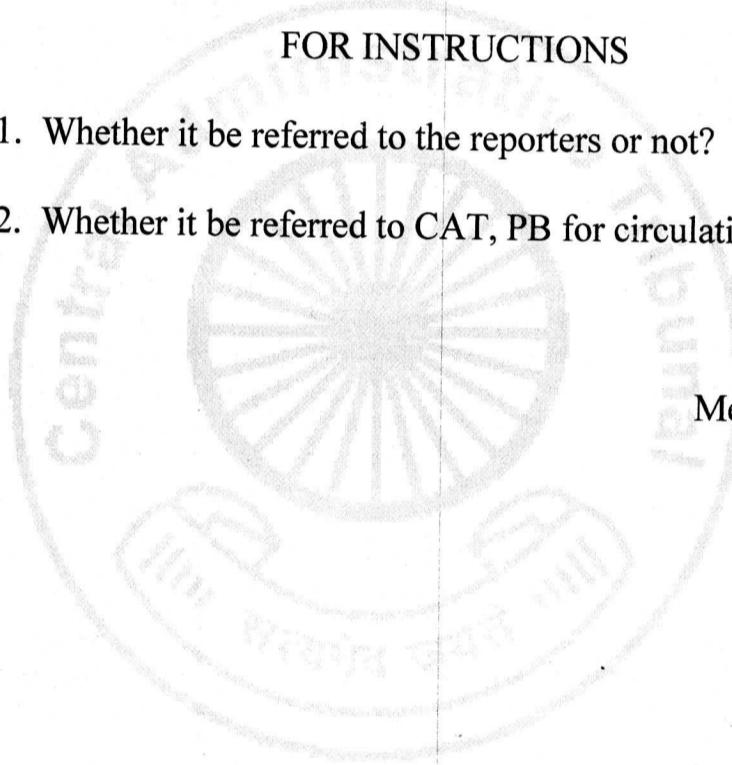
39
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 1078 of 2012
Cuttack, this the 19th day of June, 2017

Baisnab Naik Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No
2. Whether it be referred to CAT, PB for circulation? No


(R.C.MISRA)
Member (Admn.)

40
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 1078 of 2012
Cuttack, this the 19th day of June, 2017

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

.....
Bainsab Naik,
aged about 67 years,
S/o Late Gopi Naik,
At- Meramundai, PO- Limbabahali,
PS- Motanga, Dist- Dhenkanal

.....Applicant.

(Advocates : M/s J.K.Lenka, P.K.Behera)

VERSUS

- 1- Union of India represented through the General Manager, East Coast Railway, Rail Vihar. At/Po/PS- Chandrasekharpur, Bhubaneswar, Dist. Khurda.
- 2- Divisional Railway Manager, East Coast Railway, Khurda Road, PO- Jatni, Dist- Khurda..
- 3- Senior Divisional Personal Manager, East Coast Railway, Khurda Road, PO- Jatni, Dist- Khurda.
- 4- Senior Divisional Accounts Officer, East Coast Railway, Khurda Road, PO- Jatni, Dist- Khurda.
- 5- Section Engineer (PWI), East Coast Railway, Khurda Road Division, At/PO/PS- Dhenkanal Sadar, Dist- Dhenkanal.

.....Respondents
(Advocate: Dr. C.R.Mishra)

.....

Deepti

R.C.MISRA, MEMBER (ADMN.) :

The applicant who on 31.07.2004 has retired from Railway service has approached the Tribunal praying for following relief.

“.....to admit the original application and on hearing the respondents passed necessary order by quashing the impugned order dtd. 26/3/10 at Annexure-A/4 and further pleased to directed the respondents to take into consideration the temporary status/temporary and regular service of the applicant starting from 10/7/87 till retirement into consideration and pass appropriate order granting pension w.e.f. 1/8/2004 and gratuity on the basis of qualifying service and taking into consideration the decision of the Hon’ble High Court. And further the respondents be directed to pay interest as per the provisions contemplated in the Railway Service Pension Rules as delay is attributable to the respondents.”

2. Facts of the case are that applicant was engaged as a casual Labour under the Section Engineer, (PW) at Dhenkanal from July 1962 to 1994, and worked for a period of 1482 ½ days, for which he was empanelled. He was granted temporary status on 04.08.86 on completion of 120 days of continuous service. He was regularized in service on 18.07.1994 as a Junior Gangaman. He was promoted as Head Trackman on 03.01.2003, and then retired on 31.07.2004. He was not sanctioned pensionary benefits, in spite of the fact that he claimed a period of 11 years, service 5 months and 15 days including both his regular service, and casual service. He filed OA No. 298/2009 in the Tribunal making a claim for pensionary benefits. The Tribunal in an order dated 21.08.2009 directed the respondents to dispose of

pending representation of applicant, and pass ^a reasoned order. The Respondent No.2, DRM (P), Khurda Road by an order dated 26.03.2010 conveyed the decision rejecting the claim for pension. That is the order impugned in this OA.

3. The applicant has alleged that the respondents have erroneously calculated the qualifying period of service in respect of the applicant. He submits that he has served for 42 years in the Railways, starting from July, 1962 till his retirement on 31.07.2004. He has continuously worked from 12.05.1990 to the date of retirement. He has cited the case of one Shri Kelu Charan Mohanty ^{who} having similar service & record had filed OA No. 114/2006. The Tribunal in its order dated 13.03.2008 held that he had the qualifying service to be sanctioned pensionary benefits. This order was challenged in the Hon'ble High Court in WP(C) No. 17336/2008, and the Hon'ble High Court upheld the orders of the Tribunal, by holding that since the petitioner had worked for more than 40 years on casual, temporary and regular basis in the Railways, rejecting his claim for pension on some technical ground, is not warranted. The Railways have implemented that order. In a similar matter involving one Paria Champati, who had approached the Tribunal in OA No. 605/2006, similar decision was taken by the Tribunal, which on being challenged was also upheld by the Hon'ble High Court of Orissa. Thus the applicant pleads for similar relief in his case, by specifically mentioning that as per the Service Review Certificate dated 26.07.2004 of the authorities, applicant has completed

Q
Jen

10 years of qualifying service. His case is squarely covered by the court decision as quoted above.

4. The applicant further pleads that according to Rule 20 of Railway Pension Rules, 1993 the qualifying service of a Railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively, or in a temporary capacity. In case of the applicant, his service sheet reflects that he is appointed in temporary capacity from 10/07/1987. But his regular period of service is shown from 1990 to 31/07/1994. Exclusion of the period from 1987 to 1990, is according to applicant, is erroneous and also contrary to judicial pronouncements.

5. The respondents have made following submission in their counter-affidavit. They have claimed the applicant was engaged as RPS Gangman from 10.07.1987, but he actually worked in this post in broken spells upto 12.05.1990, on which date he was conferred Temporary Status in the CPC Scale. Applicant was posted as Permanent Gangman on regular measure w.e.f. 18.07.1994. He was promoted as senior Gangman on 01.08.1998 and then to the post of Head trackman. He retired on 31.07.2004 on reaching the age of superannuation. As laid down in Rule 31 and 31(d) of RSPR 1993, half of the service paid from contingencies shall be taken into account for calculating the pensionary benefits on absorption in regular employment. The respondents calculated qualifying years of 8 years 7 months and 15 $\frac{1}{2}$ days, which fell short of 10 years which is the



minimum qualifying years of service as per the RSPR, 1993. Therefore, applicant is not eligible for pension. The respondents have also submitted that in several cases, the Tribunal and the Hon'ble High Court have held that employees not possessing the minimum qualifying period of 10 years are not entitled to pensionary benefits. It is submitted that in obedience to the order of Tribunal in OA No. 298/2009, the respondents examined all documents pertaining to the case, and afforded him opportunity to be heard, before the orders of rejection dated 26.03.2010 was passed. In relation to the case of Kelu Charan Mohanty, it is submitted that a review petition bearing No. 256 of 2009 on the order of Hon'ble High Court has been filed and is pending for consideration. Further, it is submitted that the case of Paria Champti as cited by applicant is having different facts. With these submissions made in the counter-affidavit, respondents have pleaded for dismissal of this OA.

6. The applicant in his rejoinder, apart from mentioning some admitted facts, had made the important submission that is revealed from the service record that applicant rendered a total period of 14 years 2 months and 19 days of service. In the service review certificate, a total period of 1525 days is shown as non-qualifying period. If this period of 4 years 2 months and 19 days is deducted, the rest of the period would be more than 10 years, which will be qualifying period from the purpose of pension. Therefore the applicant submits that contention of

Q. 2

respondents is against their own records. Thus it is reiterated by applicant that he had the qualifying period of service for pension.

7. We have heard Ld. Counsel for both sides, and perused the record as well as the notes of arguments filed by both counsels. On perusal of the impugned order dated 28.03.2010, we would quote para (f) from the same order.

		50% service of 09 Months & 26 days.	Year Month Day
1.	50% of actual no. of working days put in broken spell by you from 10-7-87 to 20-10-87, 25-7-88 to 20-10-88 & 29-6-89 to 23-10-89 as mentioned in Para-(a) above.		00 04 28
2.	50% of casual service for the period from 12-5-90 to 17-7-94 put in by you continuously	50% service of 04 years, 01 Month & 5 days.	02 01 02 $\frac{1}{2}$
3.	100% of regular service rendered by you till date of retirement i.e. from 18-7-94 to 31-7-04		10 00 13
Total Service (Srl. Nos. 1 to 3)			12 06 13 $\frac{1}{2}$
4.	Less non-qualifying service accrued during the period from 18-7-94 to 31-07-04	(-)	03 06 1
Net qualifying service			09 00 12 $\frac{1}{2}$
Say : 09 Years			

On perusal of table it is revealed that 50% of casual service has been taken into account, and the total period from casual service as reckonable is " Year 00, month 04 and day 28, added to year 02 month 01, day 02 $\frac{1}{2}$."

Hundred percent of regular service amounting to 10 years and 13 days has been taken into account and total qualifying period is worked out as 12 years 6 months and 13 $\frac{1}{2}$ days. It is clear that only on the basis of 10 years of regular service, which meets the qualifying period,



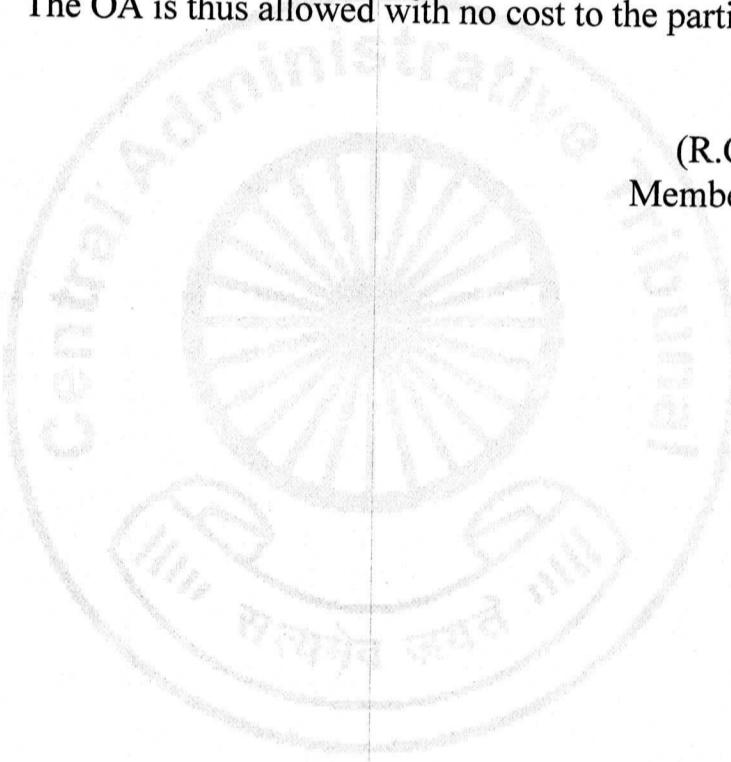
pension can be granted. But respondents have deducted 3 years, 6 months and 1 day as non-qualifying service accrued during the period from 18.07.1994 to 31.07.2004. As a result of this, respondents have decided that, the total qualifying service falling short of minimum ten years, the applicant is not entitled for pension.

8. It is noted here that the detailed reasons for which a period of 3 years 6 months and 1 day has been decided to be non-qualifying are not specified in the impugned order. This is an important point which should have been clarified. It is especially important in view of the fact that because of the non-qualifying period, the applicant has been held to be not entitled to pension. Otherwise, from his regular service of 10 years, he would have been entitled for pension, without even adding 50% qualifying service from the casual service of the applicant. The contention of the applicant is ⁱⁿ this regard is, no record has been produced by Railways in support of their contention that the period deducted from regular service should not be counted for pension. The applicant has been allowed medical leave as per rule, and the said period has been regularized. On this issue there are no documents produced by either side for verification. But when the respondents have deducted this period from the regular service, and that has altered the position with regard to the applicant, they should have produced documentary support in this regard. It will be a violation of the principle of natural justice if the period is allowed to be deducted from

qualifying period of pension, when respondents have not assigned any specific reason for such deduction.

9. For the reasons as discussed above, I am of the opinion that this is a fit case where the qualifying service of 10 years has been met for the purpose of pension. Accordingly, the respondents are directed to sanction pension in favour of the applicant, and release the consequential financial benefits.

10. The OA is thus allowed with no cost to the parties.


(R.C.MISRA)
Member (Admn.)

RK