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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No.260/00054 of 2014
Cuttack, this the 11th day of September, 2015

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

1. Nirmal Jena, aged about 42 years,
2. Amulya Jena, aged about 35 years,

Both are sons of Late Rama Chandra Jena,
Ex-Gangman/SSE/P.Way/S.E.Railway/DNT,
Permanent resident of Vill-Nuagaon,
P.O-Mulisingh, Dist.-Balasore, Odisha.

...Applicant

(Advocate: M/s. N.R. Routray, T.K. Choudhury, S.K. Mohanty)

VERSUS

Union of India Represented through

1. General Manager,
South Eastern Railway,
Garden Reach, Kolkatta-43,
West Bengal.
2. Divisional Railway Manager,
South Eastern Railway,
Kharagpur Division, At/PO-Kharagpur,
Dist-West Medinapur, West Bengal.
3. Divisional Railway Manager,
South Eastern Railway,
Kharagpur Division, At/PO-Kharagpur,
Dist-West Medinapur, West Bengal.

... Respondents

(Advocate: Mr. S. K. Mishra)

ORDER

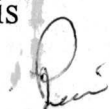
R.C. MISRA, MEMBER (A)

This is the third round of litigation on the subject of computation of qualifying period of service for sanction of pension of Late Ramachandra Jena who was an employee of the Railways. The deceased employee who retired on 08.03.1988 on the ground of being declared medically invalid, had first approached the Tribunal in filing O.A. No.243 of 2000 which was disposed of on 28.01.2002 in a detailed order by directing the respondents to consider the case on the basis of



some specific observations and directions. The concerned authorities disposed of the matter, and issued a speaking order. The wife of the deceased employee filed another O.A. bearing No.907/2010 alleging that the speaking order was passed in contravention of the observations of the Tribunal in O.A. No.243 of 2000, and without justification, family pension was denied to her. O.A. No.907/2010 was disposed of by the Tribunal by order dated 19.02.2013, with the following observations and directions:-

"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 No.2), 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 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



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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.

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."

2. In compliance of these directions, respondents have issued an order dated 17.07.2013 which is the subject matter of challenge in the present O.A.
3. The present O.A. is filed by the sons of late Ramachandra Jena making the following prayer:-

- "(i) To quash the order of rejection dated 17.07.2013;
- (ii) And to direct the respondents to compute the regular period of service w.e.f. 29/26.10/11.1984 to 08.03.1988;
- (iii) And to direct the respondents to treat the LWP if any, as extra ordinary leave as directed in O.A. No.907/2010;
- (iv) And to direct the Respondents to grant minimum pension in favour of the ex-employee w.e.f. April, 1988 and pay the arrears with 12% interest for the delayed period of payment.

4. Briefly stated, the facts of the O.A are that the deceased Railway employee was appointed in South East Railway on 7th April, 1970, and his services were regularized on 21st December, 1984. He was declared medically unfit, and he retired on 23rd February, 1988. The respondents thus took a view that the qualifying period of service being less than ten years, no pension was admissible in the case. The employee for redressal of his grievance had approached this Tribunal



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in OA No. 243 of 2000. This O.A. was disposed of with observations and directions in compliance with which the respondents passed a speaking order which was further challenged in OA No. 907 of 2010. That OA being disposed of by the Tribunal by an order dated 19th February, 2013, the respondents issued a further speaking order dated 17th July, 2013. In this order, the respondents after further examination of the service records of the deceased employee came to a decision that he was ineligible for pension, for not having the adequate qualifying period of service. This order is the subject matter of challenge in the present O.A.

5. The grounds urged by applicant in challenging the order dated 17th July, 2013 are that this order is not in consonance with the directions of the Tribunal and Railway Rules in this regard, and further that the deduction of three months of regular service mentioned as LWP in the order is not accompanied with details thereby depriving the applicant of a chance to counter this point. It is urged that the date 08.03.1988 is not the date of retirement since Chief Medical Superintendent is not the competent authority to order retirement of the applicant. A further ground is taken that in O.A. No.243/2000, the respondents submitted in the counter affidavit that the total qualifying period of service is more than 09 years 09 months. As against that, in the speaking order dated 17.07.2013 a different stand is taken, in order to deprive the applicant of minimum pension. The applicant has urged that the period of qualifying service should have been computed as 09 years 09 months, and the applicant should have been declared to be eligible for pension.

6. In the counter affidavit it is submitted by respondents that during his life time the ex-employee filed O.A. No.243 of 2000 before the Tribunal. In obedience to the orders of the Tribunal, the competent authority issued order dated



18.06.2002 in which it was stated that the period of LWP, i.e., 16.04.1985 to 11.05.1987 can not be treated as Extra Ordinary Leave as no supporting medical certificate was furnished. After the death of the employee, his widow filed O.A. No.907/2010 which was disposed of by the Tribunal on 19.02.2013 remitting the matter back to respondents with certain observations/directions. Thereafter, the respondents again examined the matter and came to a conclusion that the ex-employee had rendered only 09 years 05 months 08 days of qualifying service and was therefore was not eligible for pension. This decision is incorporated in the speaking order dated 17.07.2013. Thus, the matter of calculation of qualifying service has been the subject matter of two earlier proceedings in the Tribunal. The respondent authorities in obedience to the orders of the Tribunal in both O.As have carefully calculated the qualifying period of service. The calculation sheet as correctly prepared is also reflected in the speaking order dated 17.07.2013. The plea of the applicant that the ex-employee had rendered more than 09 years and 09 months of service has been termed by respondents as conjecture and surmise, but not based on the actual service record. The matter is now disposed of on the basis of records, and in conformity with the Rules, and therefore, the applicant is not entitled to any further consideration and relief. This is the submission of respondents.

7. In the rejoinder filed by the applicant, the submissions made in the O.A. are reiterated. Both the Ld. Counsels have filed their written notes of submission.

8. I have heard the Ld. Counsels in extenso, and perused the records. I have also gone through the written notes of submissions filed by both the parties. The history of the entire case is narrated in the earlier paragraphs. Since the matter



was adjudicated twice before, the earlier orders of the Tribunal have been covered also. It is not required to make a detailed recital of facts and events once again. Suffice it to say that in O.A. No.907/2010, the Tribunal took a view that the respondents need to examine the matter again in reference to orders of the Tribunal in O.A. No.243/2000. While the subject of qualifying service and eligibility for pension is a matter of record, the anxiety of the Tribunal was to see that the applicant is not deprived of minimum pension by either wrong interpretation of record, or wrong application of rules. The matter of service benefits is a sensitive matter, and should be carefully determined by the authorities, and that is the reason why the Tribunal wanted the matter to be further examined by the authorities.

9. At this stage, what is under challenge ^{is} in the order of the authorities dated 17.07.2013, and ^I need to see whether this order suffers from any infirmity, or whether it is a sincere compliance of the directions as well as observations of the Tribunal in the earlier O.A's. One important mention in this order is that there was LWP during the period of the employee's casual service and also regular service ~~and also regular service~~ which was not covered by any medical certificate, or any application for EOL. On this score, the period can not be counted towards qualifying service. As against this observation, the applicant has failed to give any satisfactory response. In this regard, the respondents have put their reliance on Rule.420 (iii) of MOPR, 1950 which provides that grant of EOL is subject to production of medical certificate. In effect, the total qualifying period of service came down to 09 years 05 months 08 days as per Rule, taking into account 50% of casual service from 07.04.1970 to 20.12.1984 and 100% of regular service from 21.12.1984 to 23.02.1988, excluding the LWP period. It is further stated that Railway Board's Circular dated 15.04.1987 lays down that an

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employee who has completed 09 years and 09 months but less than 10 years of qualifying service will be deemed to have completed 10 years of qualifying service and will be eligible for pension. The contention of the respondents is that this deeming provision does not help the employee in this case.

10. The respondents have incorporated the details of service record and qualifying service of the deceased employee in a tabular form in the speaking order, which is reproduced below


Details of data of service Record & Qualifying Service are placed below:-

| | | |
|--|--|--|
| D.O.B 03.09.1942 D.O.A.07.04.1970 (in casual work) D.O.R.20.12.1984 D.O.T.23.02.1988 Q/S 9 yrs. 05 m. 08 days | Casual Service from 07.04.1970 to 20.12.1984 | Yrs. Months Days 1984 12 20 1970 04 07 |
| | Total Casual Service | 14 08 13 |
| | LWP in Casual Service | 01 08 02 |
| | Net Casual Service | 13 00 11 |
| | 50% of Casual Service | 06 06 06 |
| | Regular Service from 21.12.1984 to 23.02.1988 | 1988 02 23 1984 12 21 03 02 02 |
| | 06 yrs 06 Months 06 days +03 yrs. 02 months 02 days = | 09 yrs. 08months 08 days |
| | LWP in Regular Service 3 months | 03 months |
| | Net Qualifying Service | 09 Yrs. 05 months 08 days |
| | | |

11. On the specific facts mentioned in the calculation sheet the Counsel for applicant has failed to raise any credible objection or correction. These calculations are based upon records of service, and the Tribunal can not interfere with the same, unless specific lacunae or mistakes are pointed out. ² I do not find any evidence that respondent authorities have not sincerely carried out the

earlier directions of the Tribunal. The concerned employee who filed the O.A. No.243 of 2000 is no more. The O.A. No.907 of 2010 was filed by the widow of the deceased railway employee. The present O.A. is filed by sons of the deceased employee. The subject matter of the O.A. is qualifying service for pension which is very much a matter of service records, and unless specific flaws are brought to ~~by~~ ^{to} notice, the service records have ~~et~~ ^{to} be presumed to be properly maintained by the concerned authorities. In the present case no such discrepancy has come to ~~by~~ notice. Therefore I am of the view that the conclusion of the authorities that the deceased employee is not entitled to pension since he had rendered 09 years 05 months and 08 days of qualifying service and that he can not get the advantage of Railway Board's circular dt.15.04.1987 since he has not completed 09 years and 09 months of qualifying service need not be interfered with.

12. The O.A is accordingly dismissed being devoid of merit. No costs.


(R.C. MISRA)
MEMBER(A)

K.B.