

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.662 of 1996

Present: Hon'ble Mr. D. Purkayastha, Judicial Member
Hon'ble Mr. B. P. Singh, Administrative Member

Lankeswar, s/o Late Shyam
residing at Vill. Ginara, P.O.Gingara,
P.S. & Distt. Purulia employed as CPC
Gangman/CPC Chowkidar (Retd.) in the
Office of the Chief Permanent Way
Inspector, South Eastern Railway,
P.O. & Dist. Purulia

.... Applicant

VS

1. Union of India
Service through the General Manager
S.E. Railway, Garden Reach,
Calcutta-700 043
2. Divisional Railway Manager,
S.E. Railway, Adra, P.O. Adra,
Dist. Purulia
3. Sr. Divisional Engineer, S.E. Rly.
Adra, P.O. Adra, Distt. Purulia
4. Divisional Personnel Officer,
S.E. Railway, Adra, P.O. Adra,
Dist. Purulia
5. The Chairman, Railway Board,
Rail Bhavan, New Delhi

.... Respondents

For the Applicant : Mr. B. R. Das, counsel
Mr. B. P. Manna, counsel

For the Respondents: Mrs. B. Ray, counsel

Heard on 27.10.98

: : Date of order: 17.11.1998

O R D E R

D. Purkayastha, JM
Applicant, Shri Lankeswar being aggrieved by and
dissatisfied with the speaking order passed by the General
Manager, S. E. Railway, which was communicated to the applicant
vide letter dated 6.2.96 (Annexure/A collectively) has filed this
application under section 19 of the Administrative Tribunals Act,
1985 challenging the validity of the impugned order passed by the
General Manager on the grounds that the said order was not passed
in accordance with the directions contained in the order of the

Tribunal passed in OA 1090/93 on 15.2.95. According to the applicant, he was initially engaged as a Casual Labour (Gangman) on daily rate basis in the Engineering Department of Adra Division of S.E. Railway and he was granted temporary status with Central Pay Commission (CPC) scale of pay on completion of requisite number of days of work with effect from 24.1.71. Thereafter, he was screened and was empaneled for regular absorption. However, the applicant was not absorbed since as a prerequisite for regular absorption a medical test is required and accordingly he was sent for medical examination for regular absorption in the post of Gangman on 23.12.83 after 12 years. But in the said medical examination he was declared unfit for the appropriate medical category vide unfit certificate dated 23.12.83 issued by the DMO, Adra. As a result the applicant was not regularised as a Gangman. However, the Railway authorities did not terminate his services as a casual labour with temporary status. Instead his services were utilised as CPC Chowkidar on pay equivalent to that of CPC Gangman and the applicant continued to work as such till he attained the age of superannuation on 30.6.93. The applicant applied for retiral benefits like pension, DCRG and all other post-retirement benefits as admissible to a regular railway employee and has also prayed for a direction on the respondents by filing an application bearing No. OA 1090/93 to regularise/absorb him against a substantive post of Gangman with effect from 23.12.83. The said OA has been contested by the respondents by filing a written reply. Denying the claim of the applicant the stand taken by the respondents in that application was that a Railway servant who had attained the temporary status but could not get his services regularised prior to his superannuation would not be entitled to any pension. After hearing the learned counsel of both the parties and perusing the materials on records this Tribunal on 15.2.95 passed the following orders :

i) The applicant is not entitled to get any pension in strict application of the normal rules since he was not regularised against any post before his superannuation.

ii) However, respondent No.2, within three months from the date of communication of this order, and along with a self contained separate petition to be filed by the applicant, shall refer the matter to respondent No.1 i.e., the General Manager, S.E. Rly., to consider whether in view of the facts of this case, the competent authority as specified under rule 107 of the Railway Services (Pension) Rules, 1993, would like to relax the normal rules in respect of rule 31 or 32 ibid regarding the counting of service of the applicant during the period he acted as casual labour with temporary status by treating him as deemed regular w.e.f. 23.12.83 when on medical examination his service was shifted as CPC Chowkidar.

The General Manager, S.E. Railway, respondent No.1 has disposed of the application of the applicant as ordered by this Tribunal vide letter dated 6.2.96 enclosing a copy of the decision thereon. The applicant has filed this fresh application before this Tribunal for getting appropriate relief as sought for. Mr. Das, learned counsel leading Mr. Manna submits that the General Manager patently acted in an arbitrary manner in not absorbing/regularising the applicant against the substantive post of Chowkidar or in equivalent post after decategorisation on 23.12.83 in the backdrop of the fact that some of the juniors of the applicants were absorbed against such post. Mr. Das further submits that the plea of non-availability of regular post of Chowkidar or any other equivalent post either in the Division or elsewhere is untenable and thereby the alleged order passed by the General Manager is liable to be quashed in view of the fact that the General Manager failed to act in the light of the spirit of the order of this Tribunal, where clear indication was given by the Tribunal to relax the rule of requirements by giving the applicant that he had been regularised in the capacity as Chowkidar for the purpose of granting pension. According to Mr. Das, the respondents utilised the services of the applicant despite the fact that he was decategorised in the cadre of CPC Chowkidar and he rendered services for more than 24 years and

There are laches on the part of the respondents in the matter of regularisation since the applicant was sent for medical examination after 12 years' service being rendered by him in the category of Gangman. No reasonable explanation has been assigned by the respondents as to why he was not sent for medical examination for the purpose of regularisation within reasonable period from the date of attaining the temporary status. For such laches, the applicant cannot be denied the pension taking the plea that he was not regularised in the service till the date of his retirement. So, the application should be allowed with a direction upon the respondents that the applicant shall be deemed to have been regularised in the cadre of CPC Chowkidar for the purpose of pension in order to avoid hardship caused to him for the laches of the respondents.

2. Mrs. Ray, learned counsel appearing on behalf of the respondents strenuously argued before us stating interalia that the question of granting pensionary benefits on the ground of non-regularisation is no longer res-integra and in the meantime Hon'ble Apex Court by several judgments decided the issue relying on the case of Ram Kumar and others vs. Union of India and others, reported in 1988(2)SCR 138 at 144, where it is stated that no retiral benefit is available to casual labour of this kind. Mrs. Ray also relying on a decision reported in 1997(2)SCSLJ 263 (Union of India and others vs. Rabia Bikaner etc.) and in another case SLP (Civil) Nos.3341/93 and 10951/95 (Union of India & Ors. vs. Sukanti and another etc.) decided on 30.7.96 by the Hon'ble Apex Court submits that no retiral benefit is available to the applicant since he has not been regularised till this the date of his retirement. So, the application should be dismissed. Mrs. Ray further submits that the Railway Pension Rules, 1993 has no manner of application to the applicant since the applicant retired from the Railway service on 30.6.93 and the Railway Services (Pension) Rules, 1993 came into effect with

effect from 12.12.93. So, the provisions of the Rules 31/32 and 107 of Railway Services (Pension) Rules, 1993 have no manner of application in the case of the applicant, though this Tribunal directed the respondents to consider the aforesaid provisions for the purpose of relaxation to the applicant ignoring the fact that the Railway Services(Pension) Rules, 1993 came into effect from December, 1993 and the applicant retired from service on 30.6.93 i.e., about six months from the date of implementation of the Railway Services(Pension) Rules, 1993. It is also submitted by Mrs. Ray that the order of the General Manager was passed after considering the material fact and rules as ordered by the Hon'ble Tribunal and thereby it cannot be said that the General Manager acted arbitrarily illegally and in violation of the Pension rules. So, the application is liable to be dismissed.

3. After considering the divergent arguments advanced by the learned advocates of both the parties we find that it remains undisputed fact that the applicant sought for retirement benefits in filing another OA bearing No.1090/93 and the Hon'ble Tribunal in the judgment passed on 15.2.95 categorically held that under normal rules the applicant is not entitled to any pension since he was not regularised against any post before his retirement. However, direction was issued upon the respondents to consider the relevant Rule 107 read with Rules 31 and 32 of Railway Services (Pension) Rules, 1993 for the purpose of granting pension to the applicant after treating him as deemed regular with effect from 23.12.83 when on medical examination his service was shifted as CPC Chowkidar and it was further directed by this Tribunal that the General Manager shall communicate the decision to the applicant through a speaking order within six months. We find that the General Manager disposed of the representation of the applicant as directed by this tribunal by a speaking order and disclosing the reasons thereon. In the speaking order dated 6.2.96 annexed as Annexure/A2 to the application it is found that

the General Manager assigned the reasons for non-consideration of the representation of the applicant stating inter-alia that the applicant could not be regularised due to non-availability of the vacancy in the lower medical category since availability of vacancy was very limited and there were seniors to the applicant waiting for regular absorption on such medical decategorisation. It is also found that the General Manager had also considered the provisions of Rule 31 and 32 of the Railway Services (Pension) Rules, 1993 which are applicable to Railway servants in service on or after 22.8.68 for granting the benefit of half the services paid from contingencies for calculation of pensionary benefits on absorption in regular employment, subject to fulfilment of certain conditions stipulated therein and applicable to substitutes, respectively. It is admitted fact that the applicant, Lankeswar was not engaged as a substitute, but he was appointed as a Gangman. We find that it remains undisputed that the applicant was not regularised through he rendered more than 24 years of service in the Department. The question of relaxation of rules and invoking of deeming provision comes into operation when the rule does not take care of it for granting pensionary benefits. It is also the admitted fact in this case that the applicant is not entitled to get any pension until he was regularised in regular employment as per judgment of the Hon'ble Apex Court, but at the same time it cannot be said that such benefit cannot be given to the applicant if the Departments are found at fault in the matter of regularisation of the employee concerned. It is further admitted that the applicant was appointed in the year 1971 and he was screened and he was empaneled for regular absorption. There is no explanation from the side of the respondents why the applicant was not screened and empaneled for regular absorption before 23.12.83 and whether any vacancy was available or not in that cadre after screening and till the date of his retirement. So, such inaction and

laches can be directly attributed to the authorities for not regularising the applicant even in the cadre of CPC Chowkidar when he was enjoying the regular pay scale of Rs.196-232/-, now stands revised to Rs.750-940/- (RP) with effect from 1.1.86 on being decategoriesed from the post of Gangman in the scale of Rs.200-250/- (RS) i.e., Rs.775-1025/- (RP). Though he was continuing in the lower scale of Chowkidar of Rs.750-940/-, from para 6 of the speaking order it is found that a cryptic reason has been assigned stating that the availability of vacancies is very much limited and there were seniors to him awaiting regular absorption in such lower medical category posts. The General Manager did not mention how many vacancies were available on the date of consideration of the representation of the applicant and how many persons were in the que list. No document in support of the said finding as mentioned in para 6 of the speaking order of the General Manager has been produced before this Tribunal since the applicant alleged that in the same Department ~~still~~ ^{as in ~~the~~ ~~being~~} regularisation was ~~not~~ done by the Railway authorities for the purpose of granting pension. In Ram Kumar case (Supra) the Hon'ble Supreme Court while accepting the provisions of the relevant rules has come to the conclusion that the pensionary benefits are not admissible to casual labour acquiring temporary status. It is also found that the Hon'ble Supreme Court in Rabia Bikaner (Supra) case held following the earlier decision in Ram Kumar case that no retiral benefits are available to widow of a casual labour acquiring temporary status who had not been regularised till his death. The respondents did not furnish the list of the empaneled employees who are waiting for the absorption in the cadre in which the applicant was to be regularised as per direction of the Tribunal and the position of the applicant in that list. The respondents also could not satisfy how ^{many} the ~~the~~ vacancies are available and therefore, without any material it is a fit case for remand for reconsideration.

4. In view of the aforesaid circumstances we are of the view that it would be just and proper to remand the case to the General Manager for fresh consideration on the fact that whether the applicant can be deemed to have been regularised with effect from 23.12.83 when on medical examination his service was shifted to GPC Chowkidar. Be it mentioned that at the time of consideration of the application the General Manager should take into note that he is vested with the power of relaxation of the rules or invoking deeming provision if he is satisfied that the operation of the existing rules causes undue hardship to the applicant; because the question of regularisation comes into operation when there has been undue hardship to any particular Government servant by application of the rules and deeming provision also can be invoked when the rule does not take care of it for granting such benefit.

5. In view of the aforesaid observation we remand the case to the General Manager, S. E. Railway again to consider the facts of the case in the light of the discussion made above by taking a humanitarian view on the matter. Accordingly the application is allowed with the aforesaid observation awarding no cost.

sydm
(B. P. Singh)

MEMBER (A)

17.11.1998

17.11.1998
(D. Purkayastha)

MEMBER (J)

17.11.1998