

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 739 OF 1996

Present : Hon'ble Mr. S. Biswas, Administrative Member
Hon'ble Mr. M.L. Chauhan, Judicial Member

Amar Ali,
S/o of Late Yusuf Ali,
Retd. Striker under CPWI,
S.E.Rly. Kharagpur,
R/o Vill. Narayan Pakuria,
P.O. Dhuliapur, Dist. Midnapore

VS

1. Union of India through the
General Manager, S.E.Rly.
Garden Reach, Calcutta-43
2. The General Manager,
S.E.Rly. Garden Reach, Calcutta-43
3. The Sr. Div. Personnel Officer,
S.E.Rly. Kharagpur
4. The Div. Engineer (Coordination),
S.E.Rly. Kharagpur.
5. The Chief Permanent Way Inspector,
S.E.Rly. Kharagpur.

..... Respondents

For the applicant : Mr. A. Chakraborty, Counsel

For the respondents : Mr. L.K. Chatterjee, Counsel
Mrs. A. Singh, Counsel


Heard on : 3.4.2002 : Order on : 9.4.2002

ORDER

M.L. Chauhan, J.M.:

The applicant has filed the present application praying for a direction to the respondents to grant him pension by taking into account his qualifying service w.e.f. 23.1.72.

2. The applicant was initially appointed as casual labour on 2.8.71 under P.W.I, Dantan, S.E.Rly. Kharagpur. He worked as casual Gangman from time to time with occasional breaks due to non-availability of work. He worked in the recruiting unit for the

 following periods :-

1.	From 2.8.71	to	23.10.71
2.	From 28.10.71	to	23.1.72
3.	From 4.2.72	to	23.3.72
4.	From 29.3.72	to	26.6.72
5.	From 8.7.72	to	23.9.72
6.	From 28.9.72	to	23.11.72

The applicant was again appointed as Striker under the CPWI, Kharagpur on 7.12.72 and he attained temporary status w.e.f. 7.4.73. He was eventually regularised against regular Group D post w.e.f. 19.5.94 and retired from service w.e.f. 31.5.94 on attaining the age of superannuation. The case of the applicant is that his service was discontinued as casual labour due to non-availability of work for which he was not responsible. He claims that he should have been accorded temporary status w.e.f. 23.1.72 instead of 7.4.73. His grievance is that even though he retired as a regular employee of the railways, he has not been sanctioned any pension and that he has only received DCRG amounting to Rs. 4900/- and PF amount. Being aggrieved the present OA has been filed for the relief mentioned above.

2. The respondents have filed a reply affidavit thereby contesting the claim of the applicant. It has been stated that in terms of Rule 2501(b) of IREM, 1968, a casual labour is eligible to get temporary status only after completion of six months' casual service without any break but the applicant had never worked continuously for six months as casual labour prior to 23.1.72. So, he is not eligible ^{to} get any benefit prior to that date. He had attained temporary status only on 7.4.73 after completion of 180 days casual service continuously. It is further stated the applicant had not rendered requisite qualifying service for getting pension before his retirement and as such he is not eligible to get any pension. According to the respondents, as per service records, the applicant had put in 21 years 1 month and 24 days service including his 13 days regular service from 19.5.94 to 31.5.94. Thus, his total qualifying service was 9 years 2 months and 17 days, as his total non-qualifying

service was 1003 days. In terms of Rule 2005 of IREM, Vol. II, 1990 Edn. half of the casual service rendered as casual labour is taken into consideration after regularisation for the purpose of qualifying service for pensionary benefits. Since the minimum qualifying service required for being eligible for pension is 10 years and since the applicant did not complete 10 years' qualifying service, he could not be granted any pension as per rules.

3. We have heard the ld. counsel for the applicant as well as the ld. counsel for the respondents.

4. Ld. counsel for the applicant has contended that the applicant had worked as casual labour w.e.f. 2.8.71 to 23.10.71 and again from 28.10.71 to 23.1.72. There was, therefore, only 5 days' break in between the two spells which was on account of non-availability of work. According to the ld. counsel for the applicant, if this break of 5 days is condoned, then the applicant should be deemed to have worked continuously for 180 days of work and as such he was entitled to get the temporary status w.e.f. 23.1.72 instead of 7.4.73 in terms of para 2501 of IREM, Vol. I, 1990 Edn. If the applicant is treated to have attained temporary status w.e.f. 23.1.72, then according to the ld. counsel for the applicant, he is entitled to pensionary benefits.

5. Ld. counsel for the respondents, on the other hand, submits that according para 2005 ibid, casual labours including Project casual labours shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. He pointed out that the said Para further provides that such benefit will be admissible only after the absorption of a casual labour in regular employment. Ld. counsel further submits that the service rendered by the applicant on casual basis prior to 7.4.73 when he was accorded temporary status cannot be counted and that only the service rendered from 7.4.73, i.e. when he was granted temporary

status till 19.5.94, when he was regularly absorbed in railway service as to be counted and that too by 50% for the purpose of qualifying service as per rules. According to the calculation made in the aforesaid manner, the total qualifying service rendered by the applicant including 13 days regular service after regular absorption fell short of 10 years qualifying service by about 9 months and as such the applicant could not ^{be} granted any pension. The ld. counsel further argued that the applicant remained absent for 1003 days unauthorisedly which could not be taken as qualifying service. Ld. counsel has drawn our attention to rule 69 of Railway Pension Rules, 1993 and submits that as per this rule, qualifying service for 9 years and 9 months could be rounded off into ten years for the purpose of pension, but since the applicant had completed only 9 years 2 months and 17 days qualifying service, he is not entitled to get the benefit of this rule for getting pension.

6. We have considered the matter carefully. We find that the applicant had put in more than 20 years of service including 13 days regular service with the respondent authorities and out of the aforesaid period, total non-qualifying service of 1003 days has been excluded, as according to the ld. counsel for the respondents, during this period, the applicant was absent unauthorisedly and as such this period cannot be counted for the purpose of pension.

7. Ld. counsel for the applicant has vehemently contended that the services of the applicant were discontinued during this period due to non-availability of work and under para 2501(d) of IREM, Vol. I, when a casual labour is discontinued on completion of works or for non-availability of further productive work and employed later when work is available, the gap period will not count as break in service for the purpose of reckoning of continuous service of 120 days or 180 days or 360 days, as the case may be. However, this provision will not be applicable when the incumbent joins in another seniority unit after completion of the work in the former unit. The ld. counsel contends that since the service of the applicant was discontinued and

he was taken in later when work was available, the intervening period should not be treated as break. Ld. counsel further contends that the Railway Board's circular dt. 12.7.73 provides that if the sanction of the work automatically expires on 31st March of a year and the work starts later on, for which no work could be given to the casual labours, it will not cause any break in service of the concerned casual labourers.

8. Since no material has been placed before us as to whether the service of the applicant was discontinued on account of non-availability of work or for some other reasons like the ones which will not amount to break in service for the purpose of pensionary benefits, as contended by the ld. counsel for the applicant, or whether the applicant remained absent unauthorisedly, as claimed by the respondents, no positive finding can be given by us in this regard.

9. However, having regard to the facts and circumstances of the case and more particularly the fact that the applicant had served the railway for more than 21 years, we are of the considered opinion that if he is denied pension on some technical ground, it will cause great hardship to him in his last days of life. We are, therefore, of the view that the competent authority should consider the matter sympathetically and condone the break of 4/5 days between period from 2.8.71 to 23.1.72 so that the applicant could be granted temporary status w.e.f. 23.1.72 so as to enable him for entitlement of pensionary benefits.

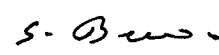
10. Ld. counsel for the applicant has drawn our attention to the decision of the Hon'ble Supreme Court in the case of Yashwant Hari katakhar -vs- UOI & Ors, 1996 SCC(L&S) 464 as also the decision of the Calcutta High Court in WPCT No. 351 of 2001 decided on 4.9.2001 (UOI & Ors -vs- Sri Sirish Ghosh) where in similar circumstances, their lordships have observed that it will be travesty of justice if the appellant therein was denied pensionary benefits simply on the ground

that he was not a permanent employee of the Government.

11 In view of what has been stated above, we dispose of this application with a direction to the respondents, particularly, respondent No. 2, to consider the case of the applicant sympathetically in the light of the observations made above and decide the matter regarding condoning the break period of 4/5 days so that the applicant could be granted temporary status w.e.f. 23.1.72 and consequently be entitled to pension and other retiral benefits as per rules. The decision in this regard be taken within 2 months from the date of receipt of a copy of this order. If the decision is in the affirmative, the applicant be granted pension and other benefits from the date they became due to him after retirement, within three months thereafter. There will be no order as to costs.


(M.L. CHAUHAN)

MEMBER(J)


(S.BISWAS)

MEMBER(A)