

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.1198 of 1996
CPC 112 of 1996
M.A.138 of 1997

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman.
Hon'ble Mr. M.S. Mukherjee, Administrative Member.

BHABANI CHAKRABORTY s/o
Late Trilokesh Chakraborty,
Ex-M.C., Eastern Railway, under
the Divisional Railway Manager,
Asansol, in the office of the
Dy.C.E.(Con) and now residing
at Will. Santagram P.O. Hirapuri
(Burdwan).

... Petitioner

Vs.

1. Union of India through the General Manager, Eastern Railway, Calcutta-1.
2. The Divisional Railway Manager, Eastern Railway, Asansol.

... Respondents

For the petitioner : Mr. Balai Chatterjee, counsel.
Ms. B. Mondal, counsel.

For the respondents: Mr. P.K. Arora, counsel.

Heard on : 15.7.1997 and 27.8.1997

Order on : 15.9.1997

ORDER

A.K. Chatterjee, V.C.

The petitioner had worked as a casual Storeman in Eastern Railway at Asansol from 1963 to 1968 and according to him, he was thereafter employed in the regular service as ^{an MC} MC from 1980 till he retired on attaining the age of superannuation on 31.10.1994 though in the notice of retirement dated 1.9.1994, he was described as a temporary status M.C. He contends that by virtue of his service of 14 years from 1980 to 1994, he

has become eligible for pensionary benefits, which, however, has not yet been released. The instant O.A. has been filed for a direction upon the respondents to release all pensionary benefits w.e.f. 1.11.1994 together with interest and costs.

2. The respondents have filed a reply and inter alia contend that after disengagement as casual Storeman in 1968, he was engaged as a Project Casual Labourer and granted temporary status and ultimately absorbed as a Gangman against regular Group-D vacancy only days before his retirement. In such circumstances, it is contended that the service of the petitioner, who only had temporary status, which can qualify for entitlement of pension, fell below the minimum length of service necessary for granting pensionary benefits and as such, no pension was granted to him.

3. When the O.A. was filed, an interim order was made on 16.10.1996, directing the respondents to release provisional pension to the petitioner as may be admissible under the rules by 3.12.1996. Since no provisional pension was released, the petitioner has filed CPC 112 of 1996 for issuing a contempt rule. The respondents have filed a miscellaneous application being No.138 of 1997 for recalling the said interim order on the ground that the petitioner was not entitled to get any provisional pension at all.

4. All the three matters were taken up together for hearing. We have heard the ld.counsel for the parties and perused the records before us.

5. The petitioner has stated in the ^{original} application that he was employed on a regular basis as M.C. from 1980, although in the notice of retirement, he was described as M.C. with temporary status, which, according to him, was erroneous. The service record of the petitioner has been produced which do not reveal

that he was appointed on a regular basis in 1980 but he was absorbed as a regular Gangman only on 20.10.1994. It has been stated in the O.A. that he had worked for 14 years continuously against a regular vacancy and still if he was kept temporary, it was deliberate and motivated and he ought not to suffer for non-regularisation. Although no relief has been prayed regarding regularisation, it has been stated that in the circumstances above, it should be held that he was deemed to have been regularised after he had put in 120 days of service continuously. We are unable to make much of this argument as after completion of requisite period of service as a casual labourer, he can only be considered for acquiring temporary status subject to fulfilment of other terms and conditions. In such circumstances, we are unable to hold that the petitioner should be deemed to have been regularised after rendering 122 days of service, as stated by him.

6. Now at the time of hearing, it was submitted on behalf of the respondents that the petitioner was re-engaged as a casual labour on 1.11.1980 and after working for 180 days he acquired temporary status w.e.f. 30.4.1981 which he held till 19.10.1994. On 20.10.1994 he was absorbed in a permanent post of Gangman and retired as such 11 days thereafter on 31.10.1994. The ld. counsel for the petitioner has contended that even on this basis the petitioner had put in 14 years of service with temporary status and as such, can claim pension under Rule 18 of the Railway Servants(Pension) Rules, 1993, which lays down a minimum period of only 10 years as eligibility for grant of superannuation pension even in case of a temporary railway servant. The Ld.Counsel for the respondents has joined issue and has pointed out Board's letter dt.14.10.90 regarding counting of the period of service of casual labourer after attainment of temporary status and on absorption as regular employee. This letter states

that half of the services rendered as a temporary employee should be counted as qualifying for pensionary benefit. This provision finds place in Rule 31 of the Pension Rules. The Id.Counsel for the petitioner has stated that applicability of the Board's letter and Rule are limited only to gratuity and not pension. We are unable to share this contention for obvious reason that the expression pensionary benefit occurring therein are wide enough to include pension. Once this position is accepted, there cannot be any manner of doubt that although the petitioner had actually rendered about 14 years of service, only 50% of service rendered after acquisition of temporary status from 30.4.1981 to 19.10.1994 can be counted ~~over~~ as qualifying for the purpose of pension which works to about 6 years and 7 months. Over and above this, the petitioner can be credited with another 11 days service rendered by him after absorption as ^{an} regular Gangman w.e.f. 20.10.1994. Thus the aggregate of service qualifying for pension falls far below the minimum period of 10 years as laid down in ^{rule 18} ~~para 18~~ of the Pension Rules pointed out by the Id.counsel for the petitioner. Therefore, the petitioner cannot claim any pensionary benefits.

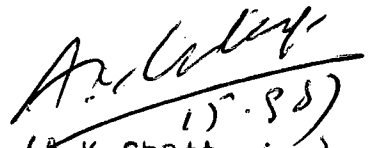
7. With the finding as above, the conclusion must be that the interim order which was passed was really infructuous. ^{Further,} since the respondents were directed to release provisional pension under the rules and as it is found that no provisional pension is admissible under the rules, the necessary conclusion is that the respondents cannot be charged with ^{any} contempt.

8. We also find that since the interim order stated that the provisional pension as may be admissible under the rules should be released, no modification or withdrawal was at all required as the rules did not permit release of provisional pension. Further, this order having been made as an interim measure, no further order is required at the present moment.

9. For foregoing reasons, O.A.no.1198 of 1996 and CPC 112 of 1996 are rejected. M.A.138 of 1997 is disposed of as no order is called for.

10. No order is made as to costs.


(M.S. Mukherjee)
Administrative Member


(A.K. Chatterjee)
Vice-Chairman