

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.0.A.209 of 1996

Present : Hon'ble Mr.D.Purkayastha, Judicial Member.

BANKIM CHANDRA SANTRA S/o
Late B.P.Santra, aged about
58½ years, Ex-Head Typist,
COM's Office, S.E.Railway,
Garden Reach, Calcutta-43,
at present residing at
Vill.Bathanberia, P.O. &
P.S. Kolaghat, Dist.Midnapore.

... Applicant

Vs.

1. Union of India through General Manager,
S.E.Railway, Garden Reach, Calcutta-43.
2. General Manager, S.E.Railway, GRC,
Calcutta-43.
3. Chief Personnel Officer, S.E.Railway,
GRC, Calcutta-43.
4. Chief Operations Manager, S.E.Railway,
GRC, Calcutta-43.

... Respondents

For the applicant : Mr.B.C.Sinha, counsel.
Mr.P.K.Ghosh, counsel.

For the respondents: Mr.P.Chatterjee, counsel.

Heard on : 1.5.1998

Order on : 1.5.1998


ORDER

The short question of law involved in this case is whether the applicant being absorbed as Temporary Cleaner in the scale of Rs.70-85/- u.s.f. 19.3.1965 from the category of casual Khalesi under the project of the respondents, would be entitled to get benefit of qualifying service for the period from 17.6.1965 to 5.1.1972 when he was appointed as Typist on officiating basis, in view of the circular contained in Establishment Sl.No.239/80 dated 31.10.1980 (annexure 'A/4' to the application). According to the applicant, since he was appointed to the post of Temporary Cleaner from the post of Casual Labourer

he is entitled to get such period of service rendered by him for the purpose of pension. According to the applicant, he was appointed as a casual Khalasi under the respondents on 7.4.1963. Thereafter he was absorbed as Temporary Cleaner in the scale of Rs.70-85 by a letter dated 19.3.1965. Subsequently, the applicant was promoted as a Typist in the scale of Rs.110-180/- w.e.f. 17.6.1965 as a step gap measure and continued as such till 5.1.1972. He was again approved and empanelled for promotion as a Typist in the scale of Rs.110-180/- vide CPO's letter dated 13.4.1972 and was posted as a Typist w.e.f. 19.4.1972 in the office of the CME, Garden Reach, Calcutta. He retired from service on attaining superannuation w.e.f. 1.9.1995 after rendering continuous service in the department w.e.f. 7.4.1963 i.e. the date of his appointment.

2. At the time of calculation of pension, the department did not take into account the period of his service from 7.4.1963 to 5.1.1972 as qualifying service. Feeling aggrieved by the said action of the respondents, he has approached this Tribunal for having a direction upon the respondents for counting the period of casual service after the attainment of temporary status on completion of 120 days continuous service as qualifying service for pensionary benefits and other consequential benefits on absorption as a regular Railway employee and to also direct the respondents to recalculate the retiral benefits and other consequential benefits in view of the above and to pay the same to him and also for payment of interest @ 18% p.a. on the amount.

3. The respondents have denied the claim of the applicant by filing a reply where it has been stated that the service rendered by the applicant from 7.4.1963 to 5.1.1972 has not been taken into account for calculation of his retiral benefit as per extant rules. The reason for not taking into account the said period for calculation of his retiral benefits is that the applicant was appointed as a casual Khalasi under the then Divisional Engineer, Rupnarayan Bridge, Kolaghat, w.e.f. 7.4.1963 and on completing 120 days of continuous service, he was granted



pay of Rs.70-85/- as a Cleaner u.s.f. 6.4.1965. Thereafter he was promoted as a Typist in the scale of Rs.110-180/- u.s.f. 17.6.1965 as a stop-gap measure and he continued as such till 5.1.1972. He was again promoted to the post of Typist in the scale of Rs.110-180/- u.s.f. 19.4.1972 under the control of Chief Mechanical Engineer, South Eastern Railway, Garden Reach, Calcutta. He retired from Railway service u.s.f. 1.9.1995 on superannuation and was given all his retiral benefits as per extant rules. The respondents have denied that the applicant is entitled to get the benefit of his casual service rendered in the Rupnarayan Bridge Project prior to his being regularised.

4. Id.counsel, Mr.B.C.Sinha, appearing on behalf of the applicant, firstly has abandoned his claim for counting of his service for the period from 7.4.1963 to 19.3.1965 on the ground that the applicant was admittedly regularised as a Temporary Cleaner from the post of casual labourer in the scale of Rs.70-85/- u.s.f. 19.3.1965. He claims that since he was appointed on regular basis as a Temporary Cleaner u.s.f. 19.3.1965, his service ought to have been counted from 19.3.1965 for the purpose of pension and not from 6.1.1972. Thereby the entire calculation made by the respondents is found contrary to the letter dated 31.10.1972 (annexure 'A/3' to the application) written by the Dy.Chief Engineer (CN), Mahanadi (Br.Proj.Unit)S.E.Railway, GRCs to the Dy.Chief Personnel Officer, S.E.Railway, Garden Reach. Mr.Sinha has drawn my attention to paragraph 1 of the said letter which clearly indicates that the applicant was appointed as a temporary Cleaner in the scale of Rs.70-85/- on 19.3.1965.

5. Id.counsel, Mr.P.Chatterjee, appearing on behalf of the respondents, submits that the arguments put forward by Mr.Sinha cannot be accepted in view of the service record maintained by the department which shows that the applicant was appointed as a stop-gap arrangement to the post of Typist u.s.f. 17.6.1965

and continued as such till 5.1.1972. He has also produced the service book of the applicant, but I find that all the relevant orders stated by the applicant and also mentioned in the reply are not attached in the service book.

6. I have considered the submissions of both the parties and have also gone through the record. In the letter dated 31.10.72 (annexure 'A/3' to the application), it has been specifically stated that the applicant was a casual Khalasi in the Office of the Dy. Chief Engineer and was appointed as a temporary Cleaner in the scale of Rs.70-85/- on 19.3.1965. Hence from 19.3.1965, the applicant is no longer a casual Khalasi. He attained a different status of temporary Cleaner. The statement made in paragraph 1 of the letter dated 31.10.1972 has not been controverted by the respondents by producing any document before me. Therefore, I have no hesitation to hold that the applicant has been absorbed as temporary Cleaner in the scale of Rs.70-85/- followed by appointment to the post of Typist from which post he retired on attaining superannuation u.s.f. 1.9.1995. Id.counsel for the applicant submits that he does not claim benefit of service from 7.4.1963 to 19.3.1965 rendered by the applicant as casual labourer in view of Clause 2 of the circular at annexure 'A/4' of the application. Thereby I am not discussing the entitlement of the said claim as originally made in the application by the applicant. It is a well settled law that promotion from one post to another requires a fresh appointment and expression of the word 'promotion' includes appointment. Since the applicant has been absorbed as temporary Cleaner in the scale of Rs.70-85/- ^{from 19.3.65} thereby it can be safely presumed that he was appointed in the post of Typist from the post of ~~casual labourer~~ ^{cleaner}. Therefore, I do not find any impediment to count the service of the applicant for the period from 19.3.1965 as regular Cleaner till the date of his retirement though he worked as Typist as a stop-gap arrangement. It is found that the applicant rendered service, even though temporary, in the

cadre of Typist till his regular appointment to the post and he earned benefits of some increments in that scale. Since he was absorbed as temporary Cleaner and regularised in the said post w.e.f. 19.3.1965 by the respondents, as is evident from annexure 'A/3' to the application, I am of the view that the entire period from 19.3.1965 till the date of his retirement on superannuation, should be counted as qualifying service for the purpose of calculation of his pension. From the letter dated 31.10.1972 it is found that the applicant has been empanelled to the post of Typist in the scale of Rs.110-180 by a duly constituted selection board and posted in CME's office, GRC vide order dated 13.4.1972. Accordingly, his pay was suggested to be rectified by the Dy.Chief Engineer (CN), Mahanadi. Since I hold that the applicant has been regularly appointed as Cleaner w.e.f. 19.3.1965, thereby the method of calculation of pension of the applicant by forfeiting the period of service rendered by the applicant in the post of temporary Cleaner, cannot be accepted and I hold that the applicant is entitled to get the entire period of service from 19.3.1965 to 5.1.1972 as qualifying service in order to add the same to the rest of the qualifying service till the date of his retirement and his pension should be recalculated accordingly.

7. Id.counsel appearing on behalf of the respondents, Mr.P. Chatterjee, has also raised the question that the applicant is only entitled to get benefit of counting of the period of service as ~~equal labourer~~ ^{regular Typist} after attaining regular appointment in the post of Typist w.e.f. 6.1.1972 ~~on completion of 120 days~~ ^{service as qualifying service for pensionary benefits on} absorption as regular Typist. So he cannot get more than 50% of the service rendered by him from 19.3.1965 to 5.1.1972 in view of the circular dated 31.10.1980 (annexure 'A/4' to the application).

8. I do not find any force in the argument of Mr.Chatterjee in view of Clause 2 of the circular at annexure 'A/4' which

specifically emphasises that the scheme will not be applicable to daily rated casual labour or labour employed under a project.

In the instant case, when the applicant has been appointed as a temporary Cleaner having a definite pay scale of Rs.70-85/-, he is no longer a casual labourer. Thereby the arguments raised by Mr.P.Chatterjee on this score is rejected.

8. In view of the aforesaid circumstances, I direct the respondents to re-calculate the pension of the applicant on the basis of the observations made above and to grant all consequential benefits to him within four months from the date of communication of this order. The applicant is also entitled to get interest @ 10% p.a. on the retiral benefits from the date of superannuation till the date of actual payment.

9. The application stands disposed of accordingly.


(D. Purkayastha)
Judicial Member