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In the Central Administrative Tribunal, Jodhpur Bench,
Jodhpur

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Date of Order : 29.6.2001.

1. O.A.No. 326/1997
2. M.A.No. 164/1999 (OA No. 326/97)

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Gani S/o Shri Jamal Retired Rest House Chowkidar, Merta Road, Jodhpur Division R/o Puram Court Sadho Ka Mohalla, Merta Road, District Nagaur.

.. Applicant.

Vs.

1. Union of India through General Manager, Northern Railway, Headquarter, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Divisional Personnel Officer, Northern Railway, Jodhpur.
4. Divisional Superintending Engineer, Northern Railway, Jodhpur.
5. Assistant Engineer, Northern Railway, Merta Road.

.. Respondents.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

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Mr. Bharat Singh, Counsel for the applicant.

Mr. S.S.Vyas, Counsel for the respondents.

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ORDER

PER MR.A.K.MISRA :

The applicant had moved this O.A. with the prayer that the letter dated 21.3.1996 (Annex A/1) rejecting the representation of the applicant be quashed and the respondents

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be directed to make payment of pension w.e.f. 1.5.1996 to the applicant keeping in view the service rendered by the applicant as temporary Railway servant from 1.12.1958 to 30.4.1996. The applicant had also prayed for a direction to the respondents to make payment of D.C.R.G. counting the services of the applicant from 1.12.1958 to 30.4.1996 with interest on all the amounts of arrear at the rate of 18% per annum.

2. Notice of the O.A. was given to the respondents who have filed the reply to which a rejoinder was also filed by the applicant. The respondents filed a reply to the rejoinder.

3. In this case, a Misc.Application (164/1999) was also moved by the applicant for summoning the documents from the respondents relating to payment of 20,265.40 on the basis of applicant's contention that this amount related to arrears for the period prior to grant of the graded scale. On the other hand, the contention of the respondents is that the arrears related to the period 14.11.1976 to 31.12.1989 when the applicant was granted the graded scale. On consideration of the facts of the case, we are of the opinion that these documents are not required to be summoned from the respondents and the Misc.Application deserves to be rejected.

4. We have heard the learned counsel for the parties and have gone through the case file.

5. It is alleged by the applicant that he was engaged as Fitter on daily wage basis w.e.f. 1.6.1958 and was

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granted the graded scale w.e.f. 14.11.1996 as Fitter and after screening he was posted as Rest House Chowkidar w.e.f. 21.3.1996. The applicant retired on superannuation on 30.4.1996. The claim of the applicant is that his period of casual service right from 1958 be counted and pensionary benefits be fixed accordingly. The respondents committed ^a mistake in not counting the services of the applicant from 1.6.1958 to 13.11.1996.

6. In reply to the aforesaid contention the respondents have stated that the applicant was engaged as a Casual Labour on 20.7.1972 and was continued thereafter from time to time. At the time of his retirement he had only 8 years 8 months and 20 days of service at his credit. The period from 20.7.1972 till his regularisation has been counted as per rules for fixation of his pensionary benefits. The applicant is entitled to count half of this period of graded scale service for pensionary benefits which have been accorded to him. The contention of the applicant that he was engaged on 1.6.1958 and continued till he was granted the graded scale is incorrect. The applicant was engaged only in the year 1972 and the service benefits have been accorded to him according to his date of engagement. All the payments relating to retiral benefits have been correctly made to him.

7. In his rejoinder the applicant admitted that he has received the payment of D.C.R.G. and arrears of salary but he has stated that the arrears of salary ^{are} relating to the period prior to 1976, ~~as being released~~. In reply to the rejoinder the respondents have stated that the payment of arrears of salary did not relate to the period



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as stated by the applicant but the same is related to the period from 14.11.1976 to 31.12.1989 on the basis of ~~the~~ grant of graded scale.

8. During the course of arguments it was stated by the applicant that the calculation of qualifying service has not properly been done by the respondents and the applicant is entitled to pensionary benefits at the revised rate as per rules. On the other hand, it was argued by the learned counsel for the respondents that as per the service sheet the ~~number of days~~ total period of service at the rate of 50% comes to less than 10 years, therefore, the applicant was correctly paid the D.C.R.G. and was rightly denied the pension. In support of this argument a photo copy of the service sheet was presented before us which was taken on record.

9. There is nothing on record to establish the claim of the applicant that he was engaged on 1.6.1958 and continued to be engaged up to 19.7.1972 as contended by him. On the contrary, from the service sheet, it appears that the applicant was engaged on 20.7.1972 as a daily rater and continued in service. He had completed continuous service of 120 days on 13.11.1976 and was granted the graded scale. The applicant has not been able to place on record any material controverting this aspect of his service career as contended by the respondents.

10. We have gone through the calculation of number of days as mentioned in the service sheet and come to the conclusion that counting from 14.11.1976, when the graded scale was granted to the applicant, till he



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superannuated the number of days or total period of service as calculated as per rules does not exceeding nine years in any case and, therefore, the claim of the applicant that he has rendered more than ten years service to the respondents qualifying for pension and enhanced pensionary benefits, is without any force. There is no denial that pension can only be granted to a Government servant who had rendered more than ten years qualifying service. In this case, the applicant has not been able to establish that his qualifying service exceeds ten years so as to entitle him to pensionary benefits. Therefore, the claim of the applicant, in this regard is liable to be rejected.

11. The applicant has also not been able to establish that he was not correctly paid D.C.R.G. Likewise, he has also not been able to establish that the amount of arrears of pay which was paid to the applicant in the year 1991 related to the period prior to 14.11.1976 when he was granted the graded scale. We have no reason to disbelieve the contention of the respondents in this regard that the payment related to the period between 14.11.1976 to 31.12.1989, ~~was not correct.~~

12. In view of the above discussions, we do not find any force in the O.A. The O.A. is liable to be dismissed. Therefore, the O.A. and the M.A. are hereby dismissed with no order as to cost.

(A.P. Nagrath)
Administrative

(A.K. Misra)
Judicial Member

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Received call
made up

Judgment copy
Received
msh 5/7

Part II and III destroyed
in my presence on 24-07
under the supervision of
section officer as per
order dated 19/2/82
Section officer (Records)