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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JODHPUR BENCH, JODHPUR**

**ORIGINAL APPLICATION NO. 123/2003**

Date of decision: this the 21<sup>ST</sup> day of January, 2004

**Hon'ble Mr. J K Kaushik, Judicial Member  
Hon'ble Mr. G R Patwardhan, Administrative Member**

Kishan Chand son of late Shri Karamchand aged 65 years by caste Sindhi resident of Chanod Gurashon Ki Haveli, Near Gurdwara, Anand Cinema, Sojati Gate, Jodhpur

(Ex. Retired Sales Man, Workshop Canteen, Northern Western Railway, Jodhpur) under Dy. C.M.E. (W) North Western Railway, Jodhpur.

.....Applicant

(By Advocate Mr. H.K. Purohit, for applicant)

**VERSUS**

- (1) Union of India through General Manager, North Western Railway, Head Quarters Office, Jaipur
- (2) Dy. Chief Mechanical Engineer (Workshop), North Western Railway, Jodhpur.
- (3) Assistant Personnel Officer, Dy. C.M.E. (W) Office North Western Railway, Jodhpur.

.....Respondents.

(By Advocate Mr. Salil Trivedi, for respondents)

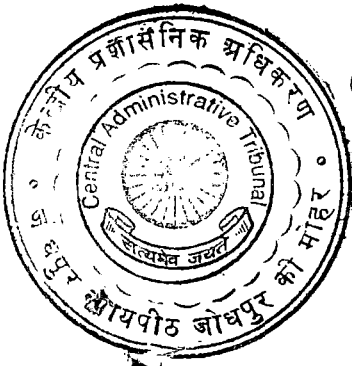
**ORDER**

**BY J K KAUSHIK, JUDICIAL MEMBER:**

Shri Kishan Lal has filed this Original Application for seeking the following reliefs:

"(1) by an appropriate writ, order or direction, the respondents may kindly be directed to issue Post Retirement Complementary Passes (two sets) as usual which they were giving since 1/2/1996 till October 2002.

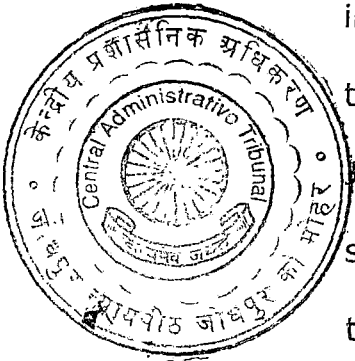




(2) by an appropriate writ order or direction, the respondents may kindly be directed to count the period with effect from 11/6/1956 to 19/10/1980 as a qualifying service for pensionary benefits (50% of this period).

(3) by an appropriate writ, order or direction, the respondents may kindly be directed to re-cast the pensionary benefits by taking into account the qualifying service of the humble applicant of more than 33 years approximately."

2. The brief facts of the case, necessary for resolving the controversy involved, are that the applicant was initially appointed a Tea Vendor by the Vice President, Canteen Managing Committee of the Railway Workshop, Jodhpur on 10.02.1956. His pay was fixed at Rs. 35/- p.m. plus Rs. 10/- D.A. On completion of 120 days, he attained the temporary status and till 19.10.1980 he worked as temporary status casual labour. On 20.10.1980, he came to be regularised as Salesman in the Workshop Canteen, Jodhpur. He continued to work on this post till he attained the age of superannuation on 31<sup>st</sup> January 1996. He has rendered a total of 28 ½ years qualifying service for grant of pensionary benefits after taking into account the 50% of the service rendered from 11.02.1956 to 19.10.1980 i.e. service before his regularisation.



3. The further facts of the case are that as per the rules in force a Group 'C' employees is entitled for one set of complementary pass in case he has rendered more than 20 years of service but less than 25 years service. In case one has rendered more than 25 years of service he would be entitled for two sets of such passes. The applicant has not been given the

*[Handwritten signature]*

benefit of the service rendered during the period from 11.02.1956 to 19.10.1980 either for grants of complementary passes or for the counting in the same qualifying service in pensionary benefits.

4. The Original Application has been filed on diverse grounds mentioned in para 5 and its sub-paras and we shall deal with the one stressed by the learned counsel for the applicant, a little later.

5. The respondents have resisted the claim of the applicant and have filed a detailed counter reply wherein it has been averred that the applicant has been treated as a regular employee in view of the judgement of the Hon'ble Supreme Court w.e.f. 22.10.1980. He was never granted temporary status from 11.02.1956 to 21.10.1980 since he was not in the employment of the Railway Administration and there is no mistake on the part of the respondents. The P.P.O. has been issued correctly. He is also not entitled for the complementary passes since he has rendered less than 20 years of service. The grounds has been generally denied.

6. An exhaustive rejoinder has been filed on behalf of the applicant almost reiterating the facts and grounds raised in the Original Application and certain documents indicating that the applicant was in service prior to declaring him as a Government servant, have been annexed thereto.

  
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7. With the consent of the learned counsel for the parties, the case was taken up for final disposal at the stage of admission. We have heard the learned counsel for the parties and have carefully perused the records of this case.

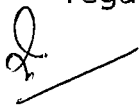
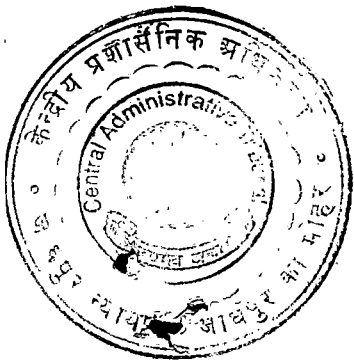
8. Both the learned counsel for the parties have reiterated their pleadings. The learned counsel for the respondents has apprised this Tribunal regarding certain subsequent developments having close proximity and applicability to the instant case. One of the communications is the Railway Board Establishment Circular No. 180/2003 wherein a decision has been taken that the service rendered by the Canteen employees prior to their regularisation date i.e. 22.10.1980 shall be counted for the purpose of eligibility for post retirement complementary passes. The same is taken on record. As regards the counting of the service prior to the date of treating the canteen employees as regular was already being counted for the purpose of grant of pensionary benefits. In this view of the matter, no debate is required on the issue that whole of the service including the service rendered prior to treating the canteen employees as the regular employee of the Railways would count for the pensionary as well as the other benefits.

9. Now, the only dispute that remains for adjudication is regarding as to how much is the qualifying service of the applicant. As far as the service of the applicant after treating him, as a Railway servant is concerned, it is clear that he has






rendered about 16 years of service since he was declared as Railway servant w.e.f. 22.10.1980 and retired on 31.01.1996. Therefore, the basic issue would be only regarding the period from 11.02.1956 to 19.10.1980. On this the applicant has averred that he has been in continuous employment for the same and in respect of the same he has placed on record his appointment letter and certain other documents i.e. free railway passes indicating that the applicant was in employment on 31.12.1964, 1969, 1984 wherein the passes have been issued to the family of the applicant. Besides this he has also stated that he has been in continuous employment of the Railways. The respondents in the reply have contended that no record is available with them regarding the past service of the applicant and the said period is under dispute. During the argument, the learned counsel for the respondents has drawn our attention to one of the communication dated 17.12.2003 wherein the observation of the Accounts Officer have been indicated in the case of the applicant and it has been said that in absence of any documentary evidence the period from 11.02.1956 to 21.10.1980 cannot be considered as qualifying service and the applicant should be asked to give in writing in regard to the service rendered by him and that should be duly verified by him and he shall also submit the documents in support thereof. We find that the applicant has categorically submitted in the Original Application that he has worked continuously from 11.02.1956 to 19.10.1980 and this averment has been duly verified. As regards the documents, the learned counsel for the applicant has

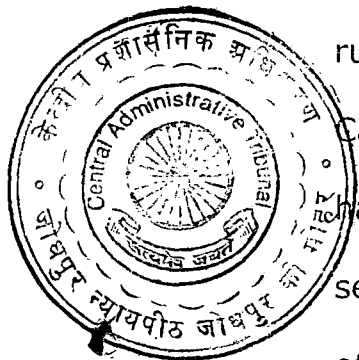



made clean breast of the facts and has submitted that whatever documents were available with the applicant he has already submitted alongwith the O.A./rejoinder and he was treated as a Railway servant on the basis of his working in the Canteen, therefore, he has fulfilled the requisite condition and the past service in Canteen should be counted for the qualifying service. In our considered opinion, once the applicant has been declared as a Government servant in view of his working under statutory canteen and that was the basis of treating him as a Railway servant, the applicant has submitted his appointment letter as well as certain passes, which have been issued to him during the service. We feel that the same would have been sufficient evidence for proving his service prior to treating him as a Railway servant. Especially, the Railways have not produced any evidence disapproving version of the applicant despite the fact that it was a case of statutory canteen and under the control of the Railway Administration. We find there is no necessity to remand the case to the respondents and can resolve the controversy ourselves since complete material is available with us. If that be so, the inevitable conclusion would be that he was in employment during the period from 10.02.1956 to 19.10.1980 and the period would be counted as qualifying service.

10. The next question is regarding as to grant of the temporary status and counting the past service as qualifying service. It seems that the understanding of both the learned counsels has been that 50% period of the service rendered after




grant of temporary status would count for the qualifying service. In the instant case, it was vehemently submitted on behalf of the respondents that since the applicant was not at all considered as a Railway employee during the said period, the question of grant of temporary status would not arise at all. We are in total agreement with the reasoning put forward by the learned counsel for the respondents that there was no question of grant of temporary status during his past service. However, we also observe that it is the total past service rendered by the applicant that would count for the qualifying service and on this count the learned counsel for the applicant is bit miser in making prayer since he is striving only for grant of 50% of the total service after grant of the temporary status. In our considered opinion, there is no question of grant of 50% of service since the rule relating to the casual labour are not at all applicable to the Canteen employees since it is not a case where a casual labour has been absorbed. In this view of the matter, it is the total past service that will be count for qualifying service and not the 50% of service. In this view of the matter, it is the total past service that would count for the qualifying service. We have not been shown any contrary provision in this regard.



11. If the total past service is taken into account, the total service rendered by the applicant would be about 40 years which is much more than even 33 years and therefore the applicant would be entitled the full pension as well as the two

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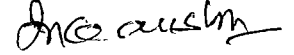
complementary passes and therefore there is a force in the submission of the learned counsel for the applicant.

12. The upshot of the aforesaid discussion is that the Original Application has ample force and substance. The same stands allowed. The respondents are directed to re-calculate his pension and grant him all consequential benefits including two complementary passes. This order shall be complied with within a period of three months from the receipt a copy of this order.

There shall be no order as to costs.



( G.R. Patwardhan )  
Administrative Member



( J.K. Kaushik )  
Judicial Member

Kumawat

R. Curry  
6-2-04

Stephens  
Adm  
11/2/04

mail H  
in my file 23/10/13  
SECTION OFFICER (RECORDS)  
order dated 18/10/13

*J.R. Green*  
Section officer (Records) 23.10.2013