

7/5

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O. A. No. 180/Jodhpur/2010

Date of decision: 7.08.2012

CORAM :

HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER
HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER.

Durga Ram S/o Shri Taru, by caste Jat age 51 years, Ex. Trollyman, resident of V&PO Sudsar, Tehsil Dungargarh, District Bikaner.

: Applicant

[By Mr. H.K.Jain, Advocate]

Versus

1. Union of India through General Manager, North Western Railway, Jaipur.
2. The Divisional Personnel Officer, North Western Railway, Bikaner.
3. Assistant Divisional Engineer, North Western Railway, Ratangarh, Bikaner Division.

....Respondents

[By Mr. Vinay Jain Advocate]

ORDER

[PER HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER]

The above application is filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the relief of direction to the respondents to grant yearly increments from the date of grant of temporary status and to pay the difference of wages of the period from 24.07.1975 to 15.02.1979 with interest at market rate.

2. Further relief of direction to fix the pay of the applicant accordingly in the regular service from the date of absorption after granting yearly increments from 24.07.1975 and pay the difference of wages arising till the date of retirement.



7/6

After the revision of the pay, the pension and all other post retrial benefits of the petitioner may be redetermined, revised and paid accordingly with interest.

That the retrial benefits of the petitioner may be redetermined, revised and paid after taking into account 24 years of service of the applicant.

Direction to give benefit of leave.

Direction to give all the consequential benefits to the applicant from the grant of temporary status i.e. 24.07.1975 till date, with interest.

3. We have heard the learned counsel for the respective parties.

4. The brief facts of the case according to the applicant are, the applicant was appointed as a Casual Labour under PWI, Bikaner, he attained temporary status as per Rule 2001 of the Indian Railway Establishment Manual, Volume II. On 23.07.1975 he attained temporary status. On 15.02.1979, the applicant was regularly selected and appointed on the post of Gangman in the regular pay scale of Rs. 200-250. On 2.1.1991, he became legible for temporary status i.e. 24.07.1975 till he was made regular i.e. 15.02.1979, the applicant was paid only daily wages, he was entitled for the pay scale of temporary employee. On the representation submitted by the applicant, the applicant was granted temporary status and the difference of wages from the period 24.07.1975 to 19.04.1978 amounting to Rs. 2,252/- that was paid on 02.01.1991 as per their

7/1

calculation. The temporary status was given to the applicant w.e.f. 24.07.1975 but, the benefit of the same was not completely given to the applicant. The difference of amount of wages was not calculated properly and the difference of wages was given only till 18.04.1978 instead of 15.02.1979. The yearly increments, leave benefits and other consequential benefits on attaining the temporary status were also not given to the applicant. The applicant submitted his application for voluntary retirement w.e.f. 31.08.2003, the same was accepted by the respondents. The applicant submitted his notice for demand of justice on 23.02.2010 but, no response, hence, the applicant filed the present O.A. for the reliefs as prayed for. The case of the applicant is continuing cause of action and hence, there is no delay in filing the O.A. for the reliefs as prayed for.

5. After service of notice, the respondents have filed the written statement and vehemently opposed the O.A. It is submitted that the applicant was appointed as a Khalasi (Casual Labour) on 24.07.1975, as per his Casual Labour Card and other records available in the Department, it is wrong to say that the applicant was appointed on 16.03.1975. The applicant's date of birth is 15.04.1958, as per rules minimum age for appointment is 18 years. The applicant should be appointed on 15.04.1976 after completion of the age of 18 years. The applicant attained temporary status on 23.07.1975 is wrong because he did not complete 120 days continuous service due to broken



18

period i.e. 29.03.1975 to 07.04.1975 and otherwise also as date of birth of the applicant is 15.04.1958 and after attaining the age of 18 years, he became eligible for appointment i.e. on 15.04.1976. Therefore, as per rules the date of appointment and working period i.e. 15.04.1976 should be based on his casual labour service from 15.04.1976 to 12.08.1976 and should complete 120 days on 01.08.1976. The applicant remained absent for 581 days i.e. from 13.08.1976 to 14.02.1979, the balance period comes to 10 months 25 days. The grade of Khalasi at that time was Rs. 196-232 and as per rules, in this grade the applicant was not entitled for further increment. The applicant was engaged as Gangman w.e.f. 15.02.1979 in the grade of Rs. 200-250. The applicant was not eligible for temporary status which has been made to him w.e.f. 24.07.1975 to 19.04.1978 is to be recovered which comes to Rs. 2,252/- as he has not completed 120 days of regular service as Casual Labour.

6. Therefore, if applicant was appointed prior to the said date, then same is of no avail because he was not eligible to be appointed. At the time of retirement the benefit which was granted was rightly granted. It is also submitted that the annual increment on attaining temporary status was rightly given and the calculation which was done was also done correctly. Applicant should be called upon to prove that how calculations which has been made, the action department is perfect.



7/9

7. When temporary status was granted to the applicant from that date calculation was made and accordingly annual increment was granted; same was also carried forward on regularization of service. It is also submitted that applicant was in the grade of Khalasi and he was in the grade of Rs. 192-232; therefore, in this grade he was not entitled for further increment and therefore, applicant was engaged as Gangman w.e.f. 15.2.1979 in grade Rs. 200-250. The benefit which was granted to the applicant has rightly been granted. Now, after retirement and that too after crossing limitation of filing of O.A. now applicant is raising voice his pay scale was not properly fixed. When applicant was in service he never raised voice hence now on the ground of promissory estoppel also applicant is not entitled to submit at this juncture.

8. All the benefits, which was granted at the time of retirement was granted as per rules. It is also submitted that even if version of the applicant is accepted then cause of action accrues on 31.8.2003, therefore, now at this belated stage applicant cannot submit his claim that annual increment and the pay scale was not correctly given. Hence on the ground of limitation O.A. filed by the applicant is not maintainable and hence deserves to be dismissed.

9. That submission made in ground (E) of O.A. it is submitted that the letter dated 23.6.1992, which has been placed by the applicant is not applicable in the case of applicant. Therefore, same is not applicable.



190

10. We have carefully considered the submission of the learned counsel for the respective parties and perused the documents available on record.

11. It is an admitted fact from either side that the date of birth of the applicant is 15.04.1958 whereas, he was appointed on 16.03.1975. As per rules, minimum age of appointment is 18 years, therefore, the applicant should be appointed on 15.04.1976 after the completion of age of 18 years. The respondents have given the calculation of the service on the applicant as per Annex.A/2 that the applicant served the Department on casual basis w.e.f. 16.03.1975 to 19.04.1978. According to the said document, from 16.03.1975 to 23.07.1975 the applicant worked 120 days.

12. The grievance of the applicant is, to direct the respondents to grant yearly increments to the date of grant of temporary status and to pay the difference of wages of the period from 24.07.1975 to 15.02.1979. The counsel for the applicant submits that the service of the applicant has been granted as temporary status for that he is asking for the increment. To substantiate his contention that he has been granted temporary status, the applicant has not produced any order of granting temporary status. The applicant is relying on the Railway Board's letters dated 13.07.1973 and 21.03.1974 for grant of temporary status. The applicant is relying only the orders for grant of temporary status but he has not produced such order for which he is asking for the increments for the said period.



9

The learned counsel for the applicant submits if the direction is given to the respondents they will consider the relevant Railway Board's order for grant of temporary status from 24.07.1975 to 15.02.1979 and they will grant the increments, the difference of wages, revision of pay and pension and other consequential benefits. The learned counsel for the respondents though they have not raised any legal issue of jurisdiction of this Tribunal the relief cannot be claimed three years earlier to the establishment of this Tribunal. They contended in the written statement that the applicant was minor as on the date of the engagement and are denying the applicant attained temporary status on 23.07.1975 but they have contended that the applicant has not completed 120 days continues during the period in between 29.03.1975 to 07.04.1975.

13. After careful consideration of the submission of the counsel from the either side and also the submissions made in the pleadings, it is evident the applicant is asking for a direction for the grant of temporary status from 24.07.1975 to 15.02.1979, he is asking for grant of increments, revision of pay and pension and other retrial benefits. The counsel for the applicant submits if the applicant is granted pension for the said period that will be recurring cause of action and there is no delay in approaching the Tribunal. The applicant superannuated on 31.08.2003. At the time of retirement calculation the respondents have correctly calculated the pensionary



92

benefits and it was rightly paid to the applicant. The applicant is not entitled for grant of temporary status w.e.f. 24.07.1975, as on this date, he was not eligible to be appointed. The applicant admits the date of birth, if his service is calculated 18 years from the date of his date of birth, then the applicant was to be appointed on immediately on attaining majority i.e. 15.04.1976.

14. We have to see whether this Tribunal has jurisdiction to decide the relief of the O.A.

15. After perusal of the above mentioned facts, we are of the view that the applicant is asked for the relief of grant of temporary status w.e.f. 24.07.1975 to 15.02.1979 and yearly increments thereon and other retrial benefits. The applicant has filed the present O.A. on 09.07.2010. According to the reliefs the cause of action arose on 15.02.1979. Though, the respondents have not contended that the O.A. is barred by limitation and the Tribunal has no jurisdiction under Section 21 (2) of the Administrative Tribunals Act. They have raised an objection in the reply statement that the O.A. is not maintainable on the ground of limitation. The issue of jurisdiction has not been raised. Since it is a legal issue though the respondents have not raised, we have considered the facts of the case and the provision under Section 21 (2) of the Administrative Tribunals Act. It is relevant to extract Section 21(2) which is as under :

"21(2) Notwithstanding anything contained in sub-section (1), where -



(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or, as the case may be, Clause (b), of sub-section (1) of within a period of six months from the said date, whichever period expires later".

16. On the facts and circumstances of this case, the cause of action arose in 1979, the grievance in respect of the application had arisen during the period of three years immediately preceding the date on which the jurisdiction and powers of the Tribunal becomes exercisable in respect of the matter relates. In the present case, there is no impugned order, the applicant is aggrieved only for grant of yearly increments of the year 1975-1979. Section 14 of the Administrative Tribunals Act deals with the jurisdiction, powers and authority of this Tribunal. The said provision came into force w.e.f. 22.1.1986. Earlier to the said date i.e. three years preceding to the said date, this Tribunal cannot entertain the reliefs claimed by the applicant's department. The Administrative Tribunals Act came into force w.e.f. 01.07.1985. Considering the facts of this case and the provisions of Section 21 (2) of the Act (supra), we are of the considered view, cause of action arose to the OA in respect of the redressal to the grievance of the applicant was only between 24.07.1975 to 15.02.1979. This Tribunal cannot entertain the reliefs of the applicant under the said provision. Accordingly, the applicant failed to establish his

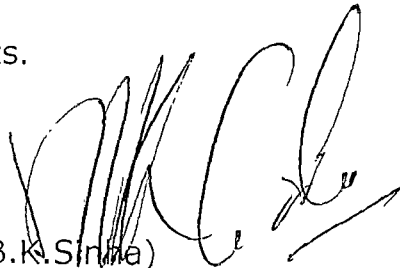


20

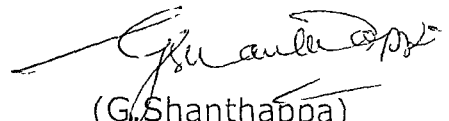
case for grant of the reliefs as prayed for in the O.A. The respondents have justified in their reply statement that the applicant has failed to convince, the Tribunal has jurisdiction to entertain that the applicant's has cause of action in the O.A.

17. For the foregoing reasons, we are of the considered view that this Tribunal has no jurisdiction to entertain this O.A. under Section 21(2) of the Administrative Tribunals Act, 1985.

18. Accordingly, the O.A. is dismissed with no order as to costs.



(B.K. Sinha)
Administrative Member



(G. Shanthappa)
Judicial Member

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~~14~~
13/8