

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 199 OF 2007

Dated the 8th February, 2008

CORAM:-

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN

EM Cherian,
Retd. Senior Gangman (Trackman),
Southern Railway, Kottayam,
Son of VC Mathew, Residing at
Valya Veliath, Kallisserry PO,
Mazhukeer, Alappuzhya District.

.. Applicant

[By Advocate: Mr MP Varkey)

-Versus-

1. Union of India,
represented by General Manager,
Southern Railway, Madras-600 003.
2. Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum-695 014.
3. Senior Divisional Finance Manager,
Southern Railway,
Trivandrum-695 014.

....Respondents

[By Advocates: Mr Varghese John for Mr. Thomas Mathew, Nellimoottil)

This application having been heard on 10th December, 2007 the
Tribunal delivered the following -

ORDER

The applicant, who was a Senior Gangman/Trackman of Southern Railway, voluntarily retired from service on 30.4.2006, has filed this OA aggrieved by the incorrect reckoning of his

qualifying service for pension. According to him his date of appointment and qualifying service as recorded in Annexure-A2 are not correct. He has contended that he is entitled to count half of his temporary status service from 7.9.72 to 30.12.83, full service from 31.12.83 to 30.4.06 and 5 years weightage service for voluntary retirement, all of which would come to 33 years. Hence he is entitled to get reckoned his qualifying service as 33 years and to get the increased pensionary benefits.

2] Respondents have filed reply and additional reply. The applicant has also filed rejoinder and additional rejoinder.

3] Let me first take up the claims regarding counting of half of his temporary status service from 7.9.72 to 30.12.83. According to the applicant he was initially engaged as Casual Labour Gangman under the Permanent Way Inspector, Mavelikkara (Open Line) from 7.3.72, as shown at Annexure-A4 and he continued as such without break and got temporary status and authorised scale of pay w.e.f. 7.8.72 as per the Rules and Guidelines. He was appointed as Substitute Gangman by Annexure-A3 order dated 5.10.83 and by Annexure-A4 order dated 11.10.84 the applicant and many others after due process of selection were appointed as temporary Gangmen against the vacancies available as on 31.12.83. According to the respondents the applicant got temporary status w.e.f. 23.10.78 only as per the Annexure-R1 Office order dated 11.6.79 as the applicant has not produced any other documents claiming temporary status from 7.9.72. As per record, i.e. Annexure-

R1 order, the applicant and others were given temporary status w.e.f.23.10.78 and this order was not challenged by the applicant for all these years and he cannot take a different plea at this stage. It has been further stated that casual labour service from the date of temporary status only can be counted as qualifying service for pension and the attempt of the applicant to say that he is entitled for temporary status from an earlier date at this stage cannot be entertained.

4] I am inclined to agree with this contention of the respondent as Annexure-A4 by which the applicant based his claim is an empanelment order issued in 1984 in which the applicant's name figured at serial No.61 and the first part of the said order reads that "casual labourers/substitutes working under the territorial jurisdiction including construction Organization under AEN/QLN. Sub Division of TVC Division a re-screened and empanelled by a duly constituted Screening Committee for appointment as temporary Gangman (Group-D) in the scale of Rsw.200-250/-". By the time this order was issued, the applicant had been granted temporary status after coming to the Open line. Hence, it would not show him as a Casual labour in the Construction Project. But Annexure-R1 order clearly contains the identification Number of the applicant corresponding to that Annexure-A4 and the letters 'CN' against his name showing that he was working in the Conversion Project and it further makes it clear that at the time of granting temporary status the applicant was drawing 1/30th of the


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scale rated daily wages from the time of taking over by Open line. The entry on page 3 of the Service Book confirms this position. In the light of this no further averment is necessary to prove that the applicant was included in Annexure-R1 was in the Construction project prior to the service qualifying for temporary status. The applicant came to be granted temporary status only after coming into Open Line and if the claim that the applicant is continuing from 1972 onwards on the Open line is correct, he should have challenged the Annexure-R1 at the time of issue and therefore having accepted the position and not having contested the same the applicant's averments to the contrary are totally baseless and imaginary. In fact, he has suppressed the existence of Annexure-R1 orders granting temporary status. This plea of the applicant deserves to be rejected and I do so.

5] Regarding the second contention that his full service from 31.12.83 to 30.4.2006 has not been taken into consideration, the respondents stated that the applicant was granted temporary status with effect from 23.10.78 and he was appointed as a Gangman w.e.f. 22.8.84 on being empanelled for the post. Hence his service from 22.8.84 to 30.4.06 i.e. 21 years, 8 months and 9 days was taken after reducing the non qualifying service for computation of pension. However, it is now noticed that as per Annexure-A3 document viz. order dated 5.10.83 appointing him as Substitute Gangmen, his service from 5.10.83 is liable to be accounted as 100% qualifying service and so it is proposed to revise his qualifying service as

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28 years instead of 27 1/2 years already sanctioned. To that extent the respondents have accepted the claim of the applicant. However, the respondents have treated one year 10 months 15 days as non-qualifying service during this period and 9 months, 6 days of non-qualifying service for the period of temporary status. The applicant has contested this and has stated that the entries in the service record were never shown to him as per the Rules and arbitrary entries made by the respondents, which are not signed by him cannot be accepted. The respondents have pointed out that the applicant was absent / on extraordinary leave for 276 days i.e. 9 months and 6 days during the period from 23.10.78 to 21.8.84 and also for a period of 675 days i.e. 1 year, 10 months and 15 days during the period from 22.8.84 to 30.4.06. These periods of absence / extraordinary leave are not liable to be accounted as qualifying service for pensionary benefits and they are to be treated as non-qualifying for pensionary benefits. The applicant has, however, denied the statement and stated that these periods were either treated as absence or leave without pay and if the relevant records are produced it can be very well verified. The applicant has also cited certain examples supported by letter dated 13.12.96 and Annexures-A6 and A7, by which medical certificate had been produced showing that he was under treatment for 22 days w.e.f. 13.12.96 in Government Hospital at Tiruvalla due to lightning shock. He was declared fit to join duty and for a non-safety category job by letter dated 18.11.98, and the Medical



Superintendent, Trivandrum, Southern Railway recommended light job for the applicant. The applicant was later kept under suspension from 20.7.02 to 7.12.02 without pay or imposing any punishment and he has no idea whether this period was counted for pension. In view of these specific averments of the applicant, the respondents were directed to produce the leave account and service record of the applicant. The Respondents have produced a list of dates on which the applicant had absented himself from duty and hence treated as unauthorized absence and also the records as directed.

6] I have heard the learned counsel for the parties and perused the records produced particularly with reference to the specific periods mentioned by the applicant. The period covered by Annexure-A6 and A7 documents from 13.12.96 has been included in the non qualifying service though he had produced medical certificate showing that he was under treatment in Government Hospital at Tiruvalla. The respondents have contended that the applicant had not intimated this to the authorities and the applicant had not followed the rules in the Indian Railway Medical Manual for availing leave on sickness and further stated that no Railway Medical Authority has certified the sickness for the said period. Annexure-6 shows that the letter dated 13.12.96 was issued by the Station Master, Southern Railway, Tiruvalla informing that the applicant was under treatment under the Government Hospital at Tiruvalla from 13.12.96 and Annexure-A7 the Medical Certificate was issued by the Medical Officer, Government Hospital, Tiruvalla

recommending the period of absence from duty. Annexure-A8 was issued by the Medical Superintendent, Southern Railway, Trivandrum recommending a light job for the applicant as he was continuously under treatment from 4.5.98. As stated by the applicant following the lightning strike he was continuously sick and was under medical treatment in different spells in the Railway Hospital. Since the leave files/ records have not been produced it is not possible to come to any definite conclusion whether the period from 13.12.96 to 31.12.96, which has been treated as non qualifying service was covered by medical certification by the Railway Authorities or not. According to Rule 21 of the CCS Pension Rules analogous to the Railway Pension Rules, all leave during service for which leave salary is payable and all extraordinary leave granted on medical certificate shall count as qualifying service. Only extra ordinary leave treated as *dies-non* can not be counted as qualifying service. Hence I am of the view that this period has to be further verified by the Respondents with reference to the Rule position and arrive at a finding whether the extra ordinary leave credited to the account of the applicant were actually covered by medical certificate. It is further noticed that no service verification as required under the Rule 5 years before the retirement or at least 2years before the retirement as stipulated under the Rules with intimation to the applicant has been done. I find merit in the contentions of the applicant that he was not aware of the period and the entries made in the service record as non-qualifying service for pension purposes

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and he become aware of this fact only when averments have been made by the respondents to the effect that 951 days had been excluded from his as not qualifying for pension.

7] Another spell of service which has been excluded is the period of suspension from 20.7.02 to 7.12.02. Here again the Rule position is that the time passed by the Government servant under suspension shall count as qualifying service where on conclusion of enquiry he has been fully exonerated or the suspension is held to be wholly unjustified; in other cases, the period of suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declares at the time that it shall count to such extent as the Competent Authority may declare. In Government of India's decision communicated by the Department of Personnel & Training OM No.11012/15/85-Estt(A) dated the 3rd December, 1985 it has been held that the suspension should be held wholly unjustified when the proceedings end with minor penalty. It is seen from the service record that the applicant has been awarded only minor penalties if that be so his suspension should be held to be wholly unjustified and the said period also is to be counted as qualifying service. The Respondents are required to review this period also in relation to the outcome of the disciplinary proceeding in which he had been placed under suspension.

8] The third limb of the averments relates to the claim of additional weightage on account of voluntary retirement. As the

respondents have already admitted that he is eligible for additional weightage and that has been given, it is not necessary for me to go further into the matter.

9] The applicant has also made an additional prayer for payment of Gratuity payable for the casual labour service which has not been reckoned for the pensionary benefits. The respondents have submitted that the applicant had not made any request or given any option as provided for in the Railway Board's letter dated 30.6.2000 and so it could not be considered. This contention is not at all acceptable as the Railway Board's order dated 30.6.2000 clearly enjoins the respondents to take suo moto steps to examine all the past cases on the basis of records available and settle the claims accordingly. It has also been mentioned in the said letter that the Railway Administration shall extend all assistance to the retired as well as the serving Railway servants to exercise their option judiciously in order that the option exercised is advantageous to them. Hence it is the bounden duty of the respondents to assist the applicant in filing his request and to exercise option so as to get maximum advantage from the order. Considering the above position, the Respondents cannot escape from the responsibility they have to take necessary steps to get his option and process the case of the applicant for grant of gratuity as per the instructions contained in the order dated 30.6.2000.

10] In the result, this OA is disposed of with the following directions:

- (i) The respondents while re-fixing the qualifying service for pension by correcting the error of calculating the regular service from 5.10.1983 also reconsider the exclusion of the periods of non qualifying service counted as extra ordinary leave with reference to the rule position stated above;
- (ii) Similar review shall also be made for the period under suspension which has also been excluded from the qualifying service;
- (iii) Payment of Gratuity under the Gratuity Act shall be undertaken in accordance with the instructions contained in Railway Board's order dated 30.6.2000.

This entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

Sathi Nair
(Sathi Nair)
VICE CHAIRMAN