

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO.311/2010**

**Dated this the 16<sup>th</sup> day of May , 2011**

**C O R A M**

**HON'BLE Mrs.K. NOORJEHAN, ADMINISTRATIVE MEMBER**

- 1 V.Lawrence, Khalasi Helper Grade-II (Retd.)  
Mangalore, R/o II, Indira Gandhi Street  
Nadavmedu, Erode.
- 2 N.Subramania Pillai, Safaivala Grade.-III,  
Southern Railway, Cannannore,  
residing at Erode.

**Applicants**

**By Advocate Mr Siby J.Monippally**

**Vs**

- 1 Union of India represented by  
Chief Personnel Officer  
Southern Railway, Chennai..
- 2 The Senior Divisional Personnel Officer  
Southern Railway, Palghat Division, Palghat..

**Respondents**

**By Sr.Advocate Mrs. Sumathi Dandapani &  
Advocate Mr.Thomas Mathew Nellimoottil.**

**The Application having been heard on 4.3.2011 the Tribunal  
delivered the following:**

**ORDER****HON'BLE Mrs.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

Brief facts of the case as stated by the applicants are that both the applicants entered the service of the Railways as Commission bearer on 30.6.1960 and 11.6.1986. In terms of the judgment of the Hon'ble Supreme Court of India in W.P. 191/1986, in the case of T.I.Madhavan Vs. Union of India, the applicants were granted the status of salaried Commission Bearers and paid salary in conformity with the regular employees w.e.f 1.11.1986 and regularised according to their seniority. It is submitted that the applicants were granted regularisation on 3.8.2005 and 8.7.2005 respectively. They retired on superannuation without any pensionary benefits on 31.12.2005 and 31.3.2006 respectively. The case of the applicants is that as per the Railways Notification dated 4.12.2009 they are entitled to get 50% of their earlier services reckoned as qualifying service for retiral benefits. Aggrieved by the denial of the same applicant filed this OA.

2 The respondents have filed reply relying on rule 103(43) of the Indian Railway Establishment Code Vol.I and submitted that the service of the applicants as Commission bearers can not entitle them to claim the service benefits under para 2 of Railway (Services) Pension Rules, 1993. Therefore such service rendered by them as Bearer on commission basis cannot be

74

counted for pensionary benefits. The applicants were originally engaged on contract basis therefore there is no employer-employee/Master-Servant relationship for the period from 30.6.61 and 11.6.1986 till their regularisation. A special reference was given to Annx.R1 appointment order which stipulates the condition that their service as Railway servant will commence from the date of their joining the post and they are eligible for the New Pension Scheme introduced from 1.1.2004.

3 The applicants have filed rejoinder reiterating the facts as stated in the OA and produced the original receipt of security deposit and copy of order dated 12.5.2005 for perusal.

4 Heard the learned counsel for the parties and perused the records.

5 The submission of the applicant is that the period of service as Commission Bearers subsequently followed by proper regularisation entitles them for treating the period prior to regularisation as regular or such period could be treated as temporary status which would entitle them to 50% of the service being reckoned for the purpose of pensionary benefits. On the contrary the respondents submitted that the rules do not provide for extending such benefits.

6 The issue involved in this OA was already under

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consideration before this Tribunal in OA 440/03, in the case of C.P. Sebastian Vs. Chief Personnel Officer, Southern Railway & Ors and by order dated 24.2.2006 this Tribunal held as under:

"In our considered opinion, this OA can be disposed of by directing the respondents to count half the service rendered by the applicant as Commission/Salaried Bearer before his regular absorption for the purpose of pension and other terminal benefits on the analogy of the provisions contained in IREC that half the service rendered by the casual labourers who have joined on temporary status till regular absorption on the post are entitled to count for pensionary purposes. Accordingly the applicant is entitled to count half the period of his service as Commission Bearer from 22.1.81 till his absorption on 8.7.99. The respondents shall pass appropriate orders granting the above benefit to the applicant within a period of three months from the date of receipt of this orders. The actual monetary benefits shall be made available to him within one month thereafter. There is no order as to costs."

7 This order was under challenge before the Hon'ble High Court of Kerala in WP(C) 15756 of 2006(S) and by judgment dated 20.3.2009 the Hon'ble High Court upheld the order of the Tribunal. It is also submitted by the counsel for the applicant that the SLP filed against the order was also dismissed.

8 In view of the above position, I follow the order of this Tribunal in OA 440/2003 and direct the respondents to count half the service rendered by the applicants as Commission/Salaried Bearer before their regular absorption for the purpose of pension and other terminal benefits on the analogy of the provisions contained in IREC that half the service rendered by the casual labourers who have joined on temporary status till regular absorption on the post are entitled to count for pensionary purposes. Accordingly the applicants are entitled to count half the period of his service as Commission Bearer

74

from 30.6.1961 till his absorption on 3.8.2005 in the case of first applicant and from 11.6.1986 till his absorption on 8.7.2005 in the case of second applicant. The respondents shall pass appropriate orders granting the above benefit to the applicants within a period of three months from the date of receipt of this orders. The actual monetary benefits shall be made available to them within one month thereafter. There is no order as to costs.

  
(K. NOORJEHANY)

ADMINISTRATIVE MEMBER

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