CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.335/2013

Thursday this the 5th day of March 2015

CORAM:

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Lakshmy,
D/o.Kuttichamy Poosari,
Trackman, Southern Railway, Quilandy.
Residing at Vallikode, Kinawalloor P.O., Palakkad. ...Applicant

(By Advocate Mr.M.R.Hariraj)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Madras – 3.

2. Senior Divisional Personnel Officer,
Southern Railway, Palakkad. ...Respondents

(By Advocate Mr.K.M.Anthru)

This application having been heard on 28th January 2015 this Tribunal on 5th March 2015 delivered the following :

ORDER

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicant, a Track Woman, working in the Palakkad Division of Southern Railway is aggrieved by Annexure A-6 communication dated 4.2.2013 rejecting her request for voluntary retirement under the Liberalised Active Retirement Scheme For Guaranteed Employment For Safety Staff (LARSGESS) and seeking appointment to her son Shri.Saravanan. The relevant portion of Annexure A-6 reads :

" .....Your service with all consequential benefits effected from 7.7.1998 only as per the judgment of Hon'ble Tribunal/Ernakulam in O.A.No.187/2007. Accordingly your pay as Trackwoman in scale Rs.2610-3540 has been re-fixed with effect from 7.7.1998. Hence, you have a qualifying service of 13 years only.

In terms of Railway Board's letter No.E(P&A)1-2010/RT-2 dated 24.9.2010, Trackman in the age group of 50-57 years and having qualifying service of 20 years are only eligible to seek voluntary retirement under LARSGESS.

But, you have yet to complete 20 years of qualifying service. Since, you are not having 20 years of qualifying service on the cut off date i.e. 1.7.2011, your request for voluntary retirement under LARSGESS cannot be considered."

2. According to the applicant, she started service with the Railway as a daily waged casual labourer with effect from 5.3.1975. After she was dis-engaged on 21.6.1980 she had to undergo several litigations both in the Industrial Tribunal and also in the High Court and later before this Tribunal to get back her employment and she was finally re-engaged on 4.10.2005 and was granted temporary status with effect from 1.2.2006. While granting her temporary status with effect from 1.2.2006 since her date of initial engagement was shown as 4.10.2005. Hence she filed O.A.No.187/2007 before this Tribunal seeking correction of her date of initial engagement, date of continuous working and the date of conferring temporary status. The said O.A was allowed by Annexure A-1 order directing the respondents to treat the date of initial engagement and date of continuous engagement as 5.3.1975 and 7.7.1998 respectively. The relevant portion of the Annexure A-1 order reads as follows :

"4. .....The other undisputed fact is that, the I.T vide its order dated 3.4.1998 had directed the respondents to re-engage her under the same service conditions as she had been engaged for the period preceding 21.6.1980. The respondents did not comply with those directions but challenged them before the Hon'ble High Court initially by

O.P.No.26548/1998 and later on by Writ Appeal No.1172/2003. Bot the OP and the WA were dismissed. Of course, the finality of the case as far as the respondents are concerned was reached only by the judgment in the aforesaid Writ Appeal passed on 25.2.2005. But the consequence of the dismissal of the said Writ Appeal is the revival of the award passed by the I.T dated 3.4.1998 from the same date. Since the said award was published on 6.6.1998, in terms of Section 17-A of the IT Act, it had to be implemented within one month ie. by 7.7.1998. Had the respondents not challenged the award of the I.T in the High Court and the matter was not dragged till 2005, they were duty bound to implement the award latest by 7.7.1998 and the applicant would have been re-engaged accordingly. Since the Writ Appeal has been dismissed and I.T award has survived, the applicant is very well within her right to contend that her continuous date of appointment should have been treated as 7.7.1998 i.e. after one month from the date of publication of the award of the I.T in terms of Section 17A of the Industrial Disputes Act, 1947. However, the fact is that the applicant was re-engaged only on 4.10.2005 and in terms of the existing rules, she is entitled for grant of temporary status only after 120 days of continuous service. Since the applicant has not actually worked from 7.7.1998 to 3.10.2005, it is not possible that she could be granted temporary status prior to a date from which she has been engaged after the award has been passed by the I.T. However, I do not find any justifiable reasons for the respondents in delaying the re-engagement of the applicant as a casual labour till 4.10.2005 even after the Hon'ble High Court has dismissed the W.A.No.1772/2003 on 25.2.2005.

5. In the above facts and circumstances of the case, the O.A is partly allowed. The respondents shall treat that the applicant was initially engaged as Daily Wage Casual Labour w.e.f 5.3.1975 as admitted by themselves in the counter affidavit. They should also treat that the applicant was deemed to have been re-engaged w.e.f. 7.7.1998 after the award of the I.T ie. after one month from the date of its publication of the award on 6.6.1998. However, there cannot be any valid dispute about the date of temporary status already granted to the applicant by the Annexure A-7 Office Order dated 6.3.2006 as she was re-engaged only from 4.10.2005. I, therefore, direct the respondents to revise the Annexure A-7 order suitably so as to declare that applicant was initially engaged as a casual labour from 5.3.1975 and she was deemed to have been re-engaged w.e.f 7.7.1998 with all consequential benefits except arrears of pay. The respondents shall issue necessary orders in this regard within a period of two months from the date of receipt of a copy of this order."

3. According to the applicant since there is a finding of this Tribunal in Annexure A-1 declaring that she was initially engaged as casual labourer from 5.3.1975, she would have had the requisite number of years for considering her request for voluntary retirement under the LARSGESS and for appointment to her son.

4. Some time after submitting Annexure A-2 application for voluntary retirement under the LARSGESS and for appointment to her ward, applicant had approached this Tribunal with O.A.No.1064/2012. It was disposed of by Annexure A-5 order dated 23.11.2012 with a direction to Respondent No.2 herein to consider the said application within three months. It is in compliance with the Annexure A-5 order of this Tribunal the impugned Annexure A-6 communication in this O.A has been issued by Respondent No.2.

5. Respondents contest this O.A stating that though the applicant was initially engaged as casual labourer on daily rate of wages from 5.3.1975 to 21.6.1980 her engagement was not continuous and there were intermittent breaks in service. The award dated 3.4.1998 of the Industrial Tribunal, Palghat directing to re-engage the applicant was challenged by respondents in Writ Petition before the High Court. The said Writ Petition and Writ Appeal filed subsequently were dismissed on 25.2.2005 and thereafter the applicant was re-engaged on 4.10.2005 as daily rated casual labourer. On completion of 120 days of continuous service, she was granted temporary status with effect from 1.2.2006. Subsequently she was screened and empanelled for absorption and was absorbed as Trackman in the Engineering Department with effect from 13.10.2006. As per the Annexure A-1 order of this Tribunal in O.A.No.187/2007 filed by the applicant she was deemed to have been re-engaged with effect from 7.7.1998. This

Tribunal in Annexure A-1 order had held that since the applicant had not actually worked from 7.7.1998 to 3.10.2005 it is not possible that she could be granted temporary status prior to a date from which she has been engaged after the award has been passed by the Industrial Tribunal. In the circumstance, according to the respondents, applicant can be granted temporary status only from 1.2.2006 and her regular appointment was from 13.10.2006. Since one requires 20 years of qualifying service as Gangman/Trackman for availing of the benefits under the LARSGESS, the applicant does not have the requisite qualifying service. After reckoning her service from 7.7.1998 to the date of her application vide Annexure A-2 ie. 4.6.2011 the qualifying service of the applicant works out to 13 years only. Therefore, the Respondent No.2 rejected her request vide Annexure A-6 communication. It is further stated by the respondents that *a fortiori* applicant cannot claim to count her qualifying service from 5.3.1975 .

6. Heard Shri.M.R.Hariraj, learned counsel for the applicant and Shri.K.M.Anthru, learned counsel for the respondents.

7. Shri.M.R.Hariraj submitted that the fellow employees of the applicant got regularisation from earlier dates whereas the applicant after a long drawn litigation was regularised only from 1998. Shri.K.M.Anthru submitted that from 1975 she was only a daily rated casual labourer and that

she was not given temporary status at that time. He further submitted that as per the Railway Establishment Manual, a casual labourer shall be eligible to count only half the period of service rendered by him after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits and that this benefit will be admissible only after their absorption in regular employment. He further submitted that a daily rated casual labourer will not be entitled to this benefit. He pointed out that in the instant case as per Annexure A-1 this Tribunal had declared that applicant should be deemed to have been re-engaged with effect from 7.7.1998 and therefore, she was given temporary status only with effect from 1.2.2006 and was given regular appointment as Trackman with effect from 13.10.2006. According to him the applicant, therefore, does not have the requisite number of qualifying years for availing of the benefits of LARSGESS.

8. Learned counsel for the applicant Sri. Hariraj, on the other hand, referring to a decision of this Tribunal in O.A.No.474/2008 - a copy of which is marked as Annexure A-7- submitted that 50% of the past service as casual labour could be treated as qualifying service for pensionary purposes. However, on a perusal of the relevant provisions of IREM, Vol.II (para 2005) 1990 Edition, it can be seen that only those casual labourer who have attained temporary status

on completion of prescribed days of continuous employment before regular absorption is entitled to count half the period of service rendered by him/her after attaining the temporary status can be treated as qualifying service for the purpose of pensionary benefits.

9. In the instant case, although the applicant was initially engaged on 5.3.1975 as casual labourer and continued to be so till 21.6.1980, there is nothing to show that she had attained temporary status during that time. As per the provisions of the IREM, 50% of the service rendered by a casual labourer after attaining temporary status would be reckoned for pensionary benefits provided he/she had continuous service after attaining temporary status till regularisation. As per Annexure A-1 order of this Tribunal aplicant was lared to have been re-engaged on 7.7.1998. Nevertheless, she was granted temporary status only with effect from 1.2.2006. For the purpose of pensionary benefits she can claim half the period of temporary status as qualifying service. LARSGESS Scheme also is a type of retirement scheme. However, in the case of LARSGESS the qualifying service prescribed is 20 years. This Tribunal has no power to alter or vary the qualifying service prescribed by the employer for enjoyment of the benefits under the LARSGESS.

10. Going by the declaration of this Tribunal in Annexure A-1 order that the applicant is deemed to have been re-engaged with effect from 7.7.1998, it becomes clear that the applicant had not put in 20 years of service as on the date of Annexure A-2 application under the LARSGESS Scheme. The aforesaid date of declaration of continuous engagement of the applicant has not been interfered with by the Hon'ble High Court either in the W.P.(C) No.10750/2008 filed by the railway or in W.P.(C) No.1069/2008 filed by the applicant, challenging Annexure A-1 order.

11. In view of the above facts and circumstances, it goes without saying that applicant has not been able to convincingly prove that she has the requisite period of qualifying service for availing of the benefits under the LARSGESS. Hence, the O.A is only to be dismissed.

12. In the result, the O.A is dismissed. No order as to costs.

(Dated this the 5th day of March 2015)

U.SARATHCHANDRAN
JUDICIAL MEMBER

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