

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.338/2007

Monday, this the 29th October 2007

C O R A M:

HON'BLE DR.K.B.S.RAJAN , JUDICIAL MEMBER

**Y.George (Retd.Colony Gangman)
S/o Yohennan, Binu Vilasam, Kura P.O,
Via Chengamanad, Kollam District.**

(By Advocate Mr.M.V.Thamban)

Applicant.

Vs.

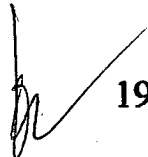
- 1 Union of India represented by the Secretary,
Ministry of Railways, New Delhi.**
- 2 The Divisional Railway Manager (Personal)
Madurai Division, Southern Railway, Madurai.**
- 3 The General Manager, Headquarters Branch
Southern Railway, Madras**
- 4 The Divisional Personnel Officer,
Southern Railway, Madurai.**

(By Advocate Mr.K.M Anthru)

Respondents.

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

ORDER

 The applicant was initially engaged as casual labourer in April 1971 and was granted temporary status w.e.f. 22.6.78. When he was

medically examined in 1984, he was de-categorised w.e.f. 26.3.84 retrospectively by order dated 7.6.84. The applicant later on filed OA 1023/1990 challenging his discharge and the Tribunal allowed the OA vide order dated 24.12.91 to the following effect:

"6. In the facts and circumstances, we allow the application, set aside the impugned order dated 7.6.84 at Annexure-II and direct the respondents to consider and reinstate the applicant to casual service in the lower medical category for which he is found fit. He will continue to enjoy the temporary status and for the purpose of seniority he will be placed in the seniority list of the category to which he is found fit and absorbed on the basis of the date of his medical examination on 26.3.84, i.e. He will be senior to all those who were appointed in that category on or after 26.3.84. Since the applicant has not rendered any service after 26.3.84 and did not move this Tribunal till 20.11.1990, he will be entitled to back wages for a period of three years only immediately prior to 20.11.90 and thereafter till he is reengaged with reference to the category of post to which he is absorbed. There will be no order as to costs".

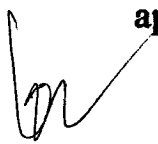
In pursuance of the above, the applicant was reinstated vide Annx.A2 order dated 25.9.92 whereby the applicant was empanelled w.e.f. 11.8.92 against the vacancies of Gangman/Khalasi in an Engineering Department. The applicant subsequently retired on attaining the age of superannuation w.e.f. 30.11.06.

2 While working out the period of qualifying service, the respondents have taken into account only regular service from 11.8.92 till the date of superannuation as could be seen in Annx.A3. Correspondingly, the P.P.O was prepared vide Annx.A4 & A5. The applicant has challenged the aforesaid Annx.A3 to A5, as according to him the period of temporary service to the extent of 50% qualifies for

pension purposes and, in addition, as regards his regular service the same should date back from 20.11.87, the period from which he had been granted full pay and allowances of Gangman/Khalasi.

3 The respondents while furnishing their reply fairly conceded to the extent that, erroneously, the applicant's temporary service was not taken into consideration which according to them qualifies for 7 years to be counted as qualifying service. Thus, the PPO was revised from erstwhile 13 years of qualifying service to 21 years of qualifying service and revised PPO issued vide Annexure to the counter. The applicant has filed rejoinder in which he has stated that even the Revised Pension Payment Order has not taken into account the exact qualifying service, as according to the applicant, the qualifying service comes to 25 years instead of 21 years.

4 The counsel for the applicant submitted that as per the directions of this Tribunal vide Annx.A1 order dated 24.12.91, the applicant was made entitled to continue to enjoy the temporary status and for the purpose of seniority he would be placed in the seniority list of the category to which he was found fit and absorbed on the basis of the date of his medical examination on 26.3.84. In other words, the applicant would be senior to all those who were appointed in that category on or after 23.6.84. According to the applicant Annx.A2 does not specifically indicate that the said order was passed in pursuance of the order of this Tribunal, much less confirming that the applicants seniority for regular appointment was worked out on the basis of the above order of the



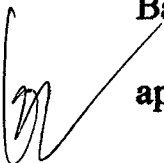
Tribunal. According to the applicant, Annx.A2, if independent of the above direction, would mean that his seniority for regular appointment was not considered as per the direction. Further, it has been stated by the applicant's counsel that the fact that the respondents have made the payment of salary to the applicant w.e.f. 1987 as per the Court order would go to show that at least from 1987 precisely from 20.9.87, the applicant's service should be considered as regular.

5 The counsel for the respondents submitted that the vacancies of Gangman having arisen on 31.12.1991, the DRM had approved a panel for provisional employment w.e.f. 11.8.92. As such that was the date the applicant has been treated as regular. According to the counsel for the respondents, the qualifying service has been worked out as per rules.

6 In his rejoinder to the argument of the counsel for the respondents the counsel for the applicant submitted as under:

a) If the records are available with the respondents, (which presumably should be available as otherwise detailed counter cannot be possible) they should verify now whether the applicant's seniority was worked out w.e.f. 26.3.84 while granting regular appointment vide Annx.A2 order. If not the applicant should be made eligible for regular appointment from the date his immediate junior was regularised.

b) The Revised Pension Payment Order which was sent to the Bank bears an endorsement "not for payment" and as such the applicant is not paid the revised pension by the Bank. The



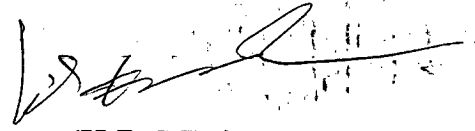
respondents should be directed to ensure payment of the revised pension by the bank within a reasonable time.

7 Arguments were heard and documents perused. Though the applicant's seniority was to be ante-dated w.e.f. 1984, it is not exactly clear whether the same was done. Records if available with the respondents would throw light in this regard. The applicant, in fact, should have been well advised to ascertain the same at that point of time when he was empanelled as per Annx.A2 order. At this distant of time in case the records are not available nothing can be done in the matter. However, since details of the casual employment temporary status as well as regular appointment are available in the counter they must have been based upon certain records available with the respondents and if there is a possibility of ascertaining that the applicant's seniority for regularisation was fixed as per the order dated 24.12.91, the applicant may be informed accordingly and if not, effort should be made to locate details of the immediate junior of the applicant whose date of regularisation would be considered as the date of regularisation of the applicant and the period of qualifying service worked out.

8 As regards direction to the State Bank of Travancore, the counsel for the respondents submitted that endorsement 'not for payment' is made in all the copies other than the original and the original addressed to the bank was routed through FA&CAO and in all expectation the same should have by now reached the State Bank of Travancore. The counsel for the applicant, on instruction, stated that on verification from

the Bank indicate non-receipt of any other communication. Respondent No.3, namely DPO is advised to liaise with FA&CAO to ensure that the original of the PPO dated 10.8.07 is transmitted to the State Bank of Travancore, Quilon so that the applicant could get his revised pension.

9 It is appreciated that in case the records are available for verification as to the date of regularisation of the junior as stated above, the same will be a time consuming process, as such, sufficient length of time should be made available in this regard. A period of six months is granted to conduct this exercise and decision taken upon the availability and otherwise of the records. The OA is disposed of with the above directions. No order as to costs.



(K.B.S.Rajan)
Judicial Member

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