

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.339/2001

Dated Monday this the 4th day of March, 2003.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

C.P.Venugopalan
S/o M.V.Krishnan Nambiar
Teacher Grade II
Railway High School
Palakkad.
Residing at 272/A, Railway Colony
Palakkad.

Applicant

[By advocate Mr.M.R.Rajendran Nair]

Versus

1. Union of India represented by
Secretary to the Government of India
Ministry of Railways
New Delhi.
2. The General Manager
Southern Railway.
Madras.
3. The Chief Personnel Officer
Southern Railway
Madras.
4. The Senior Divisional Personnel Officer
Palakkad Division
Palakkad.
5. The Headmaster
Railway High School
Palakkad.
6. The Deputy Director
Education
Kasargode.
7. The State of Kerala represented by
The Secretary to the Govt. of Kerala
Ministry of Education
Secretariat
Thiruvananthapuram.

Respondents.


[By advocate Mrs.Sumathi Dandapani for R1 to 4] .
[By Mr.Ranjith.A. (GP) for R6&7]

The application having been heard on 4th March, 2003, the
Tribunal on the same day delivered the following:

O R D E R


HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant was first appointed as a teacher in the Government High School, Chelora on 10.10.1977 and he continued there till 5.12.77. He was next appointed in Government High School, Belur Thayanur on 9.1.1978 and he served there till 31.3.78 provisionally. The next appointment of the applicant on provisional basis was in the Government High School, Madayl on 19.9.1978 where he served till 3.11.78. The next provisional appointment of the applicant as a teacher in the Government High School, Kallissery was on 4.11.1978 where he served upto 31.3.79. The applicant was appointed on provisional basis on 16.7.1979 in GHS, Azhikode which was an aided school and he continued there till 4.10.1980. He was thereafter appointed in GHS, Thrikarpur on 20.11.1981 on regular basis and he continued there till 6.6.83. While so, he applied for appointment in the Railways as a teacher and he was appointed as such on 15.6.1983. The applicant sought counting of the service rendered by him under the State of Kerala and the Aided Schools. By the impugned order A-5 dated 9.2.2000, the service of the applicant under the State Government from 20.11.1981 to 6.6.83 was counted as qualifying service for pension while the period before that was not reckoned on the ground that there was no provision for reckoning the provisional service and the aided school service. Aggrieved by that, the applicant has filed this application seeking to set aside A-5 order to the extent it denies the applicant the benefit of reckoning the past service rendered by him under the State Government prior to 20.11.1981 as qualifying service for railway pension and for a declaration that the entire past service rendered by the applicant under the State Government is liable to be reckoned as qualifying service for railway pension.



2. On behalf of respondents 1 to 4, a reply statement was filed in which they resist the claim of the applicant on the ground that the rules do not permit counting of provisional service. They also contend that without the contributions from the State Government towards leave salary and pension, the services of the applicant under the State Government cannot be counted. Respondents 6 & 7 in their reply statement contend that as the applicant did not complete his probation under the State Government, his services cannot be counted.

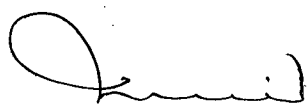
3. We have gone through the pleadings and all the material placed on record and have heard Shri Hariraj, the learned counsel of the applicant and also of the counsel of respondents 1 to 4 and of respondents 6 & 7.. According to the provisions of Rule 28 of the Railway Servants Pension Rules, the service which qualifies for State pension can be counted as qualifying service for Railway pension if the State Government employee is appointed in the Railways. In terms of G.O.(P)/543/89-Fin. dated 20.11.1989 of the State of Kerala, the provisional service with or without break is liable to be reckoned as qualifying service for pension. Although this Government Order dated 20.11.89 has been cancelled by order G.O.(P)/3116/98/Fin. dated 15th December 1998 with effect from 1.10.1994 it has been clarified in G.O.(P) No.2357/99-Fin. dated 25.11.99 of the Government of Kerala that the service would be counted upto 30.9.94. Since the applicant's service under the State of Kerala was prior to 30.9.94, the provisional service rendered by the applicant has to be reckoned as qualifying service under the Railways. The service rendered by teachers in aided schools also is qualifying service, as per Rule 14 (e) of K.S.R. Part III. From A-8 letter of the Deputy



Director of Education, Kasargode dated 20.6.91 addressed to the Divisional Officer, Southern Railway Divisional Office, Palghat, it is evident that the entire service of the applicant was pensionable, according to the State Government Rules. The requirement of pro-rata contribution for pension and gratuity by State Government and Central Government has been done away with by Government of India, Ministry of Finance O.M. No.14(5)/86/TA/1112 dated 5th December 1989 under Rule 14 of the CCS Pension Rules available at page 33 of Swamy's Pension Compilation 2000 Edition, which has been further clarified under the same Rule at page 37 of the same Compilation. Therefore the rule position is that aided school service without break, which is qualifying service for pension in the State Government service has to be reckoned as qualifying service for a Railway employee without any contribution towards leave salary, pension etc.

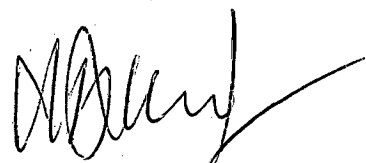
4. In the light of what is stated above, we find no merit in the contention of the respondents. Therefore, this application is allowed and the impugned order A-5 is set aside to the extent it denies to the applicant the benefit of service prior to 20.11.89 as qualifying service for pension. We direct the respondents to treat the entire period covered by A-8 as qualifying service for pension in the case of the applicant. No order as to costs.

Dated 4th March, 2003.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER

aa.



A.V.HARIDASAN
VICE CHAIRMAN