

**Central Administrative Tribunal
Lucknow Bench Lucknow**

**Original Application No.126/2005
This, the 06th day of February 2009**

HON'BLE MR. M. KANTHAIAH, MEMBER (J)

Rudra Dutt Tiwari (R.D. Tiwari) aged about 64 years S/o late Sri Rameshwar Tiwari R/o-404/2 Sirkawali Gali, Chaupatiya, Lucknow.

...Applicant.

By Advocate:- Shri Brijesh Kumar.

Versus.

1. Union of India through its Secretary, Ministry of Railway, New Delhi.
2. Vit Salahkar Avam Mukhya Lekha Adhikari/ Pension, New Delhi (FA & CAO Pension Suspense, New Delhi.
3. Chief Workshop Manager, Loco Motive Workshop, Northern Railway, Charbagh, Lucknow.
4. Workshop Electrical Engineer, Northern Railway, Charbagh, Lucknow.


... Respondents.

By Advocate:- Shri S. Verma.

ORDER

BY HON'BLE MR. M. KANTHAIAH, MEMBER (J)

The applicant has filed this OA with a prayer to issue direction to the respondents to re-fix the pension and gratuity of the applicant, according to the total services rendered by



him in the department i.e. 36 years and accordingly make payments of full pension and gratuity with interest at 18% per annum.


2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that none of the grounds in the OA are tenable in the eyes of law and thus, OA is liable for dismissal.

3. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents and reiterated his pleas in the OA.

4. Heard both side.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. It is the case of the applicant that he was selected and appointed on the post of Khallasi on regular basis w.e.f. 8.11.1964 at Loco Motive Work shop (Electrical) department, Charbagh, Lucknow and worked for 36 years. Admittedly, he was retired on 3.11.2000 on attaining the age of superannuation. Ann-A-1 is the service certificate; it shows that the applicant rendered 32 years of service. The respondents have fixed pension and gratuity of the applicant basing on such 32 years of service. Ann.-A-2 Dt. 01.12.2000 is the copy of Pension Payment Advice (PPA).



7. It is the case of the applicant that he worked for more than 36 years in the department but in the service certificate, it was wrongly mentioned as 32 years only. It is also his case that the Provident fund has been deducted from the salary of the applicant since 24.2.1967 till the date of his retirement and in support of it, he relied on provident slips and also made representations covered under Annexure-4, 5 and 6 but there was no response from the respondents for fixation of full pension and gratuity with total service for more than 36 years and as such, he was constrained to file this OA.

8. The respondents have filed Counter Affidavit, stating that the applicant was engaged as casual labour (Casual Khallasi) on 8.11.1964 and after working requisite number of working days as casual labour (Khallasi), he was appointed as temporary Khallasi w.e.f. 20.4.1974. Thus, the applicant worked as casual labour for the period of 8 years 5 months and 12 days and half of the said period was counted for the purposes of computing qualifying service for the post retiral benefits.

9. The short question involved in this OA is whether the applicant was appointed on 8.11.1964 or from 20.04.1974.

10. The applicant has not filed any of the documents to substantiate his claim that he was appointed as Khallasi on regular post on 08.11.1964 and at his request, when summoned

the service record of the applicant in which, it has been mentioned that the applicant was appointed as temporary Khallasi w.e.f. 20.04.1974. Thus, the same is not helpful to the case of the applicant. In the absence of any appointment order and other certificates and further when his service records shows that he was appointed as temporary Khallasi w.e.f. 20.4.1974, it is not at all possible to treat his regular appointed w.e.f. 08.11.1964 as contended by him. Admittedly, the applicant was appointed on the post of Khallasi as casual labour in initial stage and after working requisite number of days, he was appointed as temporary Khallasi. Without filing any of the documents and without mentioning of his appointment on 08.11.1964 in the service record, treating the date of appointment from 08.11.1964 is not at all maintainable.


11. But, it is the case of the applicant that the respondents started deduction of provident fund from his salary since 24.2.1967 regularly till the date of his retirement and without his regular appointment as Khallasi, the question of deduction of provident fund does not arise and on that ground he relied on deduction of PF from his salary w.e.f. Feb. 1967.

11. But, the policy instructions in connection of rights and privileges admissible to the casual laborers as laid down in Para 2501 to 2514 Chapter XXV of IREM and fresh instructions

circulated reveals, casual laborers on getting temporary status also eligible to contribute to the PF on completion of one year continuous service from the date of getting temporary status and as such, mere payments of PF does not confer any right to treat him as regular employee and on that ground, the applicant is not entitled to satisfy that he was regularly appointed w.e.f. 08.11.1964, for taking account of his service as 36 years and to dispute the service record only w.e.f. 20.4.1974.

12. In view of the above circumstances, there are no merits in the claim of the applicant, for re-fixation of pension and gratuity on 36 year of service and as such, OA is liable for dismissal.

In the result, OA is dismissed. No costs.


(M. KANTHAIAH)
MEMBER (J)
06.02.2009

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