

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 30.06.2014.

Pronounced on 10th July 2014

Original Application No.473/2009

**Hon'ble Mr. Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)**

Bram Anand aged about 85 years S/o Late Chandria Prasad Jigyasu, R/o 360/193, Matadeen Road, Sahadatganj, Lucknow. (Died)

- 1/1. Anand Kumar aged about 63 years.
- 1/2. Avnish Kumar aged about 54 years.
- 1/3. Amresh Kumar aged about 49 years.
- 1/4. Amitabh Kumar aged about 46 years.

All sons of Late Bram Anand R/o 360/193, Matadeen Road, Sahadatganj, Lucknow.

-Applicant.

By Advocate: Sri Amit Verma holding brief for Sri A. Moin.

Versus.

Union of India through,

1. General Manager, North Eastern Railway, Gorakhpur.
2. General Manager (Personnel) North Eastern Railway, Gorakhpur.
3. Chief Electrical Engineer, North Eastern Railway, Gorakhpur.

-Respondents.

By Advocate: Sri B.B. Tripathi.

O R D E R

By Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

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(i). to quash the impugned order dated 14/19.09.08 passed by the Respondent No.2 as contained in Annexure A-1 to the O.A. so far as it pertains to the treating the period of service from 1.8.52 to 21.8.53 as dies-non.

(ii). to direct the respondent to treat the period of service from 1.9.52 to 21.8.53 as qualifying service for the purposes of pension and other benefits and fix the qualifying service of the applicant accordingly with all consequential benefits including arrears of pension.

(iii). to direct the respondents to pay interest @ 18% p.a. w.e.f. 30.6.82 till date of actual payment i.e. 22.9.09.

(iv). to direct the respondents to pay the cost of this application.

(v). any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed."

2. During the course of hearing the applicant had expired on 04.04.2013 and through a substitution application his legal heirs have been substituted as applicant nos.1/1, 1/2, 1/3 and 1/4. The brief facts of the case are that the applicant had served in the Department of Agricultural Engineering Office of the Chief Agricultural Engineer, Kanpur, Ministry of Agriculture, U.P. from 15.6.1950 and served till 31.07.1952. Later on this department was abolished and merged with the Irrigation branch of the Public Works Department, U.P. and the applicant was retrenched. The applicant took up employment with the Electricity Suppliers, Etah under P.W.D., U.P. prior to its amalgamation with the Uttar Pradesh State Electricity Board w.e.f. 01.09.1952 to 21.08.1953. The applicant joined the Electricity Inspectorate under U.P. Government on 22.08.1953 and joined Railways in April, 1954. He retired as Divisional Engineer on 30.06.1982 after 28 years of service with the Railways. He did not

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received full pension as the qualifying service was 33 years. The relevant rules provide for counting of temporary service under the State and Central Government for pensionary purposes. But, the respondents did not give the benefits of his past service as detailed above. Consequently, the applicant filed O.A.No.597/1996. By an order dated 08.10.2004, the Respondent No.1 was directed to decide the matter of the applicant with regard to the counting of qualifying service. Copy of the order of the Tribunal is at (Annexure A-4). Aggrieved against the same, the respondents preferred Writ Petition No.325 (SB) of 2005 before the Hon'ble High Court. This writ petition was dismissed by the judgment and order dated 02.01.2008 (Annexure A-5). Thereafter, by the impugned order dated 14/19.08.2008 by which the services rendered by the applicant from 15.06.1950 to 31.07.1952 and 22.08.1953 to 23.07.1954 has been counted as qualifying service while the period from 01.09.1952 to 21.08.1953 has been treated as dies-non under Rule-43 of Railway Services (Pension) Rules, 1993.

3. The applicant has challenged the impugned order on the ground that no reason has been assigned by the respondents as to why the period of service from 01.08.1952/01.09.1952 (This appear to be a typographical error) to 21.08.1953 has been treated as dies-non and the same is against the letter and spirit of the earlier order of this Tribunal upheld by the Hon'ble High Court in Writ Petition No.325 (SB) of 2005.

4. The respondents have filed their Counter Affidavit fundamentally stating therein that the applicant was

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factually not in service w.e.f. 01.08.1952 to 21.08.1953 as per his own admission made in the affidavit at Annexure CA-1. On the basis of facts submitted by the applicant as well as from the record received from the State of U.P. the break period between the above two services i.e. the Department of Agricultural Engineering & Electricity Inspectorate, U.P. i.e. from 01.08.1952 to 21.08.1953 has been done by the competent authority in terms of Para-43 of the Railway Services (Pension) Rules, 1993. This broken period has been treated as dies-non by the competent authority.

5. The applicant has filed his Rejoinder Affidavit stating more or less same things as earlier stated by him in his OA. The applicant has also produced the letter dated 14.12.1994 (Annexure-R-1) by which the General Manager (P) stated that the applicant was employed for the period w.e.f. 01.09.1952 to 21.08.1953 with Electricity Supply Company, Etah, who was than a private licensee of State Government Department of P.W.D. and was later merged with UPSEB. The copy of this letter had been filed by the applicant in the earlier O.A.No.597/1996. The respondents have willfully chosen to ignore the same.

6. We have heard the learned counsel for both the parties and perused the entire material available on record.

7. In this case the respondents have given the benefit of the service rendered by the applicant from 15.06.1950 to 31.07.1952 from 22.07.1953 to April 1954 under State Govt. , U.P but have treated the period 01.08.1952 to

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21.8.1953 as break in service on the ground of not having been worked. This appears to be contrary to the schedule of employment supplied by the applicant with his rejoinder affidavit in R-1. This case is determined in terms of Rule-43 of Railway Services (Pension) Rules, 1993 (Annexure CR-1) and in terms of which they stated that pension entitlement of the applicant has been decided. The relevant portion of the same is as follows:-

"Para-43.

Condonation of interruption in service:-

(1). (a). In the absence of a specific indication to the contrary in the service book, an interruption between two spells of Government service rendered by a railway servant under Government including Civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service."

(b). Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.

(2). Where the break in service of a railway servant is condoned, he shall, unless specifically provided to the contrary in the sanction for such condonation, refund any gratuity, special contribution as well as Government contribution to Provident Fund, if any, with interest thereon, received by him in respect of his service before the break"

8. It is clear from the rules that interruption between two spells of Government service is automatically considered unless the same is caused by resignation, dismissal or removal from service etc. In this case the respondents produced nothing to show that the interim period of 1.9.1952 to 21.8.1953 was the result of resignation, dismissal or removal any of the debarring clauses. Moreover, the copy of order dated 14.12.1994 makes it clear that during period between 1.9.1952 to 21.8.1953 the applicant was employed with Electricity Supply Company, Etah, who was then a private licensee

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of PWD and was later merged with UPSEB. Even if period treated as break in "government" service the same, not being debarred in terms of Rule 43 (1) (b).

9. In view of the above the impugned order dated 14/19.08.2008 is hereby quashed. The matter is remanded to the respondents to refix the pension after condoning the break in service. Arrears of pension so fixed may be paid to the legal heirs of the deceased employee. However, the legal heirs of the deceased employee cannot seek to gain any interest on pension amount as the pension is basically granted to the Government employee in recognition of his past service and after his demise in the form of family pension to his dependent family members, which does not include adult son more than 25 years of age. Therefore, no interest is due to the applicants. The above exercise shall be completed within a period of four months from the date of receipt of copy of this order. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

N.R. Agrawal
(Navneet Kumar)
Member (J)

Amit/-