

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No: 145/2010

This the 4th day of October, 2013.

HON'BLE SHRI NAVNEET KUMAR, MEMBER(J)

Nadir Ali, aged about 67 years, son of Late Shri anwar Ali, resident of Takia Aazad nagar, balamau, Post-Kachhauna, Hardoi.

Applicant

By Advocate Sri Praveen Kumar

Versus

1. Union of India through the General Manager, Northern Railway Baroda House, New Delhi.
2. the Divisional Railway Manager, Northern Railway, Moradabad.
3. the Block Inspector (Construction), Northern Railway, Moradabad.

Respondents

By Advocate Sri B. B. Tripathi

(Reserved on 24.9.13)

By Hon'ble Sri Navneet Kumar Member (J)


The present O.A. is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- “1. To count the casual period from January, 1963 to 8.2.1973 i.e. total 3685 days to wards qualifying services and revise the pensionary benefits to the applicant.
 2. To pay arrears of pensionary benefits along with interest @ 18% per annum after revision of pensionary benefits also release with held NHA for the year 2000 and 2002 for about 1 days.
 3. any other relief, which this Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
 4. Cost of the present case.”
2. The brief facts of the case are that the applicant worked as casual labour under the respondents from January, 1963 to 1973 and subsequently, the applicant was regularized and finally retired on 31.12.2002. Thereafter, when the payment was made to the applicant, he found certain discrepancies towards pensionary benefits. As such he made representation and when nothing was heard, he made certain other representations and finally preferred

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the present O.A. before the Tribunal. The learned counsel appearing on behalf of the applicant has also relied upon the decision of this Tribunal passed in O.A. No. 609/2001 which is in regard to not counting of entire period of service in determining the pensionary benefit of the applicant. It is pointed out by the learned counsel for the applicant that the said order was challenged in the Hon'ble High Court and the Hon'ble High Court has also dismissed the Writ Petition but copy of the order passed in Writ Petition is not available on record. However, it is pointed out by the learned counsel for the applicant that the Writ Petition No. 619(SB) of 2007 decided which was filed by the Union of India was decided on 24.5.2007. Placing reliance on the judgment of earlier O.A., the applicant also claims for the same benefit.

3. The learned counsel appearing on behalf of the respondents have filed their reply and through reply, it was pointed out by the respondents that the applicant was selected and appointed as ESM against 25% quota reserved for daily rated skilled artisan on 9.2.1973. Before his regular appointment, he has worked as daily rated ESM. The learned counsel for the respondents has also relied upon the master circular No. 54 and as per the said circular, the learned counsel for the respondents submits that the service rendered by the daily rated employees cannot be treated as qualifying service. It is again reiterated by the learned counsel for the respondents that in terms of Para 21 of the Master Circular No. 54, years the period of service rendered on daily rated basis cannot be counted for the purpose of qualifying service. The applicant was selected and appointed as ESM against 25% quota reserved



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for daily rated skilled artisan on 9.2.1973. Apart from this, it is also pointed out by the respondents, that all payments have already been made to the applicant on the last working day on net qualifying service which is counted 29 years, 10 months & 2 days i.e. 30 years but the 50% service of daily rated basis could not be counted as per master Circular No. 54.

4. The learned counsel appearing on behalf of the applicant has filed the rejoinder and through rejoinder, once again reiterated the averments made in the O.A.

5. Heard the learned counsel for the parties and perused the pleadings on record.

6. There are certain facts which are undisputed that the applicant worked as casual labour under the respondents from 1963 to 1973 and finally he was superannuated on 31.12.2002. The only question is required to be determined here is whether the applicant is entitled for counting of 50% of the service rendered as a casual labour or not for the purpose of pensionary benefits.

Para -21 of the Master Circular No. 54 reads as under:-

“21. Some instances when periods of employment is not treated as qualifying service:-

- (i) In a part-time capacity;
- (ii) at casual market rates;
- (iii) as an apprentice except to the extent indicated in Barod's letter No. F(E) III 79 PN1/20, dated 17.4.84, 27.7.84, 13.10.86, 9.8.86 & 14.9.1988.
- (iv) In a non pensionable post;
- (v) In a post paid; from contingencies except as provided in Para 409 (ii);
- (vi) on daily rates basis;
- (vii) on a contract basis except when followed by confirmation without break.”

7. The averments of the learned counsel for the respondents is that since the applicant was on daily rated basis as such this circular is not applicable to the applicant

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and the applicant is not entitled, but the bare reading of the order passed in 609/2001, which is in regard to casual Khalasi who were subsequently empanelled on a regular basis on the post of Khalasi were given the benefit of counting of their previous service.

8. Since the pensionary rights are the statutory and constitutional right of the applicant, the principle of estoppel therefore, will not apply in this case. Rule 20 and Rule 31 of the Railway Servants (Pension) Rules, 1993 reads as under:-

“20. Commencement of Qualifying Service:- Subject to the provisions of these rules, qualifying service of a railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

Provided that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post:

Provided further that:-

“a) in the case of a railway servant in a Group ‘D’ service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose; and

b) in the case of a railway servant not covered by clause (a) service rendered before attaining the age of sixteen years shall not count, except for compensation gratuity.”

The Rule 31 of Railway Services (Pension) Rules, 1993 inter-alia provides as under:-

“3. Counting of Service from contingencies-In respect of a Railway Servant, in service on or after the 22nd day of August, 1969, half the service paid from contingencies shall be taken into account for calculating pensionary benefits ; on absorption in regular employment subject to the following conditions, namely-

a) the service paid from contingencies has been in a job involving whole time employment;

b) the service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned as posts of mails, chowkidars and khalasis;


c) the service should have been such for which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly basis and which, though not analogous to the regular scales of pay, bears some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period by staff in regular establishment;

d) the service paid from contingencies has been continuous and followed by absorption in regular employment without a break;

Provided that the weightage for past service paid from contingencies shall be limited to the period after 1st January, 1961 subject to the condition that authentic records of service such as pay bill, leave record or service book is available."

9. On perusal of Rule 20 read with Rule 31, it clearly transpires that applicant will be entitled for calculation of $\frac{1}{2}$ of the service rendered by the applicant as casual labour before acquiring temporary status. Respondents however, submit that authentic record of service of the applicant are not available and have already been destroyed. Hence this period cannot be taken into consideration for deciding the benefits of the applicant as per proviso Sub Rule (d) of Rule 31 of Railway Services (Pension) Rules, 1993. The period from 1963 to 1973 will however, be relevant in this context as the records for the said period are available with Railway authorities for verification. A master circular No. 54/99 issued by the Railway Board lays down the following guidelines for calculation of pensionary benefits. :-

"20. Counting of the period of service of casual labour for pensionary benefits- Half of the period of service of a casual labour (either than casual labour employed on projects) after attainment of temporary status on completion of 120 days continuous service if it is followed by absorption in service as regular railway employee, counts for pensionary benefits. With effect from 1.1.1981, the benefit has also been extended to Project Casual Labour."



Extract of para 2005 of Indian Railway Establishment Manual, Volume II sub Para 2005 (a) also states:-

“Casual Labour including Project Casual shall be eligible to count only half the period of service rendered by them after attaining the temporary status on completion of prescribed days of continuous employment and before regular absorption as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily rated casual labour will not entitled to these benefits.”

10. The learned counsel for the applicant has also relied upon the decision of the Hon'ble Andhra Pradesh High Court in Writ Petition No. 10837 of 2001 in General Manager, South Central Railway Rail Nilayam, Secunderabad, A.P. and another Vs. Shaik Abdul Khader which was decided on 23.6.2003 and the Hon'ble High Court of Andhra Pradesh has observed as under:-

“If this sub-para is read with para 20 and also with Rule 31, there remains no doubt that on absorption whole of the period for which a casual labour worked after getting temporary status would have to be counted and half of the period has to be counted of the period for which a casual labour worked without being absorbed. Once he is given temporary status that means he has been absorbed in the Department. Even para 2005 (A) has been drafted in the same way because of the fact that even such casual labour who have attained temporary status are followed to carry forward the leave at their credit in full to the new post on absorption in regular service. Therefore, we have no doubt in our mind that once temporary status is granted to a person who is absorbed later on the regular service carries forward not only the leave to his credit but also carries forward the service in full. Half of the service rendered by him as casual labour before getting the temporary status has to be counted. Therefore, we do not feel that the Tribunal was wrong in coming to the conclusion it has, although we may not agree with the reasons given by the Tribunal. The view taken by us is further strengthened by mandate of Rule 20 of the Railway Services (Pension) Rules, lays down.


20. Commencement of qualifying Service:- Subject to the provisions of these rules, qualifying service of a Railway Servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.”

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11. It is also pointed out that moreover, once an employee is given temporary status that means he has been absorbed in the department. On the basis of this interpretation of relevant circulars issued by Railway Services (Pension) Rules, 1993, the applicant will be entitled to get half of the service counted for the period prior to grant temporary status.

12. Accordingly, the respondents are directed to count 50% of his service rendered prior to his regularization for the purposes of his pension and pensionary benefits. The entire exercise may be completed within a period of 4 months from the date of the receipt of certified copy of this order.

13. Accordingly, the O.A. is allowed. No order as to costs.


(Navneet Kumar)
Member (J)

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