

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

O.A.NO.: 463 OF 2006

[Patna, this *Tuesday*, the *30/11* Day of November, 2010]C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER [JUDL.]

Smt. Bhakuri, W/o Late Horil, Gangman under Sr. S.E.[P.Way], E.C.Railway, Katrasgarh, resident of village – Beko, P.S.: Bagodar, District- Giridih, presently at Dumari Tapsa, P.O. Fatehpur, Distt – Gaya [Bihar].

.....APPLICANT.

By Advocate :- Shri M.P.Dixit.
Shri S.K.Dixit.

Vs.

1. The Union of India through the General Manager, E.C.Railway, Hazipur.
2. The F.A.&C.A.O. [Con.], E.C.Railway, Mahendrugat, Patna.
3. The Sr. Divisional Personnel Officer, E.C.Railway, Dhanbad.
4. The Sr. D.F.M., E.C.Railway, Dhanbad.
5. The Sr. Section Engineer [P.Way], E.C.Railway, Katrasgarh.

.....RESPONDENTS.

By Advocate :- Shri A.K. Singh, ASC.

O R D E R

Justice Anwar Ahmad, M[J] :- This OA has been filed by Smt. Bhakuri, widow of Horil, Gangman under Sr. S.E.[P.Way], E.C.Railway, Katrasgarh, for the following reliefs :-

“8[A] That your Lordships may graciously be pleased to direct the respondents to count the temporary service of late Horil from 22.03.1988 to the date of his regularisation in the year 1997 as full instead of half as shown in Annexure-A/2 and half service before the date of temporary status in view of Annexure-A/3 and thereafter grant the pension and other attendant benefits in favour of the deceased employee late Horil till his life time and further to grant family pension in favour of the applicant w.e.f. 16.12.2002 i.e. from the date of death of her husband.

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8[B] That the respondents be further directed to pay the arrears of on account of relief prayed in para 8[A] with interest @ 25% on the arrears amount from the date of retirement upto the date of actual payment.

8[C] Any other relief or reliefs may be allowed in favour of the applicant."

2. Learned counsel for the applicant submits that Horil, husband of the applicant was engaged in the Railway as casual labour before 1988. He was granted temporary status w.e.f. 22.03.1988. He was regularised against group 'D' post of Gangman sometime in the year 1977. He retired from service on 31.01.2001 [Annexure-A/1]. He died on 16.12.2002. Learned counsel submits that the deceased Horil was not granted pension and other retiral benefits on the ground that his qualifying service was less than ten years as per the calculation sheet dated 24.01.2001 [Annexure-A/2]. He submits that it is the settled principle of law that services of temporary status will be counted as full service instead of half service and services rendered as casual labour before temporary status will be counted as half service for the purpose of pensionary benefits. He submits that on counting the service of temporary status as full and half service of casual labour before grant of temporary status, the total services rendered by the applicant comes to more than 12 years and hence, he is entitled to pension and other retiral benefits. In support of his contention the learned counsel referred to the judgment of Hon'ble High Court of Andhra Pradesh reported in 2004 [Vol.2] ATJ 23 [GM, S.C.Railway, A.P. Vs. Shaik Abdul Khader]. He bases his claim on this very judgment. The Andhra Pradesh High Court considered the matter and held as under :-

"4. The arguments and counter arguments can be appreciated only

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after going through the relevant rules. Rule 31 of the Railway Services [Pension] Rules, 1993 lays down :

"31 Counting of service paid 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 malis, 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 payment 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."

Subject to condition laid down in this rule, in respect of a railway servant half of the service paid from contingencies shall have to be taken into account for calculating pensionary benefits on absorption in regular employment. Now the question is, when a person gets a temporary status whether it could be said that he had been absorbed in terms of Rule 31 because after absorption the service shall have to be counted keeping in view Rule 31.

5. Now different provisions of Master Circular 54 of 1994 shall have to be gone into which a reference has been made by the Tribunal. Para 20 of the Master Circular No.54 lays down:

"20 Counting of the period of service of casual labour for pensionary benefits :- Half of the period of service of a casual labour [other 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 01.01.1981, the benefit has also been extended to Project Casual Labour."

Reference has been made to another extract of para-2005 of Indian Railway Establishment Manual, Volume-II. Sub-para 2005[a] lays down :

"Casual labour including Project Casual labour shall be

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eligible to count only half the period of service rendered by them after attaining 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 be entitled to these benefits."

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 that 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 Railways 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.

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

[a]

[b]

Therefore, we hold that the respondent was entitled to get the service counted in full from 01.01.1983. He was also entitled to get half of the service counted before 01.01.1983 from the date he had joined in the railways as casual labour."

3. He further submits that in a similar case the Hon'ble High Court of Patna followed the aforesaid judgment in CWJC No. 114 of 2006 and

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allowed the writ petition under order dated 16.10.2008. He submits that similar relief was granted in similar case by this Tribunal in OA 126 of 2008 on 13.05.2009, OA 871 of 2004 on 12.07.2005 and OA 364 of 2006 on 11.01.2008. He, therefore, submits that the OA be allowed and the relief be granted.

4. Learned counsel for the respondents, on the other hand, submits that as per service book, Horil, husband of the applicant, was never engaged as casual labourer before 1988. He submits that he was engaged as contingent paid Chowkidar w.e.f. 22.03.1988 and was paid from contingencies and after being declared medically fit in BI category, he was posted as regular Gangman against group 'D' post on 01.01.1997. He superannuated from railway service on 31.01.2001. Accordingly, at the time of retirement his qualifying service was calculated in terms of para 31 of the Railway Services [Pension] Rules, 1993 as under :-

	Date	Month	Year
Date of appointment	22	03	1988
Regular Gangman	01	01	1997
Date of retirement	31	01	2001

Calculation

	Year	Month	Date
D/Retirement	2001	01	31
D/Aptt [CPC]	<u>1988</u>	<u>03</u>	<u>22</u>
	12	10	09
[-] ½ CPC period	<u>04</u>	<u>04</u>	<u>19 ½</u>

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	08	05	19 ½
[-] LWP period [61 Days]	00	02	01
Qualifying service	08	03	18 ½

5. Learned counsel submits that Horil was engaged as contingent paid Chowkidar and not as a casual labour and hence, the arguments advanced on behalf of the applicant is not tenable and acceptable. He submits that Rule 31 of the Railway Services [Pension] Rules, 1993 lays down - "Counting of service paid from contingencies- In respect of a railway servant, in service on or after the 22nd Day of August, 1968, half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment, subject to certain conditions." He, therefore, submits that the period of service rendered by Horil was rightly calculated and his total qualifying service came to 8 years 3 months and 18 ½ days as mentioned above, and hence, he was not entitled to any pension. He, therefore, submits that the OA be dismissed.

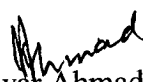
6. The determining point in this OA is as to whether Horil was initially engaged as a casual labour or as a Chowkidar paid out of contingencies. As per the OA and submissions of the learned counsel for the applicant, Horil was engaged as a casual labour. The respondents in their written statement and in their submissions have stated that the engagement of Horil as a casual labour was denied and it was stated that he was engaged as a

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Chowkidar and the payment was made from contingencies. Rejoinder to the written statement has been filed on behalf of the applicant in which in para 1 it is stated that the statements made in paragraphs 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14 & 16 of the written statement are not admitted. As such, the averment of the respondents about engagement of Horil as a contingent paid Chowkidar in the written statement was not specifically denied in the rejoinder to the written statement filed on behalf of the applicant. So, I am constrained to accept the pleadings and submissions made on behalf of the respondents that Horil was engaged as a contingent paid Chowkidar and hence, in terms of Rule 31 of the Railway Services [Pension] Rules, 1993, he is entitled to half of the service rendered as contingent paid Chowkidar from 22.03.1988 to 31.12.1996 and hence, his total qualifying service was rightly computed as 8 years 3 months 18 ½ days after deducting 61 days as LWP and he was rightly denied pension.

7. In consideration of the above discussion, I am of the view that there is no merit in the OA and the OA is fit to be dismissed.

8. In the result, the OA is dismissed.


[Anwar Ahmad]/M[J]

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