

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 631/2005**

Date of order : 30.09.2008

**HON'BLE SHRI JUSTICE M. RAMACHANDRA, VICE-CHAIRMAN
HON'BLE MR. AMIT KUSHARI, MEMBER{A}**

Ravishankar Prasad, Son of Late Akhauri Nar Sing Prasad, retired Senior Section Engineer (P. Way), Sonpur Resident of Mohalla- Gandhi Nagar, Khadi Bhander Chowk, Kanauli, District- Muzaffarpur.

...Applicant.

[By Advocate : Shri Sudama Pandey]

Vs.

1. The Union of India through the General Manager, E.C.Railway, Hazipur.
2. Divisional Railway Manager, E.C. Railway, Sonpur (Saran).
3. The D.R.M. (Engg.), EC Railway, Sonpur (Saran).
4. The F.A. & C.A.O. (Pension), EC Railway, Hajipur.
5. The Divisional Financial Manager, E.C. Railwaty, Sonpur (Saran)

..... Respondents.

[By Advocate : Shri M.N. Parbat]

**O R D E R
[ORAL]**

Justice M. Ramachandran, V.C. :- The applicant, according to him, had started his training from 15.11.1980 upto 5.1.1982, prior to his regular appointment as Assistant Permanent Way Inspector. He had opted for voluntary retirement on 31.08.2004 giving three months notice and had been permitted to go on retirement. The present application is submitted since there is error in fixing his final pension and he has also challenged the conduct of the respondents in withholding the DCRG amounting to Rs. 1,96,330/-

2. The applicant refers to Annexure A/4 Railway Board Circular No.



23/95 which, according to him, provides for training period to be counted as qualifying service for the purpose of pension. We note that in terms of Ministry's orders, in most cases the training period which are required to be undergone by a person, in relation to the job before regular employment, is treated as qualifying service for the purpose of pension. His contention is that the training period is followed immediately after appointment, and there is no reason to deny this benefit.

3. According to Sudama pandey, the learned counsel, applicant had been selected by the Railway Service Commission, as is evident from Annexure A/3 dated 31.10.1980. He had been found fit for appointment as Category A/3 in the physical fitness test and then was appointed as Apprentice PWI-III on a stipend of Rs. 425/- . The training was for a period of one year. After passing the examination he was awaiting the posting order which also was given in his favour, in 1982. The learned counsel submits that in view of the Railway Board Circular referred to above, the period of training and the period before actual appointment is to be taken as qualifying service for pension.

4. On this point, the learned counsel for the respondents submits that there was delay in actual appointment. The circular could not have applicable and the service could have taken from the actual date of appointment as seen from Annexure A/1, i.e. 06.01.1982. The learned counsel submits that mistakenly, the date has been shown in the reply statement as 14.10.1980, but this is not correct.

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He submits that the delay in the appointment after training could not have given any advantage to the applicant, whatsoever.

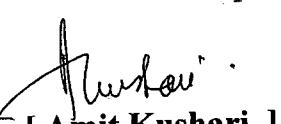
5. However, we note that paragraph 2 of the circular gives sure guidance in the matter. A doubt was as to whether if a person fails in the examination after his training, and there was delay in conferring him actual appointment, what has to be followed. In such cases, the Railway Board directed that the initial period can be considered as service but the intervening period of delay which arose due to the failure of the person concerned should be declared dies non. As far as the applicant is concerned, the delay was not due to the fact that he failed in the examination. The reason for the delay in actual appointment was attributable to the railway administration and, therefore, he could not have been found responsible for the situation. Even in the case of failure, if only a brief period is to be treated as dies non, the benefit admissible to the successful candidates should not be lesser. We direct that the entire period, i.e. from 15.11.1980 upto the date of retirement, i.e. 31.08.2004 in respect of the applicant is to be treated as service for the purpose of pension. The pension is to be revised appropriately taking note of this direction.

6. As regards the claim of DCRG, the learned counsel has relied on Rule 9 of the Railway Services Pension Manual, 1993. It is pointed out that till the date of his retirement and thereafter there was no departmental proceedings against the applicant. The President of India himself has no power to suggest that

proceedings had to be initiated against the applicant or any charge as a consequence inflicted on him after his retirement and passage of years. Therefore, the DCRG requires to be released.

7. The learned counsel for the Railways submits that Rule-9 had no application whatsoever. As a matter of fact, the applicant was holding a responsible post and at the time of retirement it was seen that he was accountable for stock sheet debit amounting to Rs. 6,17,640/- while he was working in Muzaffarpur and Sonepur. This, therefore, had to be adjusted to DCRG payable. There is no question of initiation of disciplinary proceedings against the applicant, as it was not in any way relevant..

8. After going through the matter, we do not think Rule-9 has any application to the facts of the case. He was accountable for stocks entrusted with him, and respondents were entitled to adjust sums from his DCRG after due examination. In such circumstances, we only direct that the applicant has to be advised about the final DCRG that has to be paid vis-a-vis the liabilities to which he is answerable. Communication to this effect is to be sent to him within a period of three months from today. The revised pension and arrears are also to be paid within the said period. The OA is disposed of accordingly. No costs.


[Amit Kushari]
Member(A)


[Justice M. Ramachandran]
Vice-Chairman

srk.