

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. NO. 617/2005

Date of Order: 31st March, 2011

C O R A M

**Hon'ble Mrs. Justice Rekha Kumari, Member [Judicial]
Hon'ble Mr. Akhil Kumar Jain, Member(Administrative)**

Bhubaneshwar Thakur, Son of Late singheshwar Thakur, Resident of
Village/Post- Garahara, P.S.- Barauni, District- Begusari.

Applicant.

By Advocate: - Shri M.P. Dixit

-Versus-

1. The Union of India through General Manager, E.C. Railway, Hazipur.
2. Divisional Railway Manager, E.C. Railway, Danapur.
3. Sr. DPO, EC Railway, Danapur.
4. Sr. D.F.M., E.C. Railway, Danapur.
5. Sr. D.E.N (Co-ordination), EC Railway, Danapur.
6. Assistant Engineer, E.C. Railway, Mokama Jn.
7. Section Engineer (Works), EC Railway, Garhara, Distt.- Begusarai.

Respondents.

By Advocate: - Shri B.K. Sinha

ORDER

Akhil Kumar Jain, Member [Administrative] :- This OA has been filed for directing the respondents to count the full service rendered as casual labour with temporary status and half service of the remaining period of his work as casual labour towards calculating his pensionary benefits and revise all the pensionary benefits and pension of the applicant accordingly and make payment of arrears with 20% compound rate of interest. The applicant has also sought for



setting aside Annexure A/3 whereby only the half of his service as temporary status contingent employee has been counted towards pensionary benefits.

2. Heard the learned counsel for both the sides.

3. The learned counsel for the applicant submitted that the applicant was engaged in the Railways in the month of June, 1964 as casual labour and was posted under the Inspector of Works, Mokama. The applicant was granted CPC scale called as temporary status w.e.f. 16.08.1975 and subsequently regularised in the year 1986-87. He finally superannuated from service on 31.12.2004 as a Valveman in the pay scale of Rs. 2650-4000 under Section Engineer (Works), Garhara. Thus as per claim of the applicant, he completed more than 30 years of service including the period of work as casual labour. The learned counsel for the applicant further submitted that on the basis of judgment given by Hon'ble Andhra Pradesh High Court reported in 2004(2) ATJ page 23, this Tribunal in several OAs including OA No. 871/2004 in the matter of Bhutta Rai Vs. Union of India & Ors. and OA No. 370/2007 in the matter of Raghun Sah and Others Vs. UOI and Ors. ordered counting of full service rendered from the date of temporary status and half service before that from the date when the employee joined as casual labour for calculating pensionary benefits. The learned counsel for the applicant pleaded that the case of the applicant is similar to the cases cited and hence the applicant is entitled to similar relief.

4. The learned counsel for the respondents submitted that the applicant was appointed as CPC Khalasi (Casual Labour) on 16.08.1975 and after screening for permanent post, he was posted against permanent vacancy on 23.02.1989. He finally retired on 31.12.2004. There is no specific rule in the Engineering Department to count the full service of the temporary status as well as casual labour. The pension and other pensionary benefits of the applicant were fixed as per statutory rules and instructions in the matter by counting his full service from



the date of his appointment on a permanent post and half of the service spent on C.P.C. On query, the learned counsel for the respondents confirmed that C.P.C. means temporary status. He also submitted that the Hon'ble Supreme Court in the matter of General Manager, North West Railway and Others Vs. Chanda Devi reported in 2008(2) Supreme Court Cases 108 held that Pension Rules under which Railway employees are granted pension did not apply to casual employees conferred with temporary status which protects only a casual employee's service.

5. The learned counsel for the applicant, in reply, submitted that the judgment of the Hon'ble Supreme Court cited by the learned counsel for the respondents is not relevant to this case as the same relates to granting of family pension to the widow of a temporary status casual employee. He further submitted that in case of Bhutta Rai(supra), the respondents filed Writ Petition in the Hon'ble High Court of Patna and SLP in the Hon'ble Supreme Court which were dismissed. The learned counsel for the respondents submitted that while dismissing the SLP in the matter of Bhutta Rai, Hon'ble Supreme Court made it clear that the question of law remains open.

6. We have perused the records and considered the rival submissions made by the parties. We are of the opinion that the case is similar to that of Bhutta Rai (supra) except that, in the instant case, while there is no dispute about appointment of the applicant as CPC Khalasi w.e.f. 16.08.1975, the fact of his appointment as casual labour prior to that since June 1964 as claimed by the applicant, is not supported by any document or other evidences. The respondents have only admitted the appointment of the applicant as CPC Khalasi w.e.f. 16.08.1975. We also note that for counting half of the service rendered as contingency paid casual labour towards pensionary benefits, the conditions applicable inter alia include that such service should have been continuous and followed by absorption in regular employment. In the instant case there is no evidence of rendering service as casual labour prior to 16.08.1975 before us and

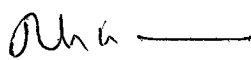


hence, we are not in a position to pass any order for counting service prior to that date.

7. In view of the above discussions, and in the light of the decisions taken in OA No. 871/2004 and other OAs, we set aside the calculation of service rendered by the applicant as contained in Annexure A/3 and hereby direct the respondents to count the entire period of his service towards pensionary benefits w.e.f. 16.08.1975, i.e. the date on which he was appointed CPC Khalasi, i.e., casual labour with temporary status and rework the pensionary benefits accordingly. We further direct that the arrears of pensionary benefits so worked out be paid to the applicant with applicable statutory interest on the arrears of DCRG. The entire exercise of recalculation of service and payment of arrears accordingly should be completed within a period of four months from the date of receipt/production of a copy of this order.

8. The applicant will also be at liberty to make a representation to the concerned respondent with supporting documents, regarding his claim of work as contingency paid casual labour since June 1964 to 16.08.2005^{1975 A.D. -} within a period of one month from the date of this order, and if such a representation is made by the applicant, the respondents shall examine the same and pass a reasoned and speaking order thereon within a period of one month from the date of receipt of representation. If their decision goes in favour of the applicant, then 50% of the period of continuous service rendered by him as contingent paid casual labour prior to granting of temporary status shall also be counted by them towards calculating pension and pensionary benefits.


[Akhil Kumar Jain]
Member[A]


[Rekha Kumari]
Member[J]

srk.