

(32)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD.

O.A. No. 410/91

Date of Decision: 31-9-92

T.A. No.

Sri M.Nagabushanam

Petitioner.

Sri JM Naidu

Advocate for
the Petitioner(s)

Versus

Divisional Rly Manager, Vijayawada

Respondent.

Sri V.Bhimanna, SC for Rlys

Advocate for
the Respondent
(s)

CORR.M:

THE HON'BLE MR.

T. CHANDRASEKHARA REDDY, MEMBER (JUDL)

THE HON'BLE MR.

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporters ~~except~~ ?
3. whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on Columns 1,2,4 (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench.)

T.C.R.
(HTCR)
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO.410/91DATE OF JUDGEMENT: 30 - SEPTEMBER, 1992

BETWEEN

Sri M.Nagabhushanam

.. Applicant

AND

1. Divisional Railway Manager,
South Central Railway
Vijayawada2. Senior Divisional Personnel Officer
South Central Railway
Vijayawada

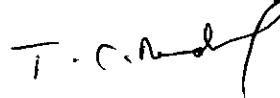
.. Respondents

Counsel for the Applicant :: Sri JM Naidu

Counsel for the Respondents :: Sri V. Bhimanna, SC for
Rlys

CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)



..2..

JUDGEMENT OF THE SINGLE MEMBER BENCH DELIVERED BY
HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This is an application filed by the applicant herein under Section 19 of the Administrative Tribunals Act to calculate the temporary status of the applicant after completion of six months from 24.9.61 and pay arrears of the pension, and all other consequential benefits to the applicant forthwith by fixing monthly pension and pass such other orders as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA in brief, are as follows:

3. The applicant joined ~~the~~ the Railways as temporary Gangman on 24.9.61. The applicant was given temporary status w.e.f. 10.3.78. The services of the applicant were regularised w.e.f. 25.11.82. The applicant retired from service after attaining the age of superannuation i.e. 30.11.89. Even though the applicant was working as temporary Gangman in the Railways from 24.9.61 onwards, he is deprived of pension for the reasons that he had not completed 10 years qualifying service on the date of his superannuation. According to the applicant, he has completed 28 years of service in Railway but his services were not regularised from the date of his original joining in Railways. The qualifying services of the applicant is calculated as 9 years 4 months and 10 days by the respondents. In any event, the applicant had put in overall ~~more~~ ^{more} ~~less~~ than 10 years qualifying service in the respondent's organisation and it is contended by the respondents that he is not eligible for ~~the~~ pension. Hence, the present OA is filed by the applicant for the relief as already indicated above.

1 - C - n - 1

..3)..

4. The respondents have filed counter to this OA.

5. In the counter, they have maintained that the qualifying service of the applicant works out to 9 years 4 months and 10 days and in accordance with the provisions contained in para 102 of the Manual of Railway Pension Rules, the applicant is not eligible for pension as he has not completed 10 years qualifying service on the date of his superannuation. So, it is the case of the respondents that the applicant is not entitled for pension, and so, the respondents are not liable to pay any pension. It is therefore maintained in the counter that the applicant was granted terminal gratuity amounting to Rs.8,550/- in lieu of DCRG and Service Gratuity of Rs.4235/- in lieu of pension and there are no merits in this OA and hence, this OA is liable to be dismissed.

6. Even though the applicant had been originally working in the constructional line, from the constructional line, he had been transferred to the open line w.e.f. 10.10.77. Prior to 10.10.77, from the year 1961, the applicant had been working in the constructional line. As could be seen from the records, the applicant had been given temporary status w.e.f. 10.4.78. The record discloses that the applicant had been engaged in deep screening work on the regular line w.e.f. 30.11.76 and not from 10.10.77 onwards, as contended by the learned counsel for the respondents. So, there is no reason why temporary status should not be given to the applicant after expiry of six months from 30.11.76 onwards. So, the applicant has got a right to be given temporary status after the expiry of 180 days from 30.11.76. Hence, the applicant should be deemed to have attained temporary status in view of the facts and circumstances of the case, w.e.f. 1.6.77.

7. No doubt, it is contended by the learned counsel

..4..

T. C. N. S. J.

38

for the ~~respondents~~ as the applicant had been working in the open ~~line~~ from the year 1977, that the applicant should be deemed to have attained temporary status only ~~on~~ ^{from} 10.3.78 onwards only. The records disclose that the applicant had been working in the construction line from 24.9.61. There is no dispute about the fact that the applicant from 24.9.61 onwards was continuously working. So, in view of this position, it is contended by the learned counsel for the applicant that the applicant had attained temporary status after expiry of 180 days from 24.9.61 onwards. The applicant had put in a representation dated 25.1.90 to the Sr.Divisional Personnel Officer, South Central Railway, Vijayawada for payment of pension to him stating that, he had attained temporary status after expiry of six months from 10.10.77 onwards. As a matter of fact, the case of the applicant, as put forth in his representation dated 25.1.90 is that, he had a right to be given temporary status after expiry of six months from 10.10.77. So, as already pointed out, the applicant in this case should be deemed to have attained temporary status w.e.f. 1.6.77. ~~On view of the representations by the Appellant dated 25-1-90, he is entitled from understanding that he obtained temporary status while working in open line.~~ Admittedly, the services of the applicant were regularised w.e.f. 25.11.82. So, from 1.6.77 to 25.11.82 the applicant had put in service after attaining temporary status as casual labour which works out to a period of 5 years 5 months 24 days. So, for the purpose of pension half of it has got to be worked out which comes to more than 2 years 8 months. The applicant after attaining regular status on 25.11.82, had retired on 30.11.89. So, the applicant had been in regular service for a period of 7 years ^{as casual labour}. So, for the purpose of pension, 2 years 8 months period has got to be added to the regular service period of 7 years and the total period thus works out

T - C. *[Signature]*

..5..

to 9 years 8 months. As the applicant has worked more than six months in the year, the service of the applicant has got to be rounded off as one year as per Pension Rules. Hence, in this case, the total service which the applicant had put in will work out to R 10 years for the purpose of pension. So, the applicant in this OA is entitled for minimum pension for his qualifying service of ten years. Even otherwise as per the statement of the respondents, the applicant had put in qualifying service of 9 years 4 months and 10 days. The date on which the applicant attained temporary status is taken as 10.3.78 by the respondents appears to be not correct as the correct date which the applicant attained temporary status as per records is 1.6.77. Therefore, on the basis of 1.6.77 as the date of temporary status of the applicant, there cannot be any doubt about the fact that the applicant is entitled for pension as already pointed out, as the applicant should be deemed to have put in minimum qualifying service for pension.

9. As already pointed out, it is the case of the applicant that he had put in 28 years of service under the respondents, as the applicant had been working since 1961. His service from the year 1961 to 1989 had been continuous. For the purpose of calculating qualifying service for pension, according to the respondents, the applicant falls short of only one month 20 days for qualifying service. If one month and 20 days is added to 9 years 4 months and 10 days, which is the qualifying service, of the applicant, the total period of service comes to 9 and 1/2 years. Admittedly, under the ~~SS~~ ^{nowwards} Pension Rules, half-year has got to be rounded to one year for the purpose of payment of pension.

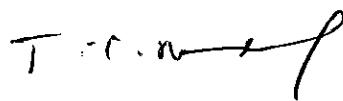
..6..

So, as the applicant had worked from the year 1961 as already pointed out, it may not be just and proper to deprive the applicant the minimum pension. So, ~~as~~ on equitable grounds also, we are of the opinion that this is a fit case for giving a direction to the respondents to pay the pension on the basis, that the applicant had put in minimum qualifying service as ten years.

10. The counsel appearing for the applicant relied on a decision reported in 1983(2) ~~as~~ ASLJ - Union of India Vs Labour Court Himayatnagar and contended that on the basis of the said decision that the applicant must be deemed to have been confirmed after completion of 3 years of service from the year 1961. We have gone through the said decision and the said decision is not applicable to the facts of this case.

11. This OA has been filed on 16.4.91. As already pointed out, the applicant had retired on 30.11.89. But even though the applicant had approached this Tribunal one year 5 and 1/2 months after he retired from service, there seems to be no delay on the part of the applicant as he had ~~as~~ put in representation dated 25.1.90 to the competent authority for payment of pension. We do not see any question of limitation being involved in this case. Payment of pension is a recurring right; hence, there cannot be any question of limitation. The applicant herein is entitled for payment of pension and other retirement benefits in accordance with Railway Pension Rules, w.e.f. 30.11.89 which is the date of retirement of the applicant.

..7



39

..7..

12. In the result, we direct the respondents to issue necessary pension payment order in favour of the applicant with all retirement benefits according to Railway Pension rules, on the basis that the applicant had qualified for pension after having put ten years of qualifying service as regular casual employee. Further, we direct the respondents to pay all arrears of pension due to the applicant with effect from 30.11.89 which is the date of retirement of the applicant. From out of the retirement benefits that are payable to the applicant, the respondents will be at liberty to deduct any payments that are already made to the applicant. OA is allowed accordingly with the said directions. Three months time is granted to the respondents from the date of communication of this order to implement the directions in this OA. In the circumstances of the case the parties shall bear their own costs.

T. C. R. M. (Signature)
(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: 30 September, 1992

8/10/92
Deputy Registrar (J)

mvl

To

1. The Divisional Railway Manager,
S.C.Rly, Vijayawada.
2. The Senior Divisional Personnel Officer,
S.C.Rly, Vijayawada.
3. One copy to Mr.J.M.Naidu, Advocate, 18-11, Kamalanagar
Near Dilsukhnagar, Hyd.
4. One copy to Mr.V.Bhimanna, SC for Rlys, CAT.Hyd.
5. One spare copy.
6. Copy to an reporter as per ~~10~~ ¹⁰ days of C.A.T.

pvm.

1st & 2nd page
1st page

(2) TYPED BY COMPARED BY

CHECKED BY APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
MEMBER (J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (J)

Dated: 30 - 9 - 1992

ORDER → JUDGMENT

R.A./C.A./M.A. No

in

O.A. No. 610/91 ✓

T.A. No. (W.P. No)

Admitted and interim directions
issued

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn

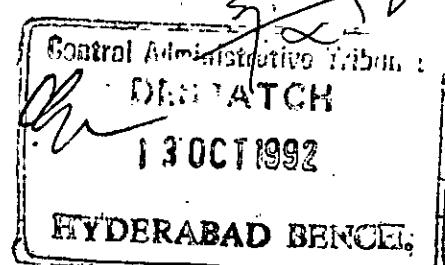
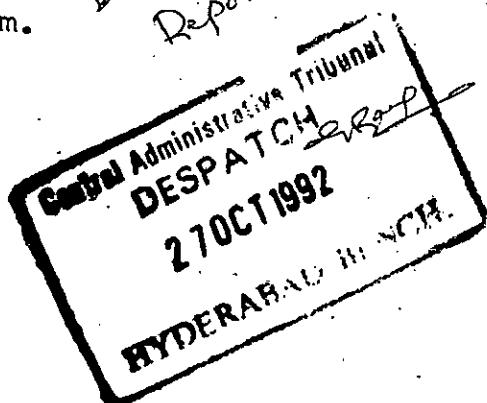
Dismissed for default

M.A. Ordered / Rejected

No orders as to costs.

p.m.

Despatched only
Reporters



For references see page 261 of