

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
HYDERABAD.

OA 215/94

(29)
Dt. 2nd March, 1995

Between

Rajiah Rajigadu

Applicant

And

Union of India represented by

1. General Manager,
S.C. Railways, Secunderabad
2. Divisional Railway Manager(P) (BG),
S.C Railway, Secunderabad

Respondents

Counsel for the applicant : Shri N. Raghavan

Counsel for the Respondents : Shri C.V. Malla Reddy

Coram

Hon'ble Shri R. Rangarajan, Member (Admn.)

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AS PER HON'BLE SHRI R. RANGARAJAN, MEMBER (ADMN.)

J U D G E M E N T

Heard Shri N. Raghavan, learned counsel for the applicant and also Shri C.V. Malla Reddy, learned standing counsel for the Respondents.

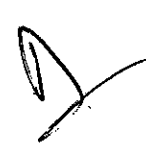
2. The applicant herein was appointed in Railway service on 13-4-49 as a Khalasi. Thereafter he was promoted as a basic carriage fitter in C&W department at Secunderabad. He was removed from service on 20-11-67 for forging of 2 medical certificates. He was re-appointed as a fresh entrant as Basic carriage fitter vide office order No. CP/536/C&W/IV dated 12-9-77. He joined service as a fresh entrant on 13-9-77. Subsequently, he was promoted as a Carriage fitter with effect from 1-4-78. He was further promoted as carriage fitter Gr. II with effect from 1-1-84 and Gr. I with effect from 23-5-87. He retired from service on superannuation on 30-4-88.

3. His period of service in the second spell was from 13-9-77 to 30-4-88 which period works out to 10 years 7 months and 17 days. But during this period he availed 507 days as LWP/AWP which works out to 1 year 4 months and 23 days. Thus he had qualifying service of 9 years 2 months and 23 days during the second spell of his employment. As per item No. 623 of Chapter vi of Manual on Railway pension, a Railway servant who has completed less than "10 years of qualifying service" is entitled to only gratuity and pension is granted to Railway servants who have completed 10 years of qualifying service. As the applicant who was treated as a fresh

 entrant in the service during his second spell of service commencing from 13.9.1977, he was not given pension as he had put in a qualifying service of less than 10 years during the second spell. Earlier he has filed OA 183/89 for payment of pension and other terminal benefits on the basis of his qualifying service of 10 years during the second spell of his service. But that OA was disposed of with a direction to the respondents therein to dispose of his representation in accordance with law. But the respondents therein have rejected his claim for pension and other terminal benefits. In view of the above he has filed this OA for a direction to the respondents to release forthwith pensionary benefits for the services rendered by him from 13.9.1977 to 30.4.1988.

4. In the second spell of service as a fresh entrant from 13.9.1977 he had put in 9 years 2 months and 23 days of service as he had availed 507 days L.W.P./A.W.P. which comes to 1 year 4 months 23 days of service. After deducting the non-qualifying service of 1 year 4 months 23 days from the qualifying service, the net qualifying service for pensionary benefits during the period of second spell of his service works out to 9 years 2 months and 23 days only. The above statement of the respondents has not been disputed by the applicant. No rejoinder has been filed in this connection. In view of this, it has to be held that the service of the applicant during the second spell of his service is less than 10 years and hence as per item 623 of Chapter (vi) of the Manual of Railway Pension Rules, he is not entitled for pension if only the second spell of service is taken into account.

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5. A careful perusal of the facts of this case will reveal that the period of the applicant's service earlier to 20.11.1967 when he was removed from service was not taken into account for determining his qualifying service. The period from 20.11.1967 to 12.9.1977 when he was not in service was treated as break in service and only the second spell of his service excluding the period of LWP/AWP during the second spell was taken to fix his qualifying service for determining his pension.

6. In OA 281/93 decided on 4.2.1994 it was held by this Tribunal that if an employee is removed from service and subsequently reinstated on the basis of his appeal/ review or otherwise as a fresh entrant, the orders treating him as a fresh entrant in service is in disregard of recruitment rules, i.e. without considering the names of other eligible candidates for the said post. In view of this, it was further held in that OA that award of major minor penalty, if any, at the time of taking him back into service will be in order, but he cannot be treated as a fresh entrant and the period of his absence from the date of his removal to the date of his reinstatement should be treated as ~~des~~-non and not as break in service and the period earlier to his date of removal from service will have to be counted as qualifying service for purposes of pension.

7. When the above said law laid down by this Tribunal was brought to the notice of the learned Standing Counsel for the respondents he fairly accepted that this rule will equally apply in the present case also. Hence, the period of service rendered by the applicant from 13.4.1949 to 20.11.1967

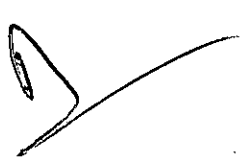


will count for qualifying service for the purposes of pension. If there is any LWP/AWP during this period, that period may have to be deducted to calculate the period of actual service during 1949 to 1967.

The period from 20.11.1967 to 12.9.1977 when he was out of service due to his removal will be treated as dies-non and will not be treated as break in service. His service during the second spell from 13.9.1977 to 30.4.1988 when he retired excluding the period of LWP/AWP during the second spell will also be added to the period from 13.4.1949 to 20.11.1967 for the purpose of computing the total qualifying service for the purpose of calculating pension. The total qualifying service thus arrived at will be ^{the} basis for determining the quantum of pension.

8. The next question arises in regard to payment of arrears of pension. The applicant retired on 30.4.1988. He filed ~~xxx~~ OA No.183/89 for payment of pension which was disposed of on 10.4.1989 directing the respondents therein to dispose of his representation. From the Annexure-I attached to the reply, it is seen that the above said direction was complied only on 2.6.1994 rejecting his claim for pension. Immediately thereafter, he approached this Tribunal by filing the present OA. In view of the sequence of events I do not see any delay on the part of the applicant to approach this Tribunal for redressal of his grievance. Hence, it is fair to direct the respondents to pay him the arrears of pension from 10.4.1989 when the earlier OA 183/89 was disposed of.

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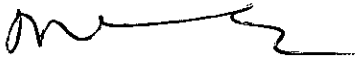


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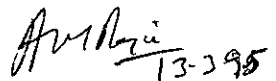
9. In the result the following direction is given:-

The applicant is entitled to count the period from 13.4.1949 to 20.11.1967 deducting the period of LWP/ AWP during that period if any, as qualifying service for the purpose of calculating the pension amount. The total period of qualifying service shall be from 13.4.1949 to 20.11.1967 added to second spell of service from 13.9.1977 to 30.4.1988 excluding the period of LWP/ AWP during the second spell and in the first spell if any. The period from 20.11.1967 to 12.9.1977 shall be treated as dies-non. The pension amount due to him shall be ~~xxx~~ calculated on the basis of total qualifying service arrived at as above and paid to him. He is entitled only arrears of pension from 10.4.1989 when the earlier OA 183/89 filed by the applicant was disposed of.

10. The OA is ordered accordingly. No costs.


(R.Rangarajan)
Member(Admn.)

Dated 2nd March, 1995.
Dictated in the open court.


13-3-95
Deputy Registrar(Judl.)

NS/Grh.

Copy to:-

1. General Manager, S.C.Railways, Secunderabad.
2. Divisional Railway Manager(P) (BG), S.C.Railway, Sec'bad.
3. One copy to Sri. N.Raghavan, advocate, CAT, Hyd.
4. One copy to Sri. C.V.Malla Reddy, SC for Riys, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. - One spare copy.

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OA-215/ay

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. R. RANGARAJAN: M (ADMN)

DATED - 21/3/1995.

ORDER/JUDGMENT: _____

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

O.A.No. _____

In 215/ay

P.A.No. _____

(W.P. _____)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No order as to costs.

No spare copy

