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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

\* \* \*

Date of Decision: 6/12/2000

OA 261/95

Fazal Hussain s/o Shri M.Kurban Ali r/o Girls School,  
Tipta Radha Vilas, Kota.

... Applicant

v/s

1. Union of India through General Manager, W/Rly, Churchate, Mumbai.
2. Dvl.Rly.Manager, W/Rly, Kota Division, Kota.
3. Executive Engineer (C), W/Rly, Kota.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

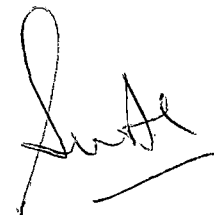
For the Applicant ... Mr.Shiv Kumar

For the Respondents ... Mr.Manish Bhandari

O R D E R

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

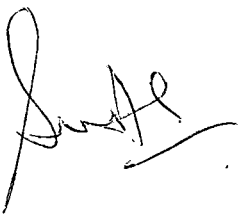
In this OA filed us 19 of the Administrative Tribunals Act, 1985, applicant makes a prayer to quash and set aside the order dated 9.3.91 (Ann.A/1) and to direct the respondents to fix the pensionary benefits of the applicant on the basis of qualifying service rendered by him with all consequential benefits and arrears alongwith interest.



(A)

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2. In brief, case of the applicant is that he was initially appointed as S.O.Mistry on 1.6.61 in Udaipur Himmatnagar Project and superannuated on 31.12.90 but the respondent department has allowed him pensionary benefits for the qualifying service of 11 years 10 months and 11 days only, whereas he is entitled to pensionary benefits for the total period of 28 years and 7 months. It is stated that applicant filed a Civil Suit against the retrenchment order dated 30.9.74 before Munsif, Kota, and ~~the said~~ stay was granted ~~by~~ by Munsif, Kota, and the applicant continued to remain in employment till the Suit was dismissed vide order dated 3.8.83. An appeal was filed before the District Judge, Kota, and stay was granted and the applicant remained in service. The said appeal ~~was~~ was transferred to this Tribunal vide TA 2040/86 but during the pendency of this TA the applicant retired from service on 31.12.90 and the TA came up for hearing on 24.4.93, ~~and~~ was disposed of with the direction as mentioned in the order dated 22.4.93. The applicant filed representation and also filed Contempt Petition No.45/94 but the Contempt Petition was dismissed vide order dated 20.4.94 and the applicant was given liberty to file a fresh OA, if so desired. It is stated that applicant served for 28 years and 7 months and this period should have been counted as qualifying service for the purpose of pension. Therefore, the applicant is entitled to revision of his pension and retiral benefits. Therefore, the applicant has filed this OA for the relief as above.



3. Reply was filed. In the reply it is stated that this OA is barred by limitation. It is also stated that qualifying service of an employee for the purpose of pension is determined in accordance with rules. The applicant was ~~and~~ initially engaged on casual basis and his service was made ~~regular~~ regular only in the year 1979 in pursuance of the letter dated 29.7.78. Therefore, for the purpose of determination of pensionary benefits the service rendered by the applicant on casual basis cannot be counted and the applicant was only entitled to pensionary benefits for the qualifying service reckoned as 11 years 10 months and 11 days only and this OA is misconceived and the applicant is not entitled to any relief sought for.

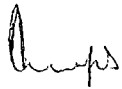
4. Heard the learned counsel for the parties and also perused the whole record.

5. In the reply, the department has made it very clear that the applicant was made regular in the year 1979 and ~~he~~ before making regular he was working on casual basis. Therefore, service rendered by the applicant on casual basis cannot be counted or determined as ~~an~~ qualifying service for the purpose of pension and retirement benefits. No rejoinder to this contention of the department was filed by the applicant before this Tribunal. It is a general rule that pension/pensionary benefits can be determined by

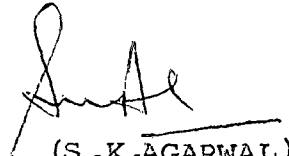
the department on the basis of qualifying service rendered by the employee on permanent/regular basis. ~~These~~ Qualifying service of a Government servant commences from the date he takes charge of the post to which he is first appointed in a permanent capacity. Temporary service followed by confirmation without interruption will also ~~qualify~~ be treated as qualifying service. Pension is admissible to permanent employees who retire or are retired with a qualifying service of not less than ten years. Temporary employees who retire on superannuation or invalidation after rendering not less than ten years of service or retire voluntarily after 20 years' continuous service are also eligible for pension. On the basis of above, service rendered on casual basis cannot be counted for determining the qualifying service of the applicant for the purpose of determination of pension/pensionary benefits. In view of the facts specifically mentioned in the reply, to which there has not been any rejoinder, it cannot be said that there has been any error in determining the pension/pensionary benefits ~~payable~~ payable to the applicant on the date of his superannuation. It is also pertinent to mention here that vide order dated 22.4.93, TA 2040/86 was decided by this Tribunal and it was held that the applicant is entitled for all benefits which are available to the persons who have worked till their superannuation including

pensionary benefits, if any. Against this order, the applicant approached this Tribunal in contempt but the Contempt Petition was dismissed without issuance of any notice. Therefore, in our considered view, the applicant has no case for interference by this Tribunal and this OA is devoid of any merit and liable to be dismissed.

6. We, therefore, dismiss this OA having no merit with no order as to costs.



(A .P .NAGRATH)  
MEMBER (A)



(S .K .AGARWAL)  
MEMBER (J)