CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

OA/291/00656/2014

Order Reserved on: 05.05.2016

Date of Order: 10.05.2016.

Coram

Hon'ble Ms. Meenakshi Hooja, Member (A)

Jwala Prasad son of Govardhan Lal, aged around 61 years, resident of Veerampura, Tehsil Bayana, Distt. Bharatpur (Rajasthan)

.....Applicant

(By Advocate Mr. Amit Mathur)

VERSUS

1. Union of India through its General Manager, West Central Railway, Jabalpur (Madhya Pradesh)
2. The Divisional Railway Manager, West Central Railway, Kota, Division Kota.

.....Respondents

(By Advocate Mr. Anupam Agarwal)

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, regarding non-payment of due pension benefits, seeking the following reliefs:

(i) The present Original Application may kindly be allowed and considering the facts that applicant remained in employment of the respondents for a period more than 28 years the directions may be issued to the respondents to treat the applicant eligible for the pension and direct the respondents to release the pension to the applicant irrespective of the period of leave.

(ii) Any other order or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.

(iii) Cost of this original application also may be awarded in favour of the applicant.

2. When the matter came up for consideration and hearing on 10th March,2016 (PH) and continue on 13th April, 2016 (and also spoken to on 5th May, 2016) Ld. Counsel for applicant submitted that the applicant was initially engaged on temporary basis in the Respondent Railway Department and he joined his service with temporary status on 14.04.1985. Thereafter his services were regularized w.e.f. 04.04.1995 and he attained the age of superannuation on 30.11.2013, but despite serving for so long, he was denied the pension as may be seen from PPO as at Annexure A/1 and his total qualifying service has been counted as only 06 years, 03 months and 28 days, and as per the Respondents, as the applicant has not completed qualifying service of 10 years, he has not been considered eligible for pension.

3. In this context, counsel for applicant submitted that though he does not challenge the service sheet of the Respondent filed by him at page 18 of the OA, as part of Annexure A/2, as the applicant could not attend his duties due to ill health, but in this OA he is challenging the grounds on which the qualifying service and service for pension of the applicant has been calculated and arrived at. In this regard at the outset he submitted that qualifying service and pensionable service, are two distinctive categories in the Railway Service. The qualifying service, in the first place enables an employee to enter into the zone of consideration for being considered for pension and thereafter after calculating the years of qualifying service, it is to be calculated and determined whether that is sufficient for purposes of grant of pension. Counsel for applicant in this context submitted that in the Railway

Service (Pension) Rules 1993 (hereinafter referred to as Pension Rules), which are relevant in this matter, the term qualifying service is defined in sub rule 22 of Rule 3 of said Rules as "service rendered while on duty or otherwise which shall be taken into account for the purpose of pension and gratuities admissible under these rules." He further referred to Chapter III, which relates entirely to Qualifying Service and its various provisions specially Rule 20, which provides that "Subject to the provisions of these rules, qualifying service of a railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity." Counsel for applicant thus contended that, on the basis of this rule, it is clear that the temporary service rendered by the applicant from 14.04.1985 to 04.04.1995 would count towards qualifying service. He further submitted that as per Rule 24, even contract service counts for qualifying service so the question of not counting temporary service does not arise. He also contended that (though it has been mentioned in the OA that as per the provisions applicable 50% temporary services are counted for pension purposes) but that is really not in accordance with the Rules in view of the provisions in Rule 20, 21 & 22. As the applicant was paid from the Consolidated Fund of India and has been in continuous service of the Railways, his temporary service counts as qualifying service also in view of the provisions of Rule 21 and Rule 22 of the Pension Rules. Thus counsel for applicant contented that entire period of service rendered by the applicant under temporary status from 14.04.1985 to 04.04.1995 i.e. 09 years 11 months and 20 days is to be counted as qualifying service and on that basis, thereafter his case is to be considered for eligibility for the purpose of pension.

4. Counsel for applicant further submitted that the entire period after regularization of the service of the applicant on 04.04.1995 and up to his superannuation in November 2013, also requires to be counted towards qualifying service and period of Leave without Pay (in short LWP) cannot be deducted from the same. In this regard, counsel for applicant contended that the period of absence has been regularized by sanctioning leave without pay (reference service sheet Annexure A/2 page 18), and there is no break in service nor has the period been declare Dies Non and as such the applicant has remained in the services of the Respondent Railways. In this regard counsel for applicant emphasized that while for the period treated as LWP, the applicant may not be paid salary, but it has to be counted as service as he remained in employment and the period of LWP cannot be deducted while calculating the qualifying service and the period for purpose of pension, and Rule 14 (x) and (xii) are not applicable in his case as while granting LWP the period of absence has not been treated as unauthorized overstay or dies non.

5. Counsel for applicant thus submitted that the entire period for 1985 - 2013 is to be treated as qualifying service as per Chapter III and sub rule 22 of Rule 3 of the Pension Rule and he is eligible for pension because his service for pension purpose exceeds the 10 year period for grant of pension, as per Rule 5.1 introduced on the basis of recommendations of the 6th Pay Commission and prayed for the OA to be allowed.

6. Per contra, Ld. Counsel for Respondents while not denying the facts that the applicant was engaged on temporary basis on 14.04.1985

and his services were regularized w.e.f. 04.04.1995 and the fact of his superannuation in November 2013, submitted that entire period of service of the applicant including full period of temporary service, and period of leave without pay cannot be counted as qualifying service for the purpose of being eligible for pension.

7. Counsel for Respondents contended that the applicant has referred to Rule 20 of the Pension Rules on the basis on which even the entire period of his service rendered in temporary capacity and not just 50% should be counted for the purpose of pension, but this has to be seen in the light of Rule 31 of the Pension Rules which provides that only "half the service paid from contingences shall be taken into account for calculating pensionary benefits on absorption in regular employment". Accordingly only 50% period of the temporary services are required be counted for the purpose of pension and this has been admitted by the applicant in the OA in Para 4(1) though he has argued differently during the hearing.

8. Counsel for Respondents further submitted that the applicant was absent from duty for more than 05 years during his temporary service and more than 14 years after his regularization, and this period of his absence has been treated as Leave Without Pay (LWP) and submitted that LWP is the same as Extra Ordinary Leave (in short EOL) and that under no circumstances the period of LWP/EOL be can be counted for qualifying service for pension as Rule 14 of the Pension Rules clearly provides that period of unauthorized absence cannot be counted for pensionary benefits. Counsel for Respondents further referred to Rule 36 of the Pension Rules and submitted that period of LWP/EOL sanctioned to

the applicant does not fall in the category of leave during service for which leave salary is payable and therefore the same has correctly been deducted from the total period of service. Counsel for Respondents also submitted that as per Rule 21 the expression "service" means service under the Government and paid by the Government from the consolidated Fund of India" but in this case while sanctioning the leave it was LWP and no payment was made therefore, the period of absence cannot be treated as paid service and cannot be counted for qualifying service or as service to count for pension and it is also clear that in the case of LWP, the increment is shifted. Counsel for Respondents also referred to Rule 22 wherein continuous service is required for being eligible for pension and the applicant does not fulfill the same. As the total qualifying service comes to only 06 years, 03 months and 28 days, which is less than the required period of 10 years (as per Rule 5.1 introduced after the 6th Pay Commission) applicant is not eligible for pension and the same has been rightly not granted to him. Counsel for Respondents also submitted that while sanctioning LWP the Respondents actually regularized the entire period of absence by granting LWP/EOL otherwise there would have been break in service with other serious adverse consequences. However, that does not entitle the applicant for his period of LWP to count towards qualifying service for the purpose of pension and he thus prayed for the dismissal of the OA.

9. In rebuttal, Counsel for applicant again reiterated that the full and not just 50%of the period rendered in temporary capacity is to be treated as qualifying service, and further Leave without Pay (LWP) has to be treated as service period especially in view of Rule 20 and Rule 3 sub Rule 22 and Rule 14 of the Pension Rules does not provide that LWP

period can be deducted while calculating qualifying service for the purpose of pension and is not applicable in the case of the applicant. The applicant has rendered more than 28 years service under the employment of the Respondents and the period being more than 10 years he is fully entitled for the pension.

10. Considered the aforesaid contentions, and perused the record especially the relevant provisions of the Railway Service (Pension) Rules, 1993. There is no doubt that sub rule 22 of Rule 3 of defines qualifying service as "service rendered while on duty or otherwise which shall be taken into account for the purpose of pension and gratuities admissible under these rules" and Rule 20, also provides for including service rendered in temporary capacity as qualifying service. Therefore, there is force in the contention of the counsel for applicant that temporary service is to be counted for the purpose of pension as per Rule 20. However, Rule 31 is also there which provides that 50% of temporary service is to be counted towards qualifying service for the purpose of pension. Therefore, a harmonious reading of Rule 20 and 31 makes it clear that while of temporary service is to be treated as qualifying service but only 50% of the same would be counted towards calculating the period for the for purpose of pension, and even the applicant has admitted so in the OA though counsel for applicant argued differently during the hearing.

11. As far as question of counting or deducting LWP/EOL is concerned, as it is clear that during that period no salary is paid

and under Rule 21 service means service under the Government and paid by the Government and as no salary has been paid for LWP, Rule 21 does not come to the rescue of the applicant. Further while there is force in the contention of counsel for applicant that in the case of the applicant this period has not been declared Dies Non as per Rule 14(xii) and it is neither a case of overstay after unauthorized absence as per Rule 14(x) but as argued by counsel for Respondents that while sanctioning LWP/EOL in the case of applicant there are no orders of competent authority/leave sanctioning authority, where it has been ordered that this period of leave has to be counted for the purpose of pension and therefore LWP as sanctioned to the applicant cannot be counted as qualifying service under Rule 36. LWP as sanctioned by the competent authority and service record of the applicant is not disputed. Therefore, it appears that the present case of the applicant is not covered by Rule 14, but in view of Rule 21 and Rule 36 of the Pension Rules, the period of LWP cannot be treated as qualifying service for the purpose of grant of pension.

12. Accordingly, the period of LWP of the applicant as per service sheet (Annexure A/2 which is not disputed or under challenge) i.e. 05 years 04 months and 09 days during temporary service and 14 years 07 months and 18 days after regularization, cannot be counted towards qualifying service for the purpose of pension as per rules. As the applicant is required to have minimum 10 years of qualifying service for pension purpose but in this case as per record

sheet it has worked out only 06 years 03 months and 28 days, therefore it cannot be said that the applicant is entitled to pension or has been wrongly denied the same.

Accordingly, in view of the aforesaid discussion and analysis the Original Application is dismissed with no order as to costs.

(Ms.Meenakshi HooJa)
Administrative Member

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