

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.462/96

Date of order: 27.10.1998

Shri Rewar, S/o Shri Ram Pal, R/o Ghudalia, Tehsil Baswa, Distt. Dausa, last employed on the post of Gangman in Western Railway, Jaipur Division, Jaipur.

Vs.

...Applicant.

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.

...Respondents.

Mr.Shiv Kumar - Counsel for applicant

Mr.M.Rafiq - Counsel for respondents.

CORAM:

Hon'ble Mr.Ratan Prakash, Judicial Member.

PER HON'BLE MR.RATAN PRAKASH, JUDICIAL MEMBER.

The applicant herein Shri Rewar has approached this Tribunal under Sec.19 of the Administrative Tribunals Act, 1985 to direct the respondents to pay him all the retiral benefits including pension, gratuity, etc. alongwith payment of the amount of arrears and interest thereon. He has also sought a direction against the respondents to extend him the benefit of Rule 18 of the Pension Rules, 1993 and benefits of circular dated 15.4.87.

2. Facts relevant for disposal for this application in brief are that the applicant after his initial appointment with the respondents' Railways on 11.8.1962 continued to work upto 20.11.1974, when his services were terminated. He filed a suit against his illegal termination in the Court of Munsif, Bandikui and after being transferred to this Bench and registered as T.A No.1982/86, it was disposed of vide order dated 31.7.1992 (Annx.Al). By the aforesaid order dated 31.7.92 (supra), the termination order of the applicant was set aside and the respondents were directed to pay him 50% of the wages from the date of his termination to the date of his superannuation i.e. from 21.11.1974 to 14.11.1991, to be paid within 4



months of the order. The applicant was further held entitled to get the benefit of revision of pay scales and was also directed to be treated as a retired employee after attaining the age of superannuation on 14.11.1991 (AN).

3. The applicant having not been paid the retiral benefits including pension although having been directed to be treated as a retired employee and confirment of tempoary status by the respondents Railways, has approached this Tribunal to claim the aforesaid relief.

4. The respondents have opposed this application by a written counter to which no rejoinder has been filed. The respondents have opposed this application on the ground of limitation and also on merits. The chief stand of the respondents has been that since in terms of provisions of Rule 2005 of IREM Vol.II, a casual labour would be eligible to count only half of the period of services rendered by him after attaining temporary status and before regular absorption, as qualifying service for the purpose of pensionary benefits, the applicant having never been absorbed in the regular employment with the respondents' Railways; would not be entitled to any pensionary benefits.

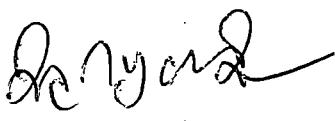
5. I heard the learned counsel for the parties at great length and have examined the record in detail including the original record made available by the respondents' department about the status of the applicant in their department. From a perusal of the documents made available, it is made out that the applicant was initially appointed on 11.8.62 and was conferred temporary status w.e.f. 24.4.1969. It is further made out on a perusal of the order of the Tribunal dated 31.7.92 (supra) that besides directing the respondents to pay to the applicant 50% wages for the period between 21.11.74 (date of termination) to 14.11.91 (AN)(date of superannuation); the applicant was held entitled to get the benefit of revision of pay scales as well. By virtue of this order, the applicant was further directed to be treated as a retired employee after attaining the age of superannuation on 14.11.91.

6. Although the respondents have tried to assert that the applicant was never absorbed in the regular employment of the respondent Railways yet by

virtue of the order of this Tribunal dated 31.7.92 (supra) it is explicit that for all purposes the applicant was to be treated as a retired employee after attaining superannuation on 14.11.91. The respondents have not been able to deny that the applicant was conferred temporary status w.e.f. 24.4.1969. The respondents have further failed to establish that the aforesaid order of the Tribunal dated 31.7.92 was ever challenged by them before a competent forum. In effect, the order dated 31.7.92 (supra) having become final, it would be deemed that by a fiction of law, the applicant was in continuous service with the respondent Railways from the date of his initial appointment on 11.8.1962 and after confirmation of temporary status w.e.f. 24.4.1969; remained in regular employment of the respondent Railways till he retired on 14.11.1991; after attaining the age of superannuation and therefore stand categorised as a 'Temporary Railway Servant' who is entitled to get all the benefits which are available to such employees under Rule 18 of the Railway Service (Pension) Rules, 1993. Hence the plea of the respondents that the applicant having never been absorbed in the Respondents' Railways does not carry any weight. In other words the applicant would be deemed to be in continuous and regular employment of the respondents Railways from the date of the confirmation of temporary status on him w.e.f. 24.4.1969 till he retired on attaining the age of superannuation on 14.11.1991. Consequently by fiction of law; the applicant who now falls under the category of Temporary Railway Servant; cannot be denied the pensionary benefits as are admissible to a regularly appointed employee in the Railways under Rule 18 of the Railway Service (Pension) Rules, 1993.

7. The contention raised on behalf of the respondents that since the services of the applicant stood terminated on 20.11.1974 and hence the O.A is time barred is also not tenable. The reason is that by virtue of the order dated 31.7.1992 (Annex. A1), the applicant having been treated as a retired employee after attaining the age of superannuation on 14.11.1991; his right to receive pension has become a recurring right and as such it cannot be said that this O.A is hit by the bar of limitation laid down under Sec. 21 of the Administrative Tribunals Act.

8. Consequently, the O.A is allowed and the respondents are directed to pay to the applicant all retiral benefits as are admissible under Rule 18 of the Railway Service(Pension) Rules, 1993, alongwith arrears and interest thereon as per rules. The respondents should comply with this direction within a period of 4 months from the date of receipt of a copy of this order. The O.A, stands disposed of accordingly with no order as to costs.



(Ratan Prakash)

Judicial Member.