

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 1st day of September, 2005

ORIGINAL APPLICATION No.343/2003
Misc. Application No.309/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Prayag Singh s/o Shri Ratan Singh ji, aged about 62 years, r/o village and post Chiksana, District Bharatpur, retired as Kante Wala under respondent No.2

.. Applicant

(By Advocate: Mr. P.P.Mathur)

Versus

1. Union of India through
General Manager,
Northern-Western Railway,
Jaipur.
2. The Divisional Railway Manager,
Jaipur Division,
Northern Western Railway,
District Jaipur

.. Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

The applicant has filed this Original Application thereby praying for the following reliefs:

- i) That the period of service rendered by the applicant since 1958 till 16.8.1972 may be counted for the purpose of giving pensionary benefits.

- ii) Respondents may accordingly directed to declare the date on which the applicant attain the temporary status and if the same is not been given after completion of 120 days from his initial appointment, the said date may be directed to be modified.
- iii) Respondents may be directed to make necessary amendment in the pensionary benefits payable to the applicant after counting the period of service rendered by him as prayed in the two relief clause and pay arrear thereafter alongwith interest at the rate of 12%
- iv) Any other appropriate order or direction which the Hon'ble Court thinks just and proper in the facts and circumstances of the case and which is in favour of the applicant may kindly be passed.
- v) Cost of the original application may kindly be awarded in favour of the humble applicant.

2. Brief facts of the case are that the applicant working as substitute against regular vacancy was appointed in Group-D post w.e.f. 16.8.1972. It is the case of the applicant that prior to his appointment in Group-D post w.e.f. 16.8.1972, he was working on casual and substitute basis since the year 1958. Thus, according to the applicant, service rendered by him since 1958 till 16.8.1972 in the aforesaid capacity shall be counted for the purpose of giving pensionary benefits. It is further pleaded that the Western Railway issued a service certificate from 16.8.1972 to 31.5.1997, which has been placed on record by the applicant as Ann.A1. It is further stated that the applicant has also filed representation before the Pension Adalat of the Railways and the representation of the applicant was rejected vide order dated 27.11.2000 (Ann.A2). It is further pleaded that feeling aggrieved by the order dated 27.11.2000, the applicant preferred OA No.438/2001 before this

Tribunal which was later on withdrawn with a liberty to file fresh OA. Copy of the order of this Tribunal dated 18.1.2002 has been placed on record as Ann.A5. Now, the applicant has filed this OA on 23.7.2003 almost 1½ years after withdrawal of the earlier OA.

2.1 Though the applicant in para 3 of the OA has stated that the present application is within the period of limitation as stipulated under Section 21 of the Administrative Tribunals Act, 1985 but in abundant precaution a separate Misc. Application for condonation of delay has been filed. The said Misc. Application was registered as MA No.309/2003. In this Misc. Application, the applicant has not explained the delay which occurred in filing the present OA at this belated stage. The reason given by the applicant for condonation of delay is that (i) the applicant being a poor retired person has to collect various documents in support of his OA which took some time and (ii) that the applicant also fell ill during the said period and could not approach the Tribunal within a period of one year of the impugned order and thereafter and that the case involves extra ordinary situation where the services rendered by a Class-IV employee for almost 14 years has been ignored for calculating the pension. Thus, in the larger interest of justice, the delay caused in filing the OA may be condoned. These are the only averments made by the

applicant in the Misc. Application for condonation of delay.

3. Notice of this application was given to the respondents. The respondents have filed reply to the OA as well as MA. In reply to the MA, the respondents have categorically stated that there is no merit in the application. As per law, the applicant was required to give justification for complete period of delay atleast monthwise if not date wise to justify reason of not filing the OA within limitation. It is further stated that the applicant took 31 years to collect various documents, as per his averments made in the MA, when he took such a long time in raising this plea no benefit can be granted to him at such a delay. Regarding the plea of the applicant that he could not approach the Tribunal within the period of one year as he was also fell ill, the respondents have categorically stated that such averments cannot be accepted in the absence of any proof to that effect. In reply to the OA, the respondents have taken preliminary objections regarding maintainability of the OA being barred by time, as according to the respondents, the applicant has prayed to court of his service from 1958 till 16.8.1972 which being barred by limitation cannot be raised at this belated stage. It is further stated that the applicant has not able to show that from 1958 till 16.8.1972, he had

continuously worked on casual and substitute basis. Thus, in the absence of any pleading as well as evidence to this effect, the OA is liable to be dismissed on the ground of non-disclosure of necessary information. On merits, the respondents have categorically stated that the applicant was appointed on 16.8.1972 prior to it as per letter Ann.A4 the applicant was appointed as substitute. The panel so prepared in July/August, 1959 for appointment in Group-D had currency of one year that is up to August, 1960 as is clear from Ann.A3 but the Railway Board vide its order dated 16.12.1960 has ordered that even a person who has worked for 30 days during the currency of panel he may be taken duty in leave/sick vacancy. Accordingly, the name of the applicant find place in the order but as for temporary status minimum of 120 days continuous work was required and as the applicant had temporarily worked for 30 days, he was not entitled for temporary status. Regarding the instances given by the applicant that he has worked in some of the places mentioned in para 4 of the OA, it has further been stated by the respondents that the applicant has not provided better particulars giving the relevant dates during which he worked on those postings or under the control of those officers so as to facilitate the answering respondents to verify the averments made in this paragraph. Besides the same, the details given by the applicant failed to disclose

the necessary requirement for grant of temporary status to the applicant. Since the applicant has not placed on record any contemporaneous record to show that he has in fact worked continuously w.e.f. 1958 till 16.8.1972 in casual/substitute capacity, still this Tribunal directed the respondents to produce the entire record to show for how much period the applicant had worked as casual labour before his absorption as Group-D employee w.e.f. 16.8.1972. Pursuant to direction given by this Tribunal, the respondents have filed additional affidavit. In the additional affidavit, the respondents have categorically stated that there is no record available prior to 16.8.1972 as the applicant was appointed only on 16.8.1972, a copy of appointment letter has been placed as Ann.R1. It is further stated that since the applicant has not been granted temporary status, thus no record prior to same had been maintained. As per rules only 10 years record relating to payment is maintained. It is only after grant of temporary status, service record such as Service Book, Personal File, Provident Fund etc. is maintained. The respondents have also categorically stated that the applicant and another persons were given appointment w.e.f. 16.8.1972 on the basis of order Ann.A3 dated 5.2.1969. This order also provided that candidates who have worked for 30 days during the period of one year from August, 1959 to August, 1960 will not be

subjected to fresh selection. Thus the panel so prepared for 60 candidates was circulated and as and when the vacancy arose, they were appointed. It is further mentioned in the additional affidavit that the seniority list was issued on 17.9.1985 wherein also the date of appointment of the applicant has been shown as 16.9.1972. The applicant has failed to protest against the same at any point of time. In case temporary status would have been granted to him prior to that date, it should have been mentioned in this seniority list. Copy of the seniority list has been placed on record as Ann.R2. The respondents have also placed on record copy of the service sheet of the applicant to show that his date of first appointment was 16.8.1972.

4. When the matter was listed for hearing on 18.7.2005, an opportunity was granted to the applicant to file rejoinder to the affidavit filed by the respondents particularly to the aspect of non availability of record which pertains to the year 1958-72 and the matter was adjourned to 29.8.2005. On 29.8.2005 at the request of the learned counsel for the applicant the matter was again adjourned to 1.9.2005 and it was made clear on that date that no further adjournment will be granted. Since the applicant has not filed any rejoinder, parties were heard at length.

5. At the outset, it may be stated that the present application is hopelessly time barred. The applicant has not shown any reason why he has filed this OA at this belated stage. According to the respondents, the cause of action in favour of the applicant has arisen for the first time in the year 1985 when the seniority list Ann.R2 was circulated and the applicant failed to file any objection against the seniority list dated 17.9.1985. From perusal of seniority list Ann.R2 it is clear that the date of appointment of the applicant has been shown as 16.8.1972. Thus, the stale claim of the applicant cannot be entertained at this belated stage i.e. after a period of almost 2 decades. That apart, as per own showing of the applicant, service certificate of the applicant Ann.A1 was issued on 31.5.1997 whereby the Western Railway has certified the service of the applicant in Railway from 16.8.1972 to 31.5.1997. In any case, at that time when the applicant was aware that his qualifying service for pensionary benefits has been counted from 16.8.1972 to 31.5.1997, he could have filed OA within one year from the date of issuance of such certificate in terms of Section. 21 of the Administrative Tribunals Act. However, it appears that the applicant did not agitate the matter immediately thereafter. As can be gathered from Ann.A2, the representation was made by the applicant only on 18.10.2000 which was rejected on 27.11.2000. The applicant has not given any

explanation as to why he did not approach before the appropriate authority immediately. That apart, the order dated 27.11.2000 was challenged by the applicant before this Tribunal by filing OA No.432/2001 which was dismissed as withdrawn on 18.1.2002 with a liberty to file fresh OA subject to limitation. Thus, while withdrawing the earlier OA, this Tribunal has not granted liberty to the applicant that the delay in filing OA has been condoned and this point was kept open. As already stated above, the OA was withdrawn by the applicant on 18.1.2002 and the present OA was filed by the applicant after a lapse of more than 1½ years on 23.7.2003. Admittedly, the present OA was also filed after a lapse of one year of statutory period as prescribed under Section 21 of the Administrative Tribunals Act. The applicant has not given any explanation whatsoever as to why he has approached this Tribunal at this belated stage what to talk of sufficient reasons. Accordingly, I am of the view that the OA is liable to be dismissed on the ground of limitation.

6. That apart, even on merit, the applicant has not been able to establish his case. But for the bald averment made in the OA that the applicant has worked in casual/substitute capacity since 1958 till 16.8.1972 and was posted at different places, no material has been placed on record to suggest that he

has worked in that capacity during the aforesaid period continuously so that the same service can be counted for pensionary benefits to the limited extent as per rules. The applicant has placed on record only two documents to suggest that he was engaged by the railway authorities during the aforesaid period. First document placed by the applicant is order dated 5.2.1969 (Ann.A3) thereby enclosing list of candidates who have worked for 30 days during August, 1959 to August, 1960. The name of the applicant find mention in that panel. This panel was prepared for the purpose that if leave/sick vacancy arises in future such persons can be taken on duty against leave/sick vacancy. Thus, I fail~~to~~ to understand how this letter dated 5.2.1969 (Ann.A3) is helpful to the applicant. On the contrary, this letter dated 5.2.1969 proves that the applicant has only worked for 30 days during August, 1959 to August, 1960 and as such his name was included in the provisional panel of approved candidates alongwith other persons and the approved candidates were to be given appointment against leave/sick vacancy which obviously may arise after issuance of the letter dated 5.2.1969 (Ann.A3). Thus from the reading of Ann.A3 it is quite clear that the applicant was not continuously working either as casual labour or in substitute capacity prior to 5.2.1969 and he alongwith other persons whose names have been included in the provisional list of approved

candidates were to be given appointment from future date. Based on the provisional list of approved candidates, pursuant to letter dated 5.2.1969 (Ann.A3) the applicant was appointed as substitute in the scale of Rs. 70-85 alongwith other persons against the vacancy of waterman and at the new headquarter shown as NIC vide letter dated -7.69 (Ann.A4). Except these two documents, there is no record to suggest that the applicant was continuously working in casual or substitute capacity since 1958. On the contrary, the respondents have specifically pleaded that the applicant has never worked for a minimum period of 120 days in any particular year and thus he was not conferred temporary status. Had he been conferred temporary status, service record such as Service Book Personal File, Provident Fund record would have definitely been maintained. There is no record available prior to 16.8.1972 as the applicant was appointed on 16.8.1972, as such entry regarding his appointment was rightly made in the service book Ann.R3.

7. At this stage it would be relevant to mention the decision of the Apex Court which stipulates that onus to prove claim is on workman and management cannot be called upon to disapprove the claim unless the workman has established it. The Apex court has further held that mere affidavit of the workman is not enough to

prove his claim. This is what the Supreme Court had held in the case of The Range Forest Officer and Anr. Vs. S.T.Hadimani, 2002 (2) SLJ 316. To the similar effect is another decision of the Apex Court in the case of Essen Deinki Vs. Rajiv Kumar, 2003 SCC (L&S) 13 whereby it was held that it was for the employee concerned to prove that in fact he has completed 240 days in the last preceding one year period. In the instant case also the applicant has failed to prove that he has worked for 120 days continuously from his initial appointment in the year 1958, as such he should have conferred temporary status. The applicant has further failed to prove that he has rendered service from 1958 till 16.8.1972 continuously so that the same can be counted for the purpose of pensionary benefits. In the absence of any material to show that the applicant continuously worked as casual worker and also in substitute capacity since 1958, no relief can be granted to the applicant. Further, the applicant was also granted opportunity to file affidavit particularly to the effect of non-availability of record which pertaining to the year 1958 to 1972. The learned counsel for the applicant has failed to avail this opportunity and has not placed any material on record. On the contrary, the respondents have taken categorical stand in the additional affidavit. Since the temporary status was not granted to the applicant, as such the service record, Service Book, Provident

Fund etc. was not maintained. The respondents have further stated that as per rules only 10 years record related to payment is maintained. The learned counsel for the applicant could not show any rule which requires that record regarding engagement and payment of wages to the applicant has to be maintained even after a lapse of about 30 years. The only argument advanced by the learned counsel for the applicant was that under instructions issued by the Railway Board a register showing name of all substitutes showing unit wise has to be maintained but the learned counsel has failed to show that such record is permanent and is not required to be weeded out even after a lapse of 3 decades.

8. For the foregoing reasons, the present OA is dismissed on account of limitation as well as on merits. No costs.



(M.L.CHAUHAN)

Member (J)

R/