

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 20.7.2004

ORIGINAL APPLICATION No. 353/2003

Ram Khilari son of Shri Shyama aged about 48 years, resident of Village Rampur Post- Koshi Khurd, Tehsil Mathura, District Mathura, at present employed on the post of Gangman in Western Railway, Kota Division, Kota in Gang No. 86.

...Applicant.

VERSUS

1. Union of India through General Manager, Central Western Railway, Jabalpur, MP.
2. Divisional Railway Manager, Central Western Railway, Kota Division, Kota.

....Respondents.

Mr. Shiv Kumar, Counsel for the applicant.

Mr. Tej Prakash Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. S.K. Agrawal, Member (Administrative)

ORDER

PER HON'BLE MR. S.K. AGRAWAL

The applicant has filed this OA with the prayer to direct the respondents to release the pension and all other retiral dues forthwith with all consequential benefits including interest on delayed payment and to pass any other order which may be deemed fit, just and proper under the facts and circumstances of this case.

2. The brief facts of the case are that the applicant was initially appointed on 25.4.1978 as a casual labour in Western Railway in Engineering Department. Thereafter, he was given temporary status w.e.f.

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21.3.1981 and regularised on 21.10.1984. Thereafter the applicant filed an application for seeking voluntary retirement on 25.5.2002 to the Incharge Sr. Section Engineer (P Way) Bharatpur. Since no reply was received from the respondents in regard to his application, he again gave an application dated 16.2.2003 to the 2nd respondent due to his ill health and sought voluntary retirement w.e.f. 16.5.2003. The applicant's grievance, however, is that till date he has not received any acceptance or rejection order on his application dated 16.2.2003. As per application dated 16.2.2003 three months have expired on 16.5.2003. He stood retired from that date. The case of the applicant here is that neither the applicant had been paid any pension nor any retiral dues has been paid to him after his voluntary retirement w.e.f. 16.5.2003. The applicant has stated in the OA that the respondents are keeping mum and are not giving him the retiral dues due to some extraneous reasons best known to them. The applicant has further submitted that pension and other retiral benefits is not a bounty and the same is a valuable right of the applicant. The action of the respondents is, therefore, violative of Article 14, 16 and 300A of the Constitution of India.

3. In the reply, the respondents authorities have stated that applicant was duly informed by the Sr. Section Engineer Bharatpur under whom the applicant was working vide his letter dated 24.6.2002 that he has not fulfilled the condition of voluntary retirement. His case for voluntary retirement cannot be accepted since he has not completed 20 years of regular service. The respondents have, therefore submitted that the application of the applicant for voluntary retirement was not considered by the Railways. The question does not arise in regard to payment of pension and other retiral dues to the applicant. The respondents have further stated in their counter reply that the applicant is not working on duty and abconding from duty w.e.f. 13.10.2002. Therefore, he is not entitled for any relief sought for in the application. The respondents have, therefore, submitted that because of the applicant's continous absence from working, major DAR action is being taken against the

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applicant by the ADENBTE. Therefore, the present OA deserves to be rejected.

4. The learned counsel for the applicant has cited the decision of the Andhra Pradesh High court in Writ Petition No. 10837/2001 decided on 23.6.2003, General Manager, South Central Railway, Rail Nilayam, Secunderabad, A.P. and another vs. Shaik Abdul Khader where the similar controversy was involved. Once a casual labour is granted the temporary status and later regularly absorbed in service, he is entitled to count full service for the period of temporary status till regularisation for the purpose of pension and half of the service before the period of temporary status. This view taken by the Hon'ble judges is further strengthened by mandate of Rule 20 of the Railways Services (Pension) Rules, which lays down as

under:-

20 Commencement of qualifying service: 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.

Provided that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post,"

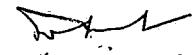
4. In view of the above, the learned counsel for the applicant has submitted that the applicant has completed 22 years of service as a regular employee in the temporary status and as such he is entitled for necessary pension and other retiral dues as applicable under CS Law.

5. I have considered all the facts and arguments put forth by the learned counsel for the applicant as well as by the respondents. In my view, the position of Andhra Pradesh High Court in the case of Shaikh Abdul Khader (supra) is fully applicable to the facts of the present case. The applicant in the present case was given temporary status w.e.f. 21.3.1981 and regularised w.e.f. 21.10.1984. Even if his services before 21.3.1981 ^{are} ~~is~~



ignored completely, the applicant has completed more than 20 years of service as on the date of his voluntary retirement.

6. In view of the above, I find merit in the submissions made by the learned counsel for the applicant. The applicant is entitled for necessary pension and retiral dues as applicable under the rules. The OA is accordingly allowed. The respondents are directed to not only to treat the applicant as a retired employee w.e.f. 16.5.2003 as per his letter seeking voluntary retirement but also to give him pension and all other pensionary benefits from that date within a period of two months from the date of receipt of a copy of this order. No order as to costs.


(S.K. AGRAWAL)

MEMBER (A)

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