

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 28th day of July, 2005

ORIGINAL APPLICATION NO.494/2003

CORAM :

HON'BLE MR.G.R.PATWARDHAN, MEMBER (A)

Balwant Rao
s/o Shri Mohan Rao,
Retired Driver,
Behind Railway Colony,
Makrawan Road,
Shamgarh (MP).

By Advocate : Shri V.P.Mishra

... Applicant

Versus

1. Union of India
Through General Manager,
Western Railway,
Churchgate,
Mumbai.
2. Sr.Dvl.Elect.Engineer (TRO),
W.Rly. (Now WC Rly.),
Kota Division, Kota.
3. Sr.Accounts Officer
Erstwhile W.Rly., Now W.C.Rly.,
Kota Division, Kota.

By Advocate : Shri Shailesh Prakash Sharma

... Respondents

ORDER (ORAL)

This OA was filed by the applicant,
retired Driver of Western Railway, against
the respondents, named above.

2. Through this OA the applicant submits
that though he was appointed as a Substitute
Cleaner on 10.6.66 and became a regular
employee only on 16.8.77, this period which
should have been taken into account for

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fixation of pension as per the instructions in force has not been done and on making representation to that effect he has been informed through the letter dated 14.11.2002 (Ann.A/1) on behalf of Divisional Railway Manager, Kota, that his qualifying service continues to be of about 23 years and 8 months and that he was appointed on 10.6.66 as NAC on daily wages and was not granted any pay scale.

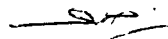
3. In para-8 of the OA, following prayers have been made :

"i) That the Hon'ble Tribunal be pleased to quash the impugned orders dated 14.11.2002 (Ann.A/1) & 11.1.2002 (Ann.A/12) declaring them illegal and void.

ii) That further, by suitable order the respondents be directed to count the service rendered as Substitute from 10.6.66 till regularisation on 27.11.71, as qualifying service, and based on it, recompute the applicant's pension and other retiral benefits.

iii) That the respondents be further directed to pay to the applicant, the arrears of pension, the DCRG etc with interest @ 9% per annum."

4. This OA was filed on 9.10.2003 and its reply under the signature of Shri Rajesh Verma, Sr.DPO, Kota of W.C.Rly. on behalf of the respondents on 25.3.2004. A rejoinder to the reply has been filed by the applicant on 31.3.2004 and an additional reply to the rejoinder by the respondents on 16.9.2004.



5. Learned counsel for both the parties have been heard today. The facts of the case, briefly stated, are as follows :

i) The applicant was initially engaged as Substitute Cleaner scale Rs.70-80 in the year 1966 in Loco Shed, Shamgarh, Kota Division of erstwhile Western Railway and now known as West Central Railway, Kota. On completion of four months continuous service the applicant attained temporary status on 10.6.66. The applicant thereafter was screened by the Screening Committee and declared suitable for regularisation in terms of letter dated 25.11.71.

ii) The applicant thus rendered total service aggregating to 31 years 6 months & 9 days, including the service rendered as substitute Cleaner, but in the PPO dated 11.1.99 (Ann.A/3), the qualifying service of the applicant was reckoned as 23 years, including the weightage of five years allowed to the applicant as he retired voluntarily on medical ground. However, in the aforesaid PPO the applicant's entire period of service rendered as Substitute from 10.6.66 till his regularisation on 27.11.71 was not treated as qualifying service.

iii) In case of substitute, the date of attaining temporary status is treated as his date of appointment. The date of appointment of applicant in all the records is consistently indicated as 10.6.66 as would be seen from the Provident Fund Pass Book (Ann.A/4).

iv) The applicant was initially appointed as Substitute Cleaner under the Running Shed Supervisor, Loco Shed, Shamgarh, on 10.6.66 as is evident from the certificate dated 8.5.82 issued by the Running Shed Supervisor, Shamgarh, wherein the date of appointment of the applicant is certified as 10.6.66.

v) The applicant had attained temporary status after four months of his initial engagement as Substitute Cleaner on 16.6.66 and was getting the facilities as admissible to temporary servants, including free privilege

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passes, as borne out from the copy of privilege pass dated 23.1.68 (Ann.A/6).

vi) In all the record including seniority list issued from time to time, the date of appointment of the applicant has been indicated as 10.6.66, as would be seen from the seniority list of Diesel Assistants dated 17.8.95, issued by DME, Kota (Ann.A/8).

vii) His junior named Lawrence S., whose name appeared below the applicant at S.No.58 of the seniority list dated 17.8.95 (Ann.A/8), the service rendered by him as substitute from the date of initial appointment of 28.6.68 is reckoned as qualifying service and thus in his case 26 years service is treated as qualifying service as against 23 years in applicant's case.

viii) No reason was given for not counting the substitute service from 10.6.66 as qualifying service, the applicant submitted representation to the 'Pension Adalat' dated 29.10.2002, in reference to which the applicant got the impugned order dated 14.11.2002 (Ann.A/1), wherein the respondents took a new plea, totally false vague and baseless being contrary to facts and law that the applicant was since appointed on daily wage basis on 10.6.66 as NAC (Non-approved candidate) and was given the scale Rs.70-85 from 27.11.71, his qualifying service is correctly reckoned as 23 years 8 months and 5 days.

6. Following grounds have been taken by the applicant to support his contention :

i) In terms of Railway Board's letter No.RB's No.F(E)III 69/PN I/21 of 22.7.70 the service as Substitute is to be counted for pensionary benefits from the date of completion of four months is to be counted as qualifying service. The text of Railway Board's order reads as under :

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"(7) Substitute Service reckoned for pensionary benefits: Service as Substitute will count for pensionary benefits from the date of completion of four months (three months in the case of teachers) continuous service as substitute provided it is followed by absorption in regular Class-III/IV service without break. The substitute service rendered before the issue of these orders will also be regulated accordingly."

ii) That apart from being contrary to Railway Board's orders the respondents have arbitrarily treated the date of regularisation i.e. 27.11.71 as his date of appointment which is factually incorrect and legally untenable. It is evident from all the documents annexed herewith that the applicant was appointed as a substitute on 10.6.66 and thus it is wrong to say that he was appointed on daily wages as under the Rules the substitutes are paid regular scale of pay and allowances as admissible to the post against which they are appointed.

iii) That contrary to Railway Board's order the respondents have arbitrarily treated the date of regularisation after screening as his date of appointment. According to Railway Board's orders the date of appointment as a substitute to be recorded in Service Book should be the date on which he attains temporary status on completion of continuous four months service. The relevant order of the Railway Board is extracted as below :

"The date of appointment of a substitute to be recorded in the service book against the column "Date of Appointment" should be the date on which he/she attains temporary status after continuous service of four months if the same is followed by his/her regular absorption. Otherwise, it should be the date on which he/she is regularly appointed."

7. Through the pleadings and arguments the respondents maintained that there is no

mistake in the calculation of qualifying service of about 23 years and 8 months and that the claim of the applicant that he was engaged on 10.6.66 cannot be verified because there are no record available to show that he was engaged as a temporary servant. They further submitted that Ann.A/5 to the OA, which is a certificate issued by the Running Shed Supervisor of Shamgarh in 1987, has no evidential value and the contents of Ann.A/8, which is a seniority list issued in 1995 by the Divisional Electrical Engineer and in which seniority of Assistant Drivers (61 in number) is shown along with their date of appointment and in which name of the applicant, Balwant Rao, appears alongwith two dates i.e. 10.6.66 and 16.8.77 cannot be relied upon as there was a mistake in the same. The respondents further maintained that it is for the applicant to prove by furnishing copies of documents that he served as a substitute and that not having been done the respondents had no alternative but to stand by the calculation they have already made and informed.

8. Alongwith the OA the applicant has enclosed copies of 13 documents including copies of Provident Fund Passbook, certificate of Running Shed Supervisor, free Travelling Passes and the seniority list referred to above. Along with that he has also furnished a copy of the qualifying service calculation of one Mr.Lawrence, whose name also appears in the seniority list issued by the Divisional Electrical Engineer at S.No.58 - just below the applicant, and a copy of which is at

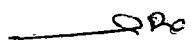
Ann.A/9. The seniority list indicates under the heading of 'appointment' two dates i.e. 28.4.68 and 16.8.77 and the calculation sheet indicates that his services have been recorded right from the year 1968 and there is a specific mention that he was appointed in 1968. The applicant wants the Tribunal to believe that in view of the similarity of entries in his case and that of Mr. Lawrence the respondents cannot now take the plea that the seniority list has no evidential value. On the other hand, in their reply, in para-4(viii) the respondents say that the qualifying service of the applicant can be counted only from the record that is available and the case cited i.e. Mr. Lawrence is of no assistance to him.

9. The learned counsel for the respondents was specifically asked about their reply contained in para-4(vii) where they maintained that the date of appointment of the applicant was inadvertently shown as 10.6.66 in the seniority list. They were asked to indicate if after realisation of this mistake they have tried to correct the seniority list since many of those included in the list still seem to be on their rolls. To this, there was no answer. The learned counsel also could not clarify about the time they realised this mistake and the steps taken to rectify the same.

10. On the basis of copies of the documents produced - specially copy of the seniority list (Ann.A/8), the presumption that can be drawn is that the applicant started working in the Establishment of the respondents in a

substitute capacity w.e.f. 10.6.66 and that by virtue of the circular of the Railway Board which authorises the period spent in this capacity to be counted for pension, the period spent from 10.6.66 to 27.11.71 is to be counted as qualifying service. In this view of the matter, there is ample justification for directing the respondents to treat the aforesaid period as qualifying service, recalculate the pension, DCRG and arrears and pay the same to the applicant alongwith a copy of the calculation sheet within a period of 90 days.

11. The impugned orders at Annexure A-1 and A-12 are accordingly quashed. The OA accordingly disposed of. No order as to costs.


(G.R. PATWARDHAN)
MEMBER (A)