

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 8th day of December, 2008

ORIGINAL APPLICATION No.309/2007

CORAM:

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

Parsadi s/o late Shri Mooliya,
retired Khalasi, Mechanical Department,
Western Railway, under SSE (C&W), Kota,
Permanent r/o Keer Pada, Naliya Colony,
Gangapur City,
Distt. Sawai Madhopur.

.. Applicant

(By Advocate: None present)

Versus

1. Union of India
through the General Manager,
West Central Railway,
Jabalpur.
2. General Manager, Western Railway,
Churchgate, Mumbai.
3. Assistant Mechanical Engineer (Estt.),
Western Railway,
Kota Division,
Kota.
4. Divisional Mechanical Engineer,
Western Central Railway,
Kota Division, Kota

.. Respondents

(By Advocate: Mr. R.G.Gupta)

ORDER (ORAL)

The applicant has filed this OA thereby praying
for quashing the impugned order dated 16.6.2007

(Ann.A1) whereby the applicant was intimated that he is not entitled to pensionary benefits.

2. Briefly stated, facts of the case are that the applicant was initially engaged as substitute in the year 1968. Vide order dated 22.3.2002, the applicant was informed that his services shall stand terminated on and from 22.4.2002 after expiry of one month's notice for retrenchment from 22.3.2002. The reason given in the said order was that he was declared unfit by the Screening Committee due to over-age. The said order was challenged by the applicant by filing OA No. 181/2002 in this Tribunal thereby praying for quashing the same and it was also prayed that the applicant may be treated as temporary railway servant in pursuance to rule 2501 and in the light of the judgment of the Hon'ble Supreme Court in the case of L.Robert D'Souza. As can be seen from the judgment dated 9.4.2003 in the aforesaid OA (Ann.A4), during the pendency of the OA, the applicant was granted temporary status w.e.f. 1983. In the light of this fact, this Tribunal held that there is no question of over-age and the fact of retrenchment is no more valid and the same was quashed. It was further made clear that so far as regularization is concerned, let the same be done as per rules. At this stage, it will be useful to quote para 4 of the judgment, which thus reads:-

"4. Since the applicant has been granted temporary status, the question of over age does not come in the way and thus, the notice of retrenchment is no more valid and, therefore, quashed. So far as regularization is concerned, let it be done as per rules."

It is admitted case between the parties that service of the applicant was not regularized and since he has not put in 10 years of regular service, the applicant was not held entitled for pensionary benefits. This fact was conveyed to the applicant vide Ann.A1 against which he has made representation. It is this order which is under challenge before this Tribunal.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that as per rules 10 years regular qualifying service is necessary for pension. The service of the applicant is less than 10 years and he is not regularized, as such, pension is not admissible to him. According to the respondents, the period of service of the applicant comes to 8 years, 5 months and 4 days only. If a Non Approved Candidate (NAC) who is not regularized has attained the age of superannuation then 50% of his entire period of NAC is counted for qualifying service. Thus, according to the respondents, the applicant is not entitled for pensionary benefits.

4. Despite repeated opportunities the applicant has not filed rejoinder.

5. When the matter was listed on 23.10.2008, none appeared on behalf of the applicant and the matter was adjourned to 8.12.2008 with a clear stipulation that no further adjournment will be granted on that date. A last opportunity was also granted to the applicant to file rejoinder. Even today, none has appeared on behalf of the applicant.

6. I have heard the learned counsel for the respondents. Instead of dismissing the case in default, as contemplated under Rule 15 of the Central Administrative Tribunal (Procedure) rules, 1987, I have proceeded to decide the same on merit rather dismissing the same in default which course is admissible under the said rule.

7. From the material placed on record, it is evident that the applicant was only a casual labour. Even in 2002 when he was again screened by the Screening Committee, it was found that he was over age, as such, his service was being dispensed with. However, subsequently the aforesaid order was quashed by this Tribunal and during the pendency of the earlier OA, the applicant was granted temporary status. As can be seen from para 4 of the judgment passed in earlier OA

(Ann.A4), relevant portion of which has been extracted above, regarding regularization of service of the applicant it was specifically observed that the same may be considered as per rules. From the material placed on record, it is also evident that service of the applicant was never regularized. The applicant has placed on record particulars of pensioner (Ann.A2) which shows that the applicant retired on 31.7.2004. The total qualifying service of the applicant is shown as 8 years, 5 months and 4 days. As can be seen from Ann.A2, against column 12 - Basic Pension the word 'N.A.' has been mentioned. In the reply filed by the respondents, the respondents have given two grounds as to why the applicant is not entitled to pensionary benefits. Firstly, on account of the fact that service of the applicant has not been regularized and he has only been conferred temporary status and secondly, the applicant has not put in 10 years of qualifying service so as to held him entitled for pensionary benefits.

8. I have given due consideration to the submissions made by the learned counsel for the respondents. I am of the view that the matter on this point is no longer res-integra. Admittedly, the applicant was a casual employee with temporary status. His services have not been regularized by the department till he has completed the age of superannuation. Thus, in view of

the law laid down by the Hon'ble Apex Court in the case of General Manager, North West Railway and Others vs. Chanda Devi, (2008) 1 SCC (L&S) 399, the applicant is not entitled to pensionary benefits till he is not regularized in the railways. The Apex Court further held that mere fact that a person has been given temporary status in terms of Rule 2005 of IREM may confer entitlement and privileges in terms of para 2005 but certainly such temporary servant is not entitled to pension or benefit of family pension so long as his service is not regularized. The Apex Court has further held that even if the railway authority has taken steps in the direction of regularization of service by holding screening test, so long as the person is not appointed against a post and has expired in the meanwhile, such a person is neither entitled to pensionary benefits nor family pension is admissible in such cases. Thus, according to me, the applicant is not entitled to any relief, in view of the law laid down by the Apex Court in the case of Chanda Devi (supra) which is squarely applicable in the facts and circumstances of this case. The respondents have stated in the reply that the applicant has not put in 10 years of service, as such, he is not entitled to pensionary benefits and Rule 31 and 69 of the Pension Manual is attracted only when the applicant is treated to be a regular railway servant and the question whether the applicant is entitled to family pension or

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service gratuity, as he has not put in 10 years service, will arise thereafter. It may be stated that as per rules, pensionary benefits to a person who is retired on superannuation is admissible only when he has put in 10 years of qualifying service and where the service rendered by a person is less than 10 years, in that eventuality, he is not entitled for pension but entitled for service gratuity. Thus viewing the matter from any angle, I am of the firm view that the applicant is not entitled to any relief.

9. At this stage, it will also be useful to quote another decision of the Apex Court in the case of Indian Council of Agricultural Research and Anr. Vs. Santosh, JT 2006 (9) SC 43 whereby the Apex Court has held that a casual labour who has been granted temporary status under Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1992 is not entitled to pensionary benefit and such a person is only entitled to the privileges as scripted in the scheme. In the case in hand also the applicant has been extended privileges which were admissible to him in terms of para 2005 of the IREM. Admittedly, the service of the applicant was never regularized which was a condition precedent for holding the person entitled for pensionary benefits under the relevant rules.

10. For the foregoing reasons, the OA is bereft of merit, which is accordingly dismissed with no order as to costs.



(M.L.CHAUHAN)
Judl.Member

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