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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

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ORDER SHEET

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**ORDERS OF THE TRIBUNAL**

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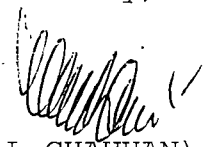
02.03.2009

OA No.389/2007

Mr. Sunil Samadaria, counsel for applicant  
Mr. V.S.Gurjar, counsel for respondents

Heard the learned counsel for the parties.

For the reasons dictated separately, the OA  
stands dismissed.



(M.L. CHAUHAN)

Judl.Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 2<sup>nd</sup> day of March, 2009

ORIGINAL APPLICATION No. 389/2007

CORAM:

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

Kunj Bihari Lal Arora  
s/o Late Shri Gulab Chand Arora,  
r/o 3-Va-23, Hiran Magri,  
Prabat Nagar, Sector-5,  
Udaipur.

.. Applicant

(By Advocate: Shri Sunil Samadaria)

Versus

1. Union of India through  
Its General Manager,  
North Western Railway,  
Zonal Office, Jaipur
2. Divisional Railway Manager,  
DRM Office, Division Ajmer,  
Ajmer.
3. Senior Divisional Personnel Officer,  
Divisional Office,  
Ajmer.

.. Respondents

(By Advocate: Shri V.S.Gurjar )



O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- i) to quash and set aside the order dated 17.02.2006 (Annexure A/1) and 27.12.2006 (Annexure A/2) and direct the respondents to compute the qualifying service from 19.09.1973 to 17.08.1978 and consequently direct the respondents to make the payment of post retiral benefits according to revised qualifying service @ 18 of p.a.
- ii) any other order which this Hon'ble Tribunal deem fit and proper in facts and circumstances of the case may also be granted in favour of applicant.
- iii) Award cost of the application.

2. Facts of the case, so far as relevant for disposal of this, case are that the applicant sought voluntary retirement from service w.e.f. 20.2.2002 vide Ann.A6. After retirement, he made representations dated 19.12.2005 and 22.12.2005 which were decided by the respondents vide order dated 17.2.2006 (Ann.A1). Feeling aggrieved by the action of the respondents, the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have taken objection that the present OA cannot be entertained being time barred on account of the fact that the same has not been filed within the period of one year from 17.2.2006 when the impugned order Ann.A1 was passed and repeated

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representations will not extend the period of limitation.

On merit, it has been stated that the applicant was engaged as substitute on 30.7.1972 and temporary status was granted on 17.3.1973, but after 19.9.1973, the services of the applicant were discharged. It is further stated that the applicant accepted his discharge from service as is evident from the entries made in column No.11 of the attestation form, copy of which has been enclosed by the respondents with the reply as Ann.R1. The respondents have further stated that the applicant was re-engaged as substitute on 2.3.1977 and he was granted temporary status on 10.12.1978 after his re-engagement. Thereafter his services were regularized and on seeking voluntary retirement, he was retired from service on 20.2.2002. Thus, according to the respondents, since the applicant has rendered qualifying service of 22 years 9 months and 17 days, his pension has been computed on that basis and the applicant is not entitled for counting of qualifying service w.e.f. 19.9.1972/19.3.1973 because his <sup>earlier</sup> service could not be computed after break in service.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA. Alongwith rejoinder, the applicant has also annexed copy of the service sheet of Shri Beni Ram and Gheri Lal as

Ann.A10 and A11 to substantiate his plea that in similar circumstances service of these two persons were counted as qualifying service for the purpose of pension.

5. I have heard the learned counsel for the parties and gone through the material placed on record.

6. The sole question which requires my consideration is whether the service rendered by the applicant prior to his discharge from service on 19.9.1973 and also the period between 19.9.73 till 2.3.77 when he was out of service can be counted for the purpose of pensionary benefits. The matter on this point requires no adjudication as the same is governed by the provisions contained in Railway Services (Pension) Rules, 1993. As per Rule 32 of the said Rules service rendered as substitute shall be counted for pensionary benefits from the date of completion of four months of continuous service as substitute followed by absorption in a regular post without any break. Admittedly, the services of the applicant as substitute followed by absorption in regular post without any break has been counted for the purpose of pensionary benefits but the applicant's service prior to his re-engagement on 2.3.1977 which constituted break in service has not been counted for the purpose of pensionary benefits. Rule 42 of the aforesaid

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pension rules provides that interruption in the service of a railway servant shall lead to forfeiture of his past service. Thus, in view of the provisions contained in Railway Services (Pension) Rules, I am of the view that the applicant is not entitled to any relief. The learned counsel for the applicant submits that since S/Shri Beni Ram and Gheri Ram who were similarly situated ~~in~~ in their case past service i.e. service rendered prior to break in service has been counted for the purpose of pensionary benefits, as such, similar benefit should be given to the applicant, cannot be accepted for more than one reason. Firstly, the said relief cannot be granted to the applicant in view of the specific provisions contained in Rule 42 of the Railway Services (Pension) Rules, 1993 and secondly in case the aforesaid persons have been granted wrong benefit by the respondents de hors the rules that will not afford any ground for the applicant to claim relief as the Hon'ble Supreme Court has repeatedly held that Article 14 cannot be enforced in negative way. Besides it, from perusal of service sheet Ann.A10, it is quite clear that Shri Beni Ram before dis-engagement of his service was drawing the basic pay of Rs. 202/- w.e.f. 19.9.1974. He was discharged from service w.e.f. 21.4.1975 being no vacancy. However, he was re-engaged as substitute on 8.4.1978 and his pay was fixed at Rs. 196/- being initial pay scale of the post. Similarly, perusal of

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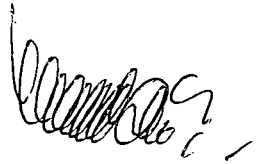
Ann.A11 also make it clear that pay of Shri Gheri Lal when discharged was Rs. 199/- whereas he was re-engaged in the initial pay of Rs. 196/-. Thus, the vague contention of the learned counsel for the applicant that their past services were counted for the purpose of pensionary benefits is not supported by these documents. Rather, these documents reveals that both these persons were treated as fresh recruitee and their pay was fixed at the minimum of the pay scale whereas they were drawing higher basic pay when they were discharged and their pay was not protected on their re-engagement.

7. That apart, the respondents in the impugned order have categorically stated that the case of these two persons will be looked into and in case they have been granted wrong benefit of the past service, action will be taken in accordance with the rules.

8. Thus, in view of what has been stated above, the applicant is not entitled to any relief on the basis of aforesaid two persons. The learned counsel for the applicant further argued that service of the applicant has been counted for the purpose of seniority w.e.f. his initial appointment, as such, interruption period of his service should also be counted for the purpose of qualifying service. Suffice it to say that seniority has nothing to do with the pensionary

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benefits, which are to be governed in accordance with the specific rules in that behalf i.e. Railway Services (Pension) Rules. 1993. Since the applicant has not made out any case for grant of relief in accordance with the provisions of Railway Services (Pension) Rules, as such I find that the present OA is bereft of merit, which is accordingly dismissed with no order as to costs.



(M.L. CHAUHAN)

Judl. Member

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