

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 395/2009

Date of Order: 18.08.2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDICIAL)

Mangilal S/o Shri Mehtab, aged about 55 years, by caste Tailor, R/o Barkheda Uda, Tehsil Baroth, District Mansaur. At present compulsorily retired Gangman, West Central Railway, Jabalpur.

... Applicant
Mr. Rajvir Sharma, counsel for applicant.

VERSUS

1. Union of India through its General Manager, West Central Railway, Jabalpur (M.P.).
2. Divisional Railway Manager, West Central Railway, Kota.

.. Respondents
Mr. R.G. Gupta, counsel for respondents

O R D E R (ORAL)

This is the second round of litigation. Earlier the applicant has preferred an O.A. No. 223/2006, in which the following reliefs were sought by the applicant:

"a) By an appropriate order or direction your Lordship may be pleased to direct the respondents to release and pay the retiral benefits such as pension, gratuity, leave encashment, P.F. and others immediately to the applicant. The respondents may be further directed to pay the arrear of such amount with interest @ 12% p.a. The respondents may be also directed to determine the pension of the applicant payable on monthly basis throughout his life.

b) Any other order or direction which this Hon'ble Tribunal may deem fit and proper be also passed. Since the amount has been withheld without any reason and the applicant low paid employee so an exemplary cost may be imposed on the respondents."



2. This Bench of the Tribunal, after having considered the matter, disposed of the said O.A. No. 223/2006 vide order dated 23rd October, 2008, and observed as under:

"9. I have heard the contentions of both the parties and after perusal of the material on record, it is observed that in para 4.5 of the OA and as per detail of Ann. A/5, the applicant has submitted that he filed leave applications alongwith medical certificates for the period mentioned therein. Therefore, the applicant is directed to make a representation to the appropriate authority, within a fortnight from the date of this order, regarding sanction of leave for the period for which he had obtained medical certificates of the railway doctor. In the event of filing of such representation by the applicant within the stipulated period, the appropriate authority is directed to decide the same within a period of one month from the date of receipt thereof. If the said representation is allowed by the respondents, the period of absence in question may be added to the qualifying service of the applicant and if it comes to 10 years, applicant may be allowed the benefit of pension. The applicant will also be at liberty to approach this Tribunal again if he feels aggrieved by the order of qualifying service and not granting the pension."

3. In pursuance of the liberty accorded by the Tribunal to represent before the appropriate authority, the applicant has represented on 31.03.2009 and the same has been decided by the respondents vide order dated 23.06.2009 and communicated vide annexure A/1 letter dated 26.06.2009.

4. Being aggrieved and dissatisfied with this impugned order dated 23.06.2009 (Annex. A/1), the applicant preferred the present Original Application, and submitted that the applicant is eligible for retiral benefits as the applicant has completed more than 20 years' regular service, whereas as per the respondents, the total period of service come to 07 years, 06 months and 07



days. Thus, as per the respondents, the applicant is not entitled for retiral benefits as the minimum 10 years' service is required for the pensionary benefits, and the sickness period has not been counted as the leave was unauthorized. Thus, as per the respondents, the total period of service of the applicant is 07 years, 06 months and 07 days.

5. In view of the judgment rendered by the Division Bench of Rajasthan High Court at Jodhpur in the case of **Union of India & Ors. vs. Mohinder Singh & Anr.** - (D.B. Civil Writ Petition No. 2345/2000 – decided on 25.07.2000) - reported in 2000 (3) WLC (Raj.) page 306, for the purpose of determination of pension and gratuity, in which the applicant rendered temporary service and on completion of 120 days working as casual with effect from the date of initial appointment as qualifying service for that purpose, the applicant is entitled to determination of his pension and gratuity by including 50% of such services.

6. Herein, in the instant case, the applicant was appointed on the post of Gangman on 14.04.1981 and acquired temporary status w.e.f. 01.01.1984, and was regularized in the service by the respondents as Gangman in the year 1987, whereas the respondents stated that applicant was regularized w.e.f. 16.10.1997. Thus, admittedly as the applicant was appointed on 14.04.1981 and completed 120 days working as casual labour, and in view of the ratio decided by the Hon'ble Division Bench of the Rajasthan High Court in the case of **Union of India & Ors.**



vs. Mohinder Singh & Anr. (supra), the applicant is entitled to determination of his pension and gratuity by including 50% of service rendered by him as temporary services on completion of 120 days working as casual with effect from the date of initial appointment as qualifying service for that purpose, and as the applicant was initially appointed on 14.04.1981, if 120 days are excluded upto 14.08.1981 so since 15.08.1981 to 15.10.1997, the date upto he remained temporary status employee because as per respondent he was regularized since 16.10.1997, so he remained under temporary status for 16 years, 02 months, and half of the service comes as 08 years and 01 month, and this period is countable for the purpose of pension and gratuity, and as per the respondents, the applicant rendered regular service for a period of 07 years, 06 months and 07 days. Therefore, after adding 08 years and 01 month service, the applicant is entitled for pensionary benefits.

7. In view of this fact, I allow this Original Application to that extent, and I deem it proper to direct and respondents to count the period of temporary status of the applicant for the purpose of pensionary benefits, as discussed herein above, in view of the ratio decided by the Hon'ble Division Bench of the Rajasthan High Court in the case of **Union of India & Ors. vs. Mohinder Singh & Anr.** (supra), and extend the benefit of pensionary benefits to the applicant accordingly, and the payment which is already made to the applicant be adjusted and after adjusting



the same, the retiral benefits be determined and allowed to the applicant.

8. The applicant in this Original Application has also challenged the impugned order dated 27.01.2005 (Annex. A/2), and in the earlier O.A. No. 223/2006, which has been preferred by the applicant, the applicant has not challenged the compulsory retirement order, which is now in this Original Application, the applicant has challenged the same and after a lapse of more than six years, the same cannot be entertained in view of the ratio decided by the Hon'ble Supreme Court in the case of D.C.S.Negi vs. Union of India and ors., in SLP (Civil) No.7956/2011 dated 07.03.2011, observing as under:-

“..... A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3).

In the present case, the Tribunal entertained and decided the application without even adverting to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicates its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant.....”



Therefore, so far as the challenge of impugned order dated 27.01.2005 (Annex. A/2) is concerned, to this extent, this Original Application is barred by limitation and cannot be entertained and deserves to be dismissed in view of the ratio decided by the Hon'ble Supreme Court in the case of D.C.S.Negi (supra). Accordingly, the O.A. is dismissed to the extent of challenging the impugned order dated 27.01.2005 (Annex. A/2).

9. In view of the aforesaid observations and directions made herein, this Original Application is partly allowed with no order as to costs.



(JUSTICE K.S.RATHORE)
Judicial Member

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