IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 6th day of August, 2010

Original Application No. 436/2009

CORAM:

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

Shri Jolly M.Robinson
s/o Shri N.Robinson,
r/o Indra Colony, Ramble Road,
Christian Gunj, Ajmer,
last employed on the post of Khallasi,
In North Western Railway
(Carriage Department), Ajmer Division,
Ajmer, Rajasthan

.. Applicant

(By Advocate: Shri Shiv Kumar)

Versus

1. Union of India,
through General Manager,
North Western Railway,
Jaipur.

2. Deputy Chief Electrical Engineer,
Railway Power House,
Nasirabad Road,
Ajmer Division,
North Western Railway,
Ajmer.

... Respondents

(By Advocate: Ms. Sonal Singh, proxy counsel for Shri Alok Garg)

ORDER (ORAL)

This is second round of litigation. Earlier the applicant has filed OA No.229/2007 whereby the applicant has prayed that

respondents may be directed to grant pension, gratuity and other pensionary benefits to the applicant w.e.f. 6.12.1996 alongwith arrears and interest. The said OA was disposed of by this Tribunal vide order dated 19th February, 2009. At this stage, it will be useful to quota Para-5 of the order, which reads as under:-

> "I have heard the learned counsel for the parties and perused the record. I find that cause of action in favour of the applicant had arisen in the year 1996 and he has filed the present OA in the year 2007. He has also not moved any application for condonation of delay. The applicant also could not file any specific order of the competent authority refusing for entertaining his claim. I also find that the applicant has straightway approached this Tribunal without exhausting any departmental remedy. In the circumstances, without going into the merit of the case, it is considered necessary to direct the applicant to submit a self contained representation to respondent No.2 within a period of one month from today and in case the said representation is filed within the specified period, respondent No.2 is directed to decide the same as per rules on the subject within a period of three months from the date of receipt thereof. However, the applicant will be at liberty to approach this Tribunal again, if he feels aggrieved by the order to be passed on his representation."

3. Pursuant to the observations made by this Tribunal, ~~this~~ Tribunal, as quoted above, the applicant made a representation dated 17.3.2009 (Ann.A/6) whereby the applicant has taken additional plea that he was discharged from service w.e.f. 6.12.1996 on medically incapacitated ground and illness was beyond his control. Thus, willful or unauthorized absence ought to have been regularized by granting leave or extraordinary leave on medical ground as per rules. It is further stated that the period in which the applicant has taken treatment cannot be treated as unauthorized absence and the said period should have been counted qualifying service for the purpose of pension after granting leave or

extraordinary leave on medical ground. It is further stated that if it was not possible for the respondents to adjust the applicant against any post, he could have been kept on supernumerary post until a suitable post, so that he could have completed minimum qualifying service for grant of pension in view of the provisions contained in Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1985. But no such effort has been made in this regard by the respondents. The said representation of the applicant was rejected by the respondents vide impugned order dated 20.8.2009 (Ann.A/1) whereby it has been stated that his absence w.e.f. 19.9.89 to 24.8.1995 and 9.12.1995 to 6.12.1996 except the period from 25.8.95 to 8.12.1995 when the applicant has undergone medical check-up cannot be treated as Extraordinary Leave. It is also stated that the period from 25.8.95 to 8.12.1995 has already been included in the qualifying service and after including this period the total qualifying service comes to 3 years, 9 month and 21 ½ days as such, the applicant has not completed 10 years service for the purpose of pension. It is this order which is under challenge in this OA and the applicant has prayed that this order dated 20.8.2009 be quashed and the respondents be directed to regularize the period from 19.9.89 to 24.8.95 and 9.12.95 to 6.12.96 during which the applicant has taken medical treatment by granting Extraordinary Leave on medical ground and after regularizing, the same should be treated as qualifying service for the purpose of pension. It is further prayed that the respondents may

be directed to grant pension and other pensionary benefits to the applicant with all consequential benefits.

4. The relevant facts, which are necessary for the purpose of decision of this case, may now be noticed. The applicant was initially appointed as Casual Khallasi on 14.11.79 in the North Western Railway, Ajmer Division. However, his services were regularized on 12.8.1983. The applicant got infection in his eye and thus absented from duty w.e.f. 19.9.1989 till 6.12.96 when the applicant was discharged from service on the basis of opinion given by the Medical Board to the effect that applicant was blind from both the eyes and recommended that applicant should be given a job in handicapped quota. However, subsequently the applicant was discharged from service w.e.f. 6.12.1996, as according to the respondents, no post was available in Ajmer Division or in the Workshop Unit where the applicant could have been adjusted by giving alternative post, even though an order dated 7.3.96 was passed by the divisional authorities thereby observing that in case any post is available or vacant in the department on which the applicant could have been adjusted, information to this effect be sent to the division.

5. Notice of this application was given to the respondents. The facts as stated above, have not been disputed by the respondents. The respondents have justified the impugned order dated 20.8.2009 whereby the applicant was informed that he has not completed 10 years' qualifying service and qualifying service of the applicant is 3 years, 9 months and 21 ½ days, as such, pension cannot be granted

to the applicant. The respondents have further stated that in view of the provisions contained under Rule 18 of the Railway Services (Pension) Rules, 1993 qualifying service for receiving pension for an employee discharges/retired on grounds of medical incapacitated is ten years. Thus, the applicant is not entitled to any relief. The respondents have stated that there is no rule to consider the period of unauthorized absence as Extraordinary Leave. Thus, according to the respondents, there is no infirmity in the impugned order and the applicant is not entitled to any relief.

6. I have heard the learned counsel for the parties and gone through the material placed on record. I am of the view that the applicant is not entitled to any relief for more than one reason. Admittedly, the applicant remained absent from 19.9.89 to 24.8.95 and 9.12.95 to 6.12.1996 when he was discharged from service except for the period from 25.8.95 to 8.12.1995 during which period the applicant appeared before the Medical Board for medical check-up pursuant to the order passed by the authorities. The applicant has not raised any grievance at the relevant time regarding regularization of his service for the aforesaid period of absence which is about 7 years i.e. from the year 1989 onwards till 1996. In any case, the applicant could have raised such grievance before the authorities at least in the year 1996 when service of the applicant was discharged and no pension was paid to the applicant. It is in the year 2007, the applicant has filed OA No.229/07 thereby praying for grant of pensionary benefits. Even in this OA, the applicant has not made out any grievance regarding

regularization of the aforesaid period of absence. The grievance of the applicant was that he is entitled to invalid pension. This Tribunal in the earlier OA in Para – 5 relevant portion of which has been reproduced above, has observed that cause of action in favour of the applicant has arisen in the year 1996 whereas the OA was filed in the year 2007 without any application for condonation of delay. Under these circumstances, it was not permissible for this Tribunal to allow the applicant to make fresh representation within a period of one month and to direct the respondent No.2 to decide representation of the applicant in the light of the law laid down by the Apex Court in the case of C.Jacob vs. Director of Geology and Mining, (2008) 2 SCC (L&S) 961 whereby the Apex Court has held that court should be circumspect in issuing direction to consider the stale claim as it ultimately leads to consideration of case on merits at subsequent states of litigation as if the cause of action stood revived due to fresh consideration. The Apex Court further in Para 11 has held that when a direction is issued by a court/tribunal to consider or deal with the representation, the directee examined the matter on merits being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or the tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgement of a jural relationship to give rise to a fresh cause of action. Thus, in view of what has been stated above, the grievance of the applicant as projected in this OA regarding treating the aforesaid period of

absent of about 7 years as leave or Extraordinary Leave on medical ground which grievance has been raised by the applicant for the first time vide representation dated 17.3.2009 after a period of about 13 years that too at the instance of direction given by this Tribunal to file fresh representation cannot be entertained in the light of the law laid down by the Apex Court in the case of C.Jacob (supra) and the OA is liable to the rejected on this ground alone.

7. Even on merit, the applicant has not made out a case for grant of relief. Admittedly, the qualifying service of the applicant was 3 years, 9 months and 22 ½ days which also include the period w.e.f. 25.8.95 to 8.12.95 when the applicant has undergone medical check-up. The applicant remained unauthorisedly absent continuously w.e.f. 19.9.89 till he was discharged from service on 6.12.1996, practically for a period of 7 years except for the period w.e.f. 25.8.95 to 8.12.1995. It is not in dispute that claim of the applicant for pensionary benefits has to be decided in terms of Railway Services (Pension) Rules, 1993. Rule 3(22) defines qualifying service to mean service rendered while on duty or otherwise which shall be taken into account for the purpose of pension and gratuity admissible under these rules. Rule 14 deals with the period which shall not be treated as service for the purpose of pensionary benefits which inter-alia provides that period of unauthorized absence in continuation of authorized joining time or in continuation of authorized leave of absence tread as overstay shall not constitute service for pensionary benefits. Thus, in view of the specific provisions contained in the rules period of unauthorized

absence of the applicant could not have been counted for the purpose of pensionary benefits. Rule 36 stipulates that all leave during service for which leave salary is payable and all extraordinary leave granted on medical ground shall count as qualifying service. Admittedly, the applicant was neither paid leave salary nor his long absence of 7 years was treated as extraordinary leave by the authorities on medical ground at any point of time. As such, in the absence of any specific order to this effect, the unauthorized absence of the applicant for the aforesaid period of 7 years cannot be treated as qualifying service.

8. That apart, leave salary can be paid to a railway servant only in case leave is available in his credit and further there is also limitation regarding treating the absence as extraordinary leave and, in any case, entire period of 7 years cannot be treated as qualifying service for the purpose of pensionary benefits, even if, any such order in terms of Rule 36 would have been passed by the authorities. Be that as it may, since the applicant has not put in 10 years qualifying service, as such, he is not entitled to pensionary benefits.

9. The learned counsel for the applicant while drawing my attention to Rule 55 argued that Rule 55 does not prescribe any period for grant of invalid pension and only speaks that invalid pension may be granted to a railway servant who retires from service on account of any bodily or mental infirmity which permanently incapacitates him for the service, as such, the applicant is entitled to invalid pension, even if he has put in less

years of service. The submission so made by the learned counsel for the applicant requires out right rejection in the light of the provisions contained in Rule 18 of the Railway Services (Pension) Rules. At this stage, it will be useful to quota Rule 18(1) of the Pension Rules which is in the following terms:-

> 18. Pensionary, terminal or death benefits to temporary railway servants
> (1) A temporary railway servant who retires on superannuation or on being declared permanently incapacitated for further railway service by the appropriate medical authority after having rendered temporary service not less than ten years shall be eligible for grant of superannuation, invalid pension, retirement gratuity and family pension at the same scale as admissible to permanent railway servant under these rules.

10. In view of this specific provisions contained in Rule 18 of the Railway Pension Rules, the applicant was not entitled to pensionary benefits unless he has put in not less than 10 years of service.

11. Further, the matter on this point is no longer res-integra. The Apex Court in the case of Union of India and Anr. vs. Bhasirbhai R. Khilji, (2007) 2 SCC (L&S) 292 considered para-materia provisions contained in CCS (Pension) Rules, 1972 and has held that for grant of any kind of pension one has to put in minimum 10 years of qualifying service. It may be stated here that the Apex Court has considered the provisions of Rule 38 and Rule 49 of CCS (Pension) Rules which are para-materia to Rule 55 and Rule 69 of the Railway Services (Pension) Rules, 1993 and in para-10 has made the following observations:-

> "10. Therefore, the minimum qualifying service which is required for the pension as mentioned in Rule 49, is ten years. The qualifying service has been explained in

> various memos issued by the Government of India from time to time. But Rule 49 read with Rule 38 makes it clear that qualifying service of pension is ten years and therefore, gratuity is determined after completion of qualifying service of ten years. Therefore, for grant of any kind of pension one has to put in the minimum of ten years of qualifying service. The respondent in the present case, does not have the minimum qualifying service, the authorities declined to grant him the invalid pension. But the amount of gratuity has been determined and the same was paid to him."

The finding given by the Apex Court based upon interpretation of 38 and 49 of the CCS (Pension) Rules in the case of Bashirbhai R.Khalji, which are paramateria to Rule 55 and 69 of the Railway Services (Pension) Rules is squarely applicable in the facts and circumstances of this case.

12. Further, apart from the provisions contained in Rule 69 of the Railway Services (Pension) Rules, Rule 18 of these Rules categorically stipulates that 10 years of qualifying service is required for the purpose of invalid pension.

13. Thus, for the foregoing reasons, I am of the view that the applicant has not made out a case for grant of relief. Accordingly, the OA is dismissed with no order as to costs.

(M.L.CHAUHAN)
Judl. Member

R/