

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 517/2010

Order reserved on: 13.03.2014

Order pronounced on: 4.4.2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER

Madan S/o Shri Kishan, age 61 years, R/o Sikandra Road, New Petrol Pump Ke Pass, Ward No. 7, Bandikui, District Dausa (Rajasthan).

...Applicant

Mr. M.C. Taylor, counsel for applicant.

VERSUS

1. Union of India through its Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. Railway Board through its Secretary, Rail Bhawan, New Delhi.
3. General Manager, Northern Western Railway, Jagatpura, Jaipur (Rajasthan).
4. Divisional Railway Manager, Northern Western Railway, Jaipur (Rajasthan).

...Respondents

Mr. Indresh Sharma, counsel for respondents.

ORDER

(Per Mr. Anil Kumar, Administrative Member)

The applicant has filed this Original Application praying for the following reliefs: -

- "a. That by appropriate order or directions the respondents be directed to give benefit of 10, 20 and 30 and to revise the pension of the applicant accordingly by modifying the impugned order dated 14/07/2007 (Annexure-1).

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- b. That by appropriate order or directions the respondents be directed to gratuity of Rs. 194160/- as against Rs. 168275/-.
- c. That by appropriate order or directions the respondents be directed to pay Rs. 15,000/- have been wrongly deducted from the pension wrongly showing as loan taken on the marriage of his daughter Lajwant Lila Bai and Shanti Bai and as loan of Rs. 10,000/- on the marriage of applicant's son.
- d. That by appropriate order or directions the respondents be directed to pay commutation amount of Rs. 254640/- as against Rs. 208652/-.
- e. Any other relief which the court the Hon'ble tribunal deems fit in the facts and circumstances of the case."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was initially appointed as 'Beldar' on 27.09.1967 in the office of the I.O.W. Bandikui in Western Railway in the category of Casual Labour. The book of casual labour has been annexed as Annexure-3. The letter regarding seniority has been annexed as Annexure-4. The applicant continued to work as Casual Labour 'Beldar' upto 08.08.1983. Vide order dated 08.08.1983 (Annexure-5), he was regularized on the post of Beldar. He was promoted in class-III vide Senior Engineer, Grade-I, Northern-Western Railway, Bandikui order No. S.E.E./740/1 dated 31.03.2003. He cleared the trade test and was formatted on the post of Grade-II vide Railway Board's order No. EEE/839/12-Part-V dated 10.01.2008. He joined on the said post on 16.01.2008. He retired from the post of Carpenter Grade-II on 30.06.2009.

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3. Learned counsel for the applicant submitted that in the letter issued by the Divisional Manager, Railway Board (EOH), Jaipur dated 30.06.2009 pertaining to the details of amount, which was to be paid to the applicant; his name has been shown Madan Singh S/o Shri Sher Singh whereas his name is Madan S/o Kishan. The total qualifying service for the purpose of gratuity has been counted from the date of his regularization i.e. with effect from 08.08.1983. It has been worked out to be 25 years, 10 months and 22 days.

4. Learned counsel for the applicant further submitted that the service rendered by the applicant as casual labour from 1967 to 07th August, 1983 has not been taken into consideration. As per rules prevailing at that time, the services rendered by him as casual labour ought to have been taken into consideration for determining qualifying service and as such serious injustice has been caused to the applicant by illegally depriving him from addition of 16 years to his qualifying service. If the service rendered by the applicant as casual labour is taken into consideration then the qualifying service of the applicant works out to be more than 43 years. In that case, he would be entitled for gratuity for 15 months in place of gratuity for 13 months. In addition, he would also be entitled to the benefit of 10, 20 and 30 years of service under the MACP Scheme. He would also be entitled for the revision in his pension.

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5. Learned counsel for the applicant also submitted that the applicant was a contributor to P.F. Scheme. On retirement, he has been paid a sum of Rs. 19791/- only. He has been paid the Provident Fund from PF Account No. 1691071 upto the year 1999. After 1999, the PF contribution of the applicant has been deposited in a different account number as 1692071. This shows that the PF contribution deposited in account No. 1692071 has not been taken into consideration and has not been paid to the applicant.

6. Learned counsel for the applicant submitted that in the statement issued by the PF department, it has been shown that the applicant has taken three loans for the marriage of his daughters namely Rajwanti, Lilla Bai & Shanti Bai. He has neither taken the loans as shown in the statement nor has daughters named as above. He has four daughters and their names are Manju, Meena, Shila & Priti. One of them, Priti is still to be married. This shows that the loan taken by someone has been illegally deducted from the P.F. Account of the applicant.

7. Learned counsel for the applicant further submitted that the applicant has applied for a loan of Rs. 10,000/- for the marriage of his son. But this loan was not granted for a long time. When he approached to the PF authorities, he was informed that his application for loan is not traceable and he should give a fresh application. Accordingly, he gave fresh application and he was granted Rs. 10,000/-. However, to utter surprise of the

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applicant, it was shown by the respondents that the applicant has taken two loans of Rs. 10,000/- each. In fact the loan application, which was alleged by the P.F. officials to have been misplaced, has been actually used illegally for drawing the amount of Rs. 10,000/- causing loss of Rs. 10,000/- to the applicant.

8. Learned counsel for the applicant also submitted that the fact is that the applicant had taken the loans for the marriage of his daughter and son to the tune of Rs. 15,000/- and 10,000/- and only this amount was liable to be deducted from his pension.

9. Learned counsel for the applicant submitted that the applicant was entitled for a commutation of Rs. 2,54,640/- whereas he has been paid only Rs. 2,08,652/-. Therefore, he prayed that the Original Application be allowed and the respondents be directed to pay the additional amount to the applicant; which are due to him as per the details given in the Original Application.

10. The respondents have filed their written reply. In the reply, they have stated that the Original Application is time barred. The applicant has challenged the impugned PPO dated 14.07.2009 (Annexure-1) whereas the O.A. has been filed on 02.12.2010. Hence, the Original Application is barred by limitation.

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11. Learned counsel for the respondents submitted that the applicant was regularized in the year 1983. The cause of action for counting his earlier services of casual labour, thus, arose in the year 1983. Therefore, this issue of counting of his earlier service after 30 years cannot be adjudicated now. Therefore, the O.A. is liable to be dismissed on this ground also.

12. Learned counsel for the respondents further submitted that the applicant has not provided any documentary proof for giving him temporary status for his doing casual labour work and, therefore, he is not entitled to get the benefit after a long delay.

13. Learned counsel for the respondents also submitted that the pension payment order dated 14.07.2009 has since been revised vide PPO dated 27.04.2010 (Annexure R/1) and the same does not suffer from any illegality or infirmity. The name of applicant is now correctly shown in the revised PPO.

14. Learned counsel for the respondents further stated that the applicant was engaged as a daily worker Beldar in the respondent-department on the basis of work requirement. He did work on different periods at different places as a daily wager. He did not work as a regular employee. He never completed 120 days regular working at the same place doing the same type of work, therefore, the services of the applicant prior to the regularization were not treated as temporary status (TS) as per the para 7.5 of the Master Circular No. 48 of the Services. The

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applicant was regularized when the screening committee considered him on the basis of the roster point at SC category w.e.f. 08.08.1983. Therefore, service rendered by the applicant as a casual labour was not taken into consideration in calculating the pension. Hence, the benefits of MACP scheme are not applicable to the applicant as he earned two promotions. The retiral benefits were given to the applicant from 08.08.1983 i.e. gratuity, pension, commutation and PF, etc.

15. Learned counsel for the respondents also submitted that the service card of casual labour annexed as Annexure-3 by the applicant has no legal sanctity. It has not been signed by any authority in the Railways. It does not disclose the fact as to on which date, the applicant was given the temporary status during service and when and where he has worked during this period. Similarly Annexure-4 which is with regard to his seniority position is also not a signed document. Therefore, it cannot be relied upon. However, he further submitted that a perusal of this letter shows that the applicant was at sl. No. 46 whereas the persons upto sl. No. 42 were on the work. The applicant was informed that he would also be provided the work on his turn as and when there would be any work available. This itself shows that he was not on work at that point of time i.e. on 26.08.1978. Therefore, the qualifying period of service of the applicant has been correctly calculated as 25 years 10 months and 22 days as he was regularized on 08.08.1983 and he retired on 30.06.2009.

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16. Learned counsel for the respondents further submitted that the applicant was regularized w.e.f. 08.08.1983 and promoted for the first time on 31.03.2003 and second promotion was given on 10.01.2008. His third promotion was due on 08.08.2013 but the applicant retired on 30th June, 2009 i.e. prior to 08.08.2013.

17. Learned counsel for the respondents also submitted that in the PPO dated 14.07.2009, due to the typographical error, name of the applicant was mentioned as Madan Singh S/o Kishan in place of Madan S/o Kishan but all other contents were correct. Therefore, the respondents immediately revised the PPO and issued a correct PPO dated 27.04.2010 (Annexure R/1). The respondents have denied that another person having the same name was retired on the date of retirement of the applicant.

18. Learned counsel for the respondents submitted that PF number of the employee was 1692071 but due to some mistake some of the postings were done in PF No. 1691071 but after retirement of the applicant all the amount was adjusted and thereafter the payment of the PF was paid to him. The letter dated 16.09.2010 clearly states that all the credit was given to the applicant after adjusting another account.

19. Learned counsel for the respondents further submitted that during the tenure of service from the year 2001 to 2005, the applicant had withdrawn Rs. 65,000/- from his PF account. But so far as the withdrawal from the year 1992 to 1997 are

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concerned, the paid bills have been destroyed in the month of October, 2009. The applicant did not raise the said dispute at that time; otherwise, the dispute would have been resolved. At this stage, when the documents have been destroyed, it is not possible to enquire into this matter.

20. Learned counsel for the respondents argued that the applicant has received all the due benefits like pension, commutation, gratuity and P.F. and no due regarding retiral benefits has been left with the department. Therefore, the Original Application has no merit and it should be dismissed with costs.

21. The applicant has filed a rejoinder and the respondents have filed additional reply to the rejoinder.

22. Heard the learned counsel for the parties and perused the documents available on record.

23. It is admitted that the applicant was regularized on the post of Beldar with effect from 08.08.1983. With regard to the engagement of the applicant as Beldar with effect from 27.09.1967 to 08.08.1983 on temporary status basis as Beldar, the applicant has not been able to produce any document which could show that he worked as a temporary status Beldar or that he worked regularly during this period as Beldar on casual basis. We are inclined to agree with the contentions of the learned

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counsel for the respondents that the service card of the casual labour produced by the applicant as Annexure-3 is not a signed document. Therefore, we are of the view that it cannot be relied upon as a documentary proof that he worked as Beldar on a regular basis with the respondents. This does not give any details of place of his working or the periods in which he worked. This card also does not prove that he worked for 120 days continuously at a particular place so as to entitle him for temporary status.

24. Similarly the seniority list annexed by the applicant as Annexure-4 is not a signed document. Even if it is treated as a authenticate document even then it does not provide any relief to the applicant. It only states that his name in the seniority list is at sl. no. 46, whereas the employees upto sl. no. 42 have been taken on work. It further states that the applicant would be informed as and when there would be any work with the respondent-department. This also shows that as on 26.08.1978 i.e. the date on which this letter was issued, the applicant was not doing any work with the respondent-department.

25. Therefore, we are of the considered opinion that the applicant has failed to prove that from 27th September 1967 to 08.08.1983, the applicant was working with the respondents in temporary status capacity or on casual labour Beldar which would entitle him to count his services from 27th September, 1967 to 08.08.1983. Therefore, we do not find any irregularity

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in the action of the respondent-department for counting his services with effect from 08.08.1983 for the purpose of pension, gratuity, commutation, etc.

26. Learned counsel for the applicant during the argument produced a letter dated 26.04.1984 written by the applicant to the Senior D.P.O, NWR, Jaipur Division, which shows that it is a representation of the applicant being aggrieved from the fact that the applicant was not treated as T.S. from 01.04.1967 till 26.04.1984 and he requested the respondents vide this representation to give him the temporary status and also to make the payment of arrears accordingly and he also requested for promotion. He has also requested in this representation for certain payments to be made for the period of work between 13.07.1990 to 12.08.1990 and that he has met on three occasions with D.P.O. i.e. on 05.12.1995, 15.01.1996 and 12.04.1996 but his grievances have not been removed. We have carefully perused this document. It shows that this letter has been back dated as on 26.04.1984 because of on two reasons. Firstly, if this representation was given on 26.04.1984 then how can it referred to the payment to be made from 13.07.1990 to 12.08.1990 and, secondly, that the applicant met on three occasions to D.P.O. i.e. on 05.12.1995, 15.01.1996 and 12.04.1996. Surely, if this representation was ever given, must have been given on or after 12.04.1996 i.e. the last time when he met to the D.P.O. Therefore, this document cannot be relied upon.

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27. He also drew our attention to the Office Memorandum No. 7/7/2008-P&PW(F) dated 13th February, 2009 issued by the Department of Pension and Pensioners Welfare, New Delhi regarding implementation of Government's decision on the recommendation of the Sixth CPC – Revision of provisions regulating gratuity.

28. Learned counsel for the respondents submitted that the applicant has been given the benefit of the aforesaid Office Memorandum dated 13th February, 2009, which was produced by the learned counsel for the applicant during the course of the argument. He further submitted that the pension of the applicant has been fixed as per the provisions of this Office Memorandum. He has also been paid the gratuity according to the provisions of this Office Memorandum. Therefore, we hold that on this count also the applicant is not entitled for any relief.

29. With regard to the payment of PF is concerned, the respondents in their written submission have admitted that due to mistake, some of the postings of PF of the applicant were done in PF No. 1691071 instead of 1692071 but after retirement of the applicant, all the amounts were adjusted and thereafter the payment of PF was made to him.

30. Learned counsel for the applicant could not produce any details regarding the wrong payment of P.F. on account of some

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wrong entries made in the PF of another person. The respondents have stated that mistake has been corrected and accordingly the correct payment has been made to the applicant. Therefore, we are of the opinion that the applicant is not entitled for any relief on this point as well.

31. With regard to the taking of loan for the marriage of his son / daughter, the respondents have enclosed the copies of the forms and sanction orders of the loan taken by the applicant on different occasions and the same have been annexed as Annexure R/2. All these documents have been duly signed by the applicant. The documents show that the applicant has taken loans from time to time from his PF account. Learned counsel for the respondents submitted that if there were any discrepancies in the PF account of the applicant then he should have made a complaint in this regard at the relevant time and not after his retirement. He further submitted that the Railway department issues P.F. pass book to all the employees and they are entitled to keep and update the said P.F. pass book from time to time.

32. We have carefully perused the documents produced by the respondents with regard to the loan amounts sanctioned to the applicant and, we are of the view that the documents have been duly signed by the applicant. He has also not denied his signatures on these documents except on one document in which the applicant has signed as Madan Carpenter instead of Madan. The respondents submitted that some time employees

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sign along with their designation for proper identification. Therefore, there is nothing wrong if the applicant has also signed as Madan Carpenter showing his designation. Thus, on the basis of the above discussion, we do not find any irregularity in the action of the respondents in deducting the amount of loans from the retiral benefits of the applicant.

33. With regard to the grant of M.A.C.P. to the applicant, the respondents have stated that he has been given two promotions. First promotion was given on 31.03.2003 and second promotion was given on 10.01.2008. His third promotion was due on 08.08.2013 but before that date, the applicant retired on 30th June, 2009. The total qualifying service of the applicant is 25 years 10 months and 22 days, therefore he was entitled for first and second M.A.C.P. on completion of 10 and 20 years of service but since he has already been given two promotions, therefore, he was not entitled to the first and second M.A.C.P. according to the MACP scheme. Thus, on this count also, the applicant is not entitled for any relief.

34. Consequently, the Original Application being devoid of merit is dismissed with no order as to costs.


(M. NAGARAJAN)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER