

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****OA No. 060/00564/2014****Pronounced on : 07.08.2015****Reserved on : 05.08.2015****CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS.RAJWANT SANDHU, MEMBER(A)**

1. Lila Ram s/o Ram
2. Rajesh Kumar s/o Lila Ram

Both are resident of L-69, Railway Colony, District Sirsa.

.....Applicants

BY ADVOCATE: MR. RAKESH NACPAL**VERSUS**

1. Union of India through the Secretary to Government of India, Railways Department, Rail Bhawan, New Delhi.
2. North West Railway through its Divisional Railway Manager, Bikaner
3. Station Superintendent, North West Railway, Sirsa, District Sirsa.
4. District Divisional Engineer, North West Railway, Sirsa, District Sirsa.

.....Respondents

BY ADVOCATE: NONE

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ORDER**HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-**

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

- (i) Quash the order dated 26.10.2013 vide which the most genuine and reasonable claim of the applicants has been rejected.
- (ii) Direct the respondents to give appointment to the applicant No. 2 on the post of Gangman or any other suitable post in the Railway Department as per the policy Annexure A-3 of the respondents namely, "Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) with Grade Pay of Rs. 1800.

2. The applicant No. 1 is seeking voluntary retirement for himself and appointment to his son, applicant No. 2 under LARSGESS.

It is claimed in the OA that the applicant No. 1 is working with the respondent department as Gateman in the pay scale of Rs. 5200-20200 + 1800. His date of birth is 10.05.1956. On 16.08.1989, he was appointed as Gangman and on 22.08.1992, his services were regularized. The application of applicant No. 1 for giving appointment to applicant No. 2 was forwarded by the respondent No. 3 to respondent No. 2 vide letter dated 01.07.2011. It was again recommended by respondent No. 2 for consideration vide letter dated 01.07.2013. When the case was considered on 24.10.2013, applicant No. 1 was informed that his claim

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had been rejected as he had not completed 20 years of service as on 01.07.2011 and he was more than 57 years old as on 01.07.2013. Hence the claim of the applicants was rejected vide order dated 26.10.2013 (Annexure A-4).

4. In the grounds for relief, it has interalia been stated as follows:-

- (i) That the claim of the applicants has been wrongly and illegally rejected only on the ground that the applicant No. 1 has not completed 20 years of service on 01.07.2011 and the age of the applicant No. 1 is more than 57 years as on 01.07.2013. Actually, the applicant had more than 20 years service as on 31.07.2011. As per Annexure P-4, he had served the respondent from 22.01.1990 and as per the calculation of the respondent, the applicant has served 21 years 6 months and 9 days on 31.07.2011. However, respondent department had wrongly deducted the period of temporary service i.e. 2 years 7 months and 15 days and also deducted the period of leave without pay as mentioned.
- (ii) That the period of temporary service should have been counted i.e. 2 years, 7 months and 15 days as it is well settled law that temporary/ad hoc service is counted for the retiral benefits and the claim raised by the applicant is also like a retiral benefit. Hence, the temporary service of the applicant should have been counted.
- (iii) That period of leave without pay as alleged should have been counted for period of service as it is not punishment. It is also disputed that the period mentioned leave without pay.
- (iv) That the applicant was appointed on 16.08.1989 and on 31.07.2011, he has worked for 21 years, 11 months, 16 days and hence, the case of the applicants should have been considered as applicant fulfilled the eligibility criteria.

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- (v) That it is nowhere mentioned in the policy that only regular service would be counted. Hence, the action of the respondent department is totally unjustified.
- (vi) That as per the details given by the respondents alongwith the impugned order, it has been shown that the applicant No. 1 has served 17 years, 7 months and 13 days as on 31.07.2011. After 31.7.2011, the applicant No. 1 has served continuously till July, 2013. Copy of pay slips from 01.08.2011-31.07.2013 are attached as Annexure P-5 which shoes that at the time of consideration, the applicant No. 1 has served 19 years, 7 months and 13 days and this period should be treated as service of 20 years as per rounding up scheme and General Clauses Act. Hence, the impugned order deserves to be set aside.

5. In the written statement filed on behalf of the respondents, it has been stated that the service record and leave record of the applicant indicates that the applicant did not have the minimum qualifying service of 20 years under the LARSGESS. The relevant details of this record are as follows:-

Date of Birth	10.5.1956
Appointed as Casual Labour	23.09.1989
Temporary Status CPC Scale Granted as Gangman after 120 days	22.01.1990
Regularized as Gangman	22.08.1992
A. Service from 22.8.1992 to 31.7.2011	18 Y-11M-22D
B. Service from Temporary Status (22.1.1990) to 22.8.1992 (Regularization)	2 Y-7M-0D
C. Countable 50% of B as per para 2006 IREM Vol.II	1Y-3M-15D
D. Unauthorized absence without pay between 4.11.1991 to 16.7.2008 (Period not regularized as leave by the competent authority)	2Y-7M-11D
E. Total Qualifying Service as on 31.07.2011 (A + C - D)	17Y-7M-13D

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Under Rule 2006 of Indian Railway Establishment Manual Volume II, only 50% of the casual service period between attainment of temporary status and permanent absorption is counted towards Qualifying Service.

6. When the matter was taken up for consideration on 05.08.2015, there was none to represent the respondents. Hence, Rule 16 of the CAT Procedure Rules, 1987 was invoked and we proceeded to decide the matter.

7. Learned counsel for the applicants has been heard when he reiterated the content of the OA and the rejoinder and stated that the respondents have not counted the full period of temporary service rendered by the applicant while computing the service put in by the applicant No. 1. He stated that there was no requirement under the LARSGESS that the services put in should be "regular". Moreover, he stated that the period of alleged unauthorized absence has also not been taken into account by the respondents while computing the qualifying service. The applicant No. 1 had not been charge sheeted or punished for these periods of absence and these should have been taken into account in the normal course and hence, the claim of the applicant No. 1 for voluntary retirement and that of applicant No. 2 to be considered for appointment in lieu of service of his father deserves to be allowed.

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8. We have given our careful consideration to the matter. From the material on record, it is quite evident that as on 01.07.2011 when the applicant first submitted his application under LARSGESS, the applicant No. 1 did not fulfil the requirement of qualifying service of 20 years. When he sought reconsideration of the matter and his application was forwarded on 01.07.2013, the applicant No. 1 had already crossed the age of 57 years and hence was ineligible under LARSGESS. Hence, there is no merit in the OA and the same is rejected.


(RAJWANT SANDHU)
MEMBER(A)


(SANJEEV KAUSHIK)
MEMBER(J)

Dated: 7. 8. 2015
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