

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.NO. 060/00359/2014 Date of order:- April 07 , 2015.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

Parminder Singh widow (er)/husband of late Smt. Neena Sharma, ex. Office Superintendent, R.C.F. Kapurthala, resident of 95-B, Type IV(DS) R.C.F.Colony, Kapurthala(Punjab).

.....Applicant.

(By Advocate :- Mr. Inderjit Kaushal)

Versus

Rail Coach Factory, Kapurthala, through General Manager.

...Respondent

(By Advocate : Mr. Lakhinderbir Singh).

ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:-

"i) Direction be given to respondent RCF to count adhoc service from 21.1.1987 to 10.8.1991 before its

regularization i.e. 10.08.1991 for the only purpose of counting of pension and pensionary benefits;

ii) Quashing of impugned action of respondent RCF of illegally deducting amount of Rs.1,40,073/- from the DCRG of the wife of the applicant;

iii) Directions be given to the respondent RCF to refund an amount of Rs.1,40,073/- illegally deducted from the DCRG of the wife of the applicant along with interest @ 18% per annum till its payment;

iv) directions be given to the respondent RCF to pay interest @ 18% per annum on the delayed payment i.e. DCRG, Family Pension, Leave encashment, provident fund etc. till its realization".

2. Facts of the case in brief are that the applicant's wife namely Mrs. Neena Sharma while working as Office Superintendent in Rail Coach Factory (for short 'RCF') met with an accident on 3.6.2009 and ultimately she died on 24.12.2011. Applicant being the legal nominee of late Smt. Neena Sharma submitted all the documents for release of DCRG, leave encashment & family pension. When the said benefits were not released to the applicant, he made a number of representations to release the retiral benefits of her wife. In July, 2012, the RCF released the amount of leave encashment. Family pension was also released to the applicant in October, 2013. An amount of Rs.5,82,057/- as DCRG was released in favour of the applicant whereas a sum of Rs.7,09,825/- is required to be released as DCRG in favour of the applicant. The applicant contends that a sum of Rs.1,40,073/- as DCRG has illegally been deducted without

assigning any reason. The applicant pleads that the RCF had not counted the adhoc service from 21.1.1987 to 10.8.1991 for the purpose of pension and other pensionary benefits. In this regard, the applicant made a representation dated 25.9.2013 to RCF for release of interest on delayed payment of DCRG, Pension, leave encashment, PF and PLB.

3. The applicant has relied upon a Railway Board Circular No.E(ng) II-84/CL/58 dated 20.12.1985 wherein it was mentioned that even the temporary service is countable towards all the benefits. Hence the present OA.

4. Pursuant to notice, the respondents have filed their written statement by stating that the OA is hopelessly barred by the law of limitation. They have pleaded that initially the applicant and others were appointed as Stenographer/Typist on adhoc appointment and appointment order dated 5.1.1987 issued to the applicant clearly stipulates that the "appointment is purely on ad-hoc basis and the appointees will have no claim for permanent retention in Railway service. They will have to clear their selection from the Railway Recruitment Board and she would not be eligible for pensionary benefit under the SRPF, gratuity rules and any leave with allowances beyond those admissible to temporary employees under the rules in force from time to time during adhoc service". The services of the applicant was terminated on 30.6.1988 and she was re-engaged with effect from

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6.7.1988 along with other adhoc appointees. They have further stated that the applicant and other adhoc appointees also appeared in the examination held by the Railway Recruitment Board, but they could not qualify the examination. However, the Railway Recruitment Board vide letter dated 15.2.1991 had agreed to regularize the services of adhoc employees as a special case from prospective effect adhoc service rendered by Smt. Neena Sharma and other similarly situated employees. Even the Railway Board has again clarified vide letter dated 20.12.2011 that the ad hoc service will not counted for any purpose. They have relied upon the judgments passed by the Hon'ble Apex Court in the case of **Dhiraj** versus **Union of India** (A.I.R. 1991 S.C. 73) and **State of Nagaland** versus **Vasanta** (A.I.R. 1970 S.C. Page 537).

5. The applicant has filed a rejoinder by generally reiterating the averments made in the O.A. The applicant has relied upon a judgment passed by the Hon'ble High Court of Punjab & Haryana in the case of Kesho Ram versus State of Haryana & Ors. (2006(3) P.L.R. Page 697) wherein it was held that all services uninterrupted or continuous serviced followed by confirmation be treated as qualifying service and the periods of breaks are to be omitted while working out the aggregate service.

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6. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

7. The crucial question that needs to be answered is whether the ad hoc service put in by the deceased i.e. the wife of the applicant should be considered for the purposes of pensionary benefits? Notwithstanding the circumstances in which the applicant's wife was regularized namely as a special case because of her failure to pass the test, the fact remains that she had put in ad hoc service before she was regularized in 1991. The applicant has relied on the judgment of the jurisdictional high court in Harbhajan Kaur vs. State of Punjab to support his contention. This judgment in turn has relied on the judgment passed in Hazur Singh vs. State of Punjab and others. The relevant portion of the judgment is reproduced below:-

"A perusal of the aforesaid rule shows that an interruption between two spells of service rendered under the State Government is to be treated as automatically condoned except where the interruption has been caused by resignation, dismissal or removal from service of due to participation in a strike. The interruption in the case of the petitioner is neither on account of resignation, dismissal or removal from service or due to participation in a strike.

8. In view of the above provisions as explained by a Division Bench of this Court in the judgment rendered on January 14, 2003 in Hazura Singh's case (supra), ad hoc service rendered by the petitioner prior to her appointment on regular basis is to be counted as qualifying service for pensionary benefits. There was no willful absence from duty by the petitioner prior to her appointment on regular

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basis. The breaks in service were unilateral act of the State Government.

9. Consequently, impugned order dated November 18, 2002 is set aside. The State Government is directed to count the days of actual ad hoc service of the petitioner towards her qualifying service for the purposes of pensionary benefits".


In view of this ratio of law laid down in the above judgment, we find merit in the applicant's prayer for considering the period of ad hoc service to be taken into account for the purposes of pensionary benefits. We have taken note of the fact that the representation of the deceased employee to include her period of ad hoc service for pension etc. was rejected by the respondents way back in 2009 and then she did not choose to approach the court. The respondents therefore, have argued that the prayed is hit by limitation. We have carefully considered this plea of the respondents and are of the view that in the larger interest of justice, we will rather disregard this deficiency. A number of Apex Court's rulings justify taking such a view in particular circumstances.

8. As regards the applicant's other claims about the quashing the recovery of an amount of Rs. 1,40,073 as excess payment against the admissible entitlement under DCRG, refund of this amount along with interest as also payment of interest on delayed payment of DCRG, Family Pension, Leave encashment, Provident Fund etc., we have gone through carefully the explanation given by the respondents in

their written statement. We are of this considered view that this delay has not been deliberate or callous and has occurred on account of administrative processes as also the applicant's own request to keep the payments pending while the representation of some of the deceased's colleagues on similar issues was under consideration. And therefore, we disallow the applicant's prayer for grant of interest on these payments.

9. Resultantly, the OA partially succeeds. Let the pensionary entitlements be calculated afresh in the light of inclusion of the deceased's ad hoc service for the purposes of pension and admissible pensionary benefits based on this inclusion. The additional amount that works out based on this calculation be paid to the applicant as per law. The exercise of recalculation and actual payment be completed within three months of the respondents getting a certified copy of this order.

10. Parties will bear their own cost of litigation.


(UDAY KUMAR VARMA)
MEMBER (A).


(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- April 07 , 2015.

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