Central Administrative Tribunal
Principal Bench

OA No.1967/2014
MA No.757/2016
MA No.1707/2014

Order reserved on: 01.08.2016

Pronounced on: 09.09.2016

Hon'ble Mr. V.N. Gaur, Member (A)

Rajender Prasad, Aged 60 years,
S/o Sh. Jai Prakash,
Retired Mali from Northern Railway,
Delhi Division,
R/o Vasant Vihar Colony,
Near Railway Station,
Ghari Harshru,
Gurgaon (Har.)

-Applicant

(By Advocate: Mr. Yogesh Sharma)

-Versus-

1. Union of India through
   The General Manager,
   Northern Railway, Baroda House,
   New Delhi.

2. The Divisional Railway Manager,
   Northern Railway, Delhi Division,
   State Entry Road,
   New Delhi.

3. The Divisional Personnel Officer,
   Northern Railway,
   State Entry Road,
   New Delhi.

4. The Senior Section Engineer (Horticulture),
   Northern Railway, S.P.Marg,
   New Delhi.

-Respondents

(By Advocate: Mr. Amit Kumar)

O R D E R

The applicant has filed the present OA with the following prayer:

> "(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 27.1.2014 and consequently, pass an order directing the respondents to count 50% of the casual service before attaining the temporary status and 100% casual service with temporary status service as qualifying service for the purpose of granting pensionary benefits and consequently, re-calculate the retirement benefits of the applicants with all consequential benefits including the different of amount with interest.
>
> (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to calculate the sickness period or LWP on medical grounds period as a qualifying service for the purpose of granting pensionary benefits and increment purpose, with all the consequential benefits.
>
> (iii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to calculate all the retirement benefits of the applicant on the basis of last pay of Rs.10949/- and also pass an order declaring to the effect that any reduction in the pay at the time of retirement without passing any order and any show cause notice is illegal and against the principle of natural justice and consequently, pass an order of restoring the pay of the applicant and grant the retirement benefits accordingly.
>
> (iv) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to release the post retirement passes and medical facility to the applicant.
>
> (v) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to refund the recovered amount of Rs.160006/- from the retirement benefits of the applicant, with interest.
>
> (vi) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation and interest on all the payment from the due dates."

2. Before examining the issues in the OA, the MA no. 1707/2014 filed by the applicant seeking exemption from filing

English translation of Hindi documents and the MA no. 757/2016 filed by the respondents seeking amendment in the counter reply are allowed for the reasons stated in those MAs.

3. The brief facts of the case are that, according to the applicant, he was appointed as casual labour Gangman w.e.f. 05.04.1975 and subsequently granted temporary status w.e.f. 09.03.1981. He was regularised w.e.f. 07.08.1989. On 16.03.2002 the applicant met with an accident while performing duties following which he was declared medically unfit for the posts of Gangman w.e.f. 16.03.2002. He was given alternative post of Mali w.e.f. 01.01.2005. After his retirement on 31.10.2013 he was given Pension Payment Order (PPO) in which the respondents counted his qualifying service only w.e.f. 17.08.1989 and mentioned the total qualifying service of only 18 years and calculated the pensionary benefits accordingly. He was thus denied the benefit of post retirement passes and medical facility for which a minimum 20 years of qualifying service is required. The last basic pay of the applicant in July 2013 was Rs.10,949/- p.m. which was reduced by the respondents to Rs.10,070/- without giving any show cause notice and without passing any speaking order. At the time his retirement he was also given a calculation sheet dated 19.11.2012 showing a recovery of Rs.1,60,006/- from the commutation and gratuity without passing any order or intimation to the applicant.

4. Learned counsel for the applicant submitted that the respondents have totally ignored the entire temporary status and casual service rendered by the applicant while calculating the qualifying service for the purpose of pensionary benefits. It is a settled law that for the purpose of pensionary benefits 50% of casual service and 100% of temporary service are to be counted. In this regard he referred to the Tribunal's decision in OA No.3041/2011 **Sita Ram vs. Union of India** and stated that the present controversy was identical to the issue in that OA. He also relied on the following judgements:

(i) **General Manager, South Central Railway, Rail Nalayam, Secunderabad, AP & Another Vs. Shalik Abdul Khader**, WP No.10837/2011 in the High Court of Andhra Pradesh.

(ii) **Shri Chander Pal & another vs. Union of India & another**, OA No.1502/2005 decided on 16.02.2006 of this Tribunal

(iii) **Chotan Parshad & others vs. Union of India & others**, OA No.2006/2006 decided on 18.03.2008 of this Tribunal.

5. It was further mentioned by the learned counsel that without issuing any show cause notice, it was illegal on the part of the respondents to have effected a cut in the salary of the applicant and make recovery from the commutation and gratuity amount of the applicant. These recoveries were made on account of leave availed by him when he met with an accident while performing duty as well as sickness, which was against the

settled principle of law that EOL on medical ground should be treated as regular service for the purpose of granting increments and for the purpose of granting retiral benefits. Learned counsel further mentioned that according to Railway Board circular no.E(G)70 LE 1-4 dated 02.01.1971, the scrutiny of the leave record in respect of retiring employees should be restricted to the last three years of service in all cases. This circular was taken note of by the Tribunal in **OA No.2301/2013** and by the order dated 07.03.2014 the respondents were directed to scrutinise the leave record and restrict recovery only in respect of the leave taken during the last three years of service.

6. Learned counsel for the respondents disputed the dates given by the applicant and submitted that he was appointed to the post of Trackman on 09.03.1981 in the grade of Rs.200-250 and screened on 17.08.1989. He was medically de-categorised for the post of Trackman on 16.03.2002 and posted to the post of Mali on 10.01.2005. The applicant retired from the post of Mali on 31.10.2013 on superannuation. According to the Railway Board instruction no. RBE No.36/10 dated 25.07.2010, 50% of service from date of temporary appointment to the date of screening is counted. His service record does not show any period of casual labour engagement prior to 1981. According to learned counsel, the qualifying service of the applicant was calculated in accordance with the rules. The applicant remained

absent/LWP for a period of 10 years 19 days, and therefore, he had not completed 20 years qualifying service which is mandatory for issuing post retirement passes. The last basic pay of the applicant on 01.07.2013 was Rs.10,850 and not Rs.10,630 as mentioned by him. Later after adjusting the LWP of 3682 days, the basic pay upon retirement of the applicant was calculated at Rs.10,070.

7. Heard the learned counsel for the parties and perused the record. The controversy in the present case revolves around counting of qualifying service for pensionary benefits. The applicant claims that he was appointed as a casual labour on 05.04.1975, and thereafter appointed as Trackman on 09.03.1981 and subsequently regularised w.e.f. 07.08.1989. The respondents, on the other hand, relying on the entries in the service book have denied that the applicant had served in the capacity of casual labour prior to 1981. According to the respondents, he was screened on 17.08.1989. The applicant has not placed on record any document that could support his claim that he was engaged on casual basis by the respondents in 1975. In the absence of any such document the averment of the respondents that his service started from 09.03.1981 in the grade of Rs.200-250 has to be accepted. The next question that arises is, what is the weightage to be given for the temporary status period from 09.03.1981 to 17.08.1989. Respondents have

claimed that according to the Railway Board's instruction no. RBE No.36/10 dated 25.07.2010, 50% of the service from temporary to screening is counted. The applicant has, however, countered this and stated that it is now well settled that the service with temporary status should be given 100% weightage for the purpose of granting pensionary benefits. Learned counsel for the applicant has relied on the order of Hon'ble Supreme Court in **Union of India & ors. vs. Sarju**, SLA (Civil) No.20041/2008 dated 30.09.2011.

8. In the aforementioned order, the Hon'ble Supreme Court upheld the decision of the High Court of Patna dismissing the petition challenging the order of Patna Bench of this Tribunal wherein the respondents were directed to count the entire temporary status service of the applicant, till the date of superannuation, for the purpose of calculation of pension and other retiral benefits. The order dated 30.09.2011 of Hon'ble Supreme Court is reproduced below:

> "Four of the above noted five special leave petitions are directed against the orders passed by the different Division Benches of the Patna High Court dismissing the writ petitions filed by the petitioners against the directions given by the Central Administrative Tribunal, Patna Bench (for short, 'the Tribunal') for counting the service of the respondents with effect from the date they were given temporary status till the date of superannuation for the purpose of calculation of pension and other retiral benefits.
>
> SLP(C) No.35934 of 2009 is directed against the order of the High Court which upheld the direction given by the Tribunal for counting of casual and temporary service for the purpose of payment of retiral benefits.

Sarju (respondent in SLP(C) No. 20041/2008) was engaged as casual labour on 17.1.1960. He was given temporary status with effect from 1.1.1981 and regularised with effect from 1.4.1988. On attaining the age of superannuation, he was retired from service on 30.11.2001. The application filed by him under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act') for counting his temporary service as part of qualifying service for the purpose of calculation of the retiral benefits was disposed of by the Tribunal vide order dated 1.3.2006, the operative portion of which reads as under:

> "In view of the law laid down by the Hon'ble Andhra Pradesh High Court as well as C.A.T., Cuttack Bench, there is no basis/ground to take different view. In the result, the O.A. is allowed. The respondents are directed to recalculate the pension with arrears from due date (the date of superannuation) with all incidental benefits after counting the full service from the date of grant of temporary status i.e. 1.4.1981. These exercises should be completed within a period of four months from the date of receipt of a copy of this order. There shall be no order as to cost."

Ishwar Nand Mishra (respondent in SLP(C) No. 13709/2009) was engaged as casual labour in 1966. He was granted temporary status with effect from 10.3.1971 and was regularised with effect from 27.5.1981. After attaining the age of superannuation, he filed an application for counting his past service for the purpose of pension etc., which was disposed of by the Tribunal vide order dated 16.1.2008, the operative portion of which reads as under:

> "In view of the law laid down by the Hon'ble Andhra Pradesh High Court as well as CAT, Cuttack Bench, and Patna bench there is no basis/grounds to take a different the pension with arrears from due date (the date of superannuation) with all incidental benefits after counting the full service from the date of grant of temporary status i.e. 15.3.1971. The exercise should be completed within a period of four months from the date of the receipt of a copy of this order, No order as to the costs."

Mani Kant Jha (respondent in SLP(C) No. 35934/2009) joined service as casual labour on 30.7.1973. He was granted temporary status with effect from 1.1.1981 and was absorbed on regular basis with effect from 1.4.1988. After attaining the age of superannuation with effect from 30.6.2005, the respondent filed O.A. No.505/2005 for issue of a direction to the petitioners herein to count his past service as part of qualifying service for the purpose of calculation of retiral benefits. The same was disposed of by the Tribunal vide order dated 29.11.2006, the operative portion of which reads as under:

> "In the result, this application is allowed. The respondent No.2 and 3, namely the Chief Administrative Officer [Con] E.C. Railway, Mahendrughat, Patna and the Chief Personnel Officer, E.C. Railway, Hazipur, are hereby directed to get the qualifying period of service of the applicant, for the purposes of pensionary benefits, calculated afresh adding thereto the entire period of service undergone by the applicant under temporary status and half period of service undergone as casual labourer and then to have the pensionary benefits calculated thereupon afresh. This should be done within three months of the receipt of a copy of this order whereafter the arrears of retiral benefits including of the pension, should be paid within one month, eligible failing which the amount of unpaid arrears would be payable with interest @9% per annum starting from the date of expiry of the period of four months after receipt of a copy of order, till the amount is paid."

Chanarik and 4 others (respondents in SLP(C) No. 35936/2009) were initially engaged as CPC/Gangmen. They were given temporary status with effect from 26.12.1985, 25.1.1986 and 14.2.1986 respectively. After superannuation from the service, they filed O.A. No. 260/2005 for issue of a direction to the petitioners herein to count their total service as part of qualifying service for the purpose of payment of retiral dues. The same was disposed of by the Tribunal vide order dated 2.9.2005, the operative of which reads as under:

> "In the result, this OA is allowed. The respondents are directed to grant pension with arrears from due date (date of superannuation), with all incidental benefits, after counting the full service from the date of grant of temporary status i.e. 26.12.1985, 25.1.1986, 26.12.1985, 14.2.1986 and 26.12.1985 respectively."

Ram Barai (respondent in SLP(C) No. 14690/2010) was initially engaged as Casual Labour/Gangman on17.4.1967. He was granted temporary status with effect from 11.11.1990 and was regularised with effect from 18.9.1995. After superannuation from service, he filed O.A. No. 97/2006 for counting his total service for the purpose of retiral benefits. The same was disposed of by the Tribunal vide order dated 31.8.2007, the relevant portion of which reads as under:

> "I have considered the rival view points carefully. In view of the judicial pronouncements of Hon'ble Andhra Pradesh High Court and the Divisional Bench of Central Administrative Tribunal as well as or single Bench of Central Administrative Tribunal, I agree that the applicant is entitled to get pension treating the entire period of service of temporary status as pensionable and the period of service rendered as cast labour as 50 per cent pensionable. The respondent are directed to give these benefits as and when the applicant retires."

The writ petitions filed by the petitioners questioning the legality and correctness of the orders passed by the Tribunal were dismissed by the High Court.

We have heard learned counsel for the parties and perused the record. We have also gone through the judgment of this Court in Union of India and others vs. K.G.Radhakrishnan Panickar and others [(1998) 5 SCC 111]. In our view, the directions given by the Tribunal in the matter of counting of past service of the respondents for the purpose of calculation of the retiral benefits did not suffer from any legal infirmity and the High Court rightly declined to interfere with the same. The judgment of this Court in Union of India vs. K.G.Radhakrishnan Panickar (supra) on which reliance has been placed by learned counsel for the petitioners is clearly distinguishable. In that case, the Court was called upon to consider whether the services rendered by the employees as Project Casual Labour can be treated as part of the qualifying service for the purpose of calculation of the retiral benefits and whether the cut off date fixed in the policy framed by the Railway Administration for counting half of the service rendered as Project Casual Labour was discriminatory and violative of Article 14 of the Constitution. After adverting to the relevant policy decisions, this Court held that the policy of the Railways does not suffer from any constitutional infirmity. That judgment has no bearing on the decision of the issue whether temporary service, which was followed by regularisation should be counted as part of the qualifying service for the purpose of retiral benefits. As a matter of fact, if the respondents had prayed for counting half of the service rendered by them as Project Casual Labour as part of qualifying service, we may have examined the issue in detail and decided whether the said prayer should be granted. However as they did not challenge the orders of the Tribunal before the High Court, we refrain from expressing any opinion on the issue.

The special leave petitions are accordingly dismissed. The petitioners are directed to calculate the pension and other retiral benefits payable to the respondents keeping in view the directions given by the Tribunal and pay the arrears within next three months with interest at the rate of 12% from the dates of their retirement on attaining the age of superannuation.

A report showing compliance of this order shall be filed in the Registry of this Court within four months and the matter be posted before the Court in the 3rd week of February, 2012."

9. From the above judgment, it is clear that the respondents have to take into account the entire temporary status service

rendered by the applicant which admittedly started from 09.03.1981. In that case the applicant had served for more than 32 years before he superannuated on 31.10.2013. Even if the absence period of 10 years 9 days is deducted the applicant would have served for more than 20 years.

10. With regard to the recovery on account of 3682 days of leave without pay, the circular of the respondents dated 02.01.1971 provides that only the last three years of service has to be scrutinised and verified prior to the retirement. The circular, as reproduced in OA No.2301/2013 reads as follows:

> "GOVERNMENT OF INDIA (BHARAT SARKAR)
> MINSITRY OF RAILWAYS/RAIL MANTRALAYA
>
> (RAILWAY BOARD)
>
> No.E(G)70 LE 1-4 dated 02/01/1971
>
> Subject: Maintenance and verification of leave accounts and qualifying service for pension.
>
> Attention is invited to para 2 (E) of the Board's letter of even No. dated the 20.08.1970 on the above subject wherein it has been laid down that at the time of retirement/termination of service of employees, scrutiny of their leave account should ordinarily be restricted to the last three years of their service etc. In this connection, the question whether in a case where there is prima facie evidence that the leave account of an employee has not been kept up to date and does not bear an endorsement of verification, it should be open to the Accounts Office to scrutinize the unverified period, has been reconsidered by the Board. It has been decided in consultation with the Ministry of Finance and D&AG that in such cases scrutiny of the leave record should be restricted to the last three years of service in all cases. In view of this clause (e) of para 2 of the Board's letter of 20.08.1970, referred to, be substituted as under:-
>
> "(e) At the time of retirement/termination of service of employees, scrutiny of their leave accounts should be restricted to the last three years of their service in all cases"."

11. The pleadings on record do not show the period when the leave without pay of 3682 days was availed by the applicant. However, it is obvious that whole of this leave could not have been availed during "three years" prior to the superannuation, and that the respondents have not maintained up-to-date record of leave in the service book of the applicant otherwise there would not have been an occasion to revise his basic pay from Rs.10,850/- to 10,070/- and effecting recovery of Rs.1,60,006/-.

12. Learned counsel for the applicant has also relied on the judgment of Hon'ble Supreme Court in the case of **State of Punjab & Others Vs. Rafiq Masih,** 2014 (4) Scale 613 to stress if a payment has been made to an employer for which he is not at fault, and more so when he is a Grade-III employee, no such deduction could have been made at the time of his superannuation. The applicant has claimed that extra ordinary leave on medical grounds has to be treated as qualifying service. However, he has not placed any rule or law in support of his claim. Therefore, we are unable to accept the contention. Further the judgments/orders cited by the applicant in respect of counting 50% period of casual service would not be relevant in the present context since the applicant has not been able to establish that he served the respondents in the casual capacity from 1975 to 1981.

13. Therefore, in the light of the preceding discussion and the reasons stated, the following directions are given to the respondents:

(i) The qualifying service of the applicant for the purpose of pensionary benefits shall be counted w.e.f. 09.03.1981 when he was appointed as Trackman in temporary status.

(ii) For the purpose of fixation of pay, pension and qualifying service only the leave taken during the last three years of service shall be considered in accordance with the rules.

(iii) In case there is any excess payment made to the applicant, no deduction will be made on account of the leave without pay taken prior to three years of retirement of the applicant and the recovery already made, if any, shall be refundable.

14. Accordingly, OA is allowed. No costs.

(V.N. Gaur)
Member (A)

'sd'

September 09, 2016