

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.4079/2016

Reserved on 6th September 2018

Pronounced on 19th September, 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

Munshi Ram s/o late Sh. Nanak Ram
Aged about 61 years
Catering Waiter
s/o late Sh. Nanak Ram
r/o 71, South Avenue, New Delhi

..Applicant

(Mr. U Srivastava and Ms. Neelima Rathore, Advocates)

Versus

Union of India through

1. The General Manager, Northern Railway
Baroda House, New Delhi
2. The DRM New Delhi,
Estate Entry Road, New Delhi
3. The Senior Divisional Personnel Officer
O/o the DRM, Northern Railway
Estate Entry Road, New Delhi

..Respondents

(Mr. Krishna Kant, Advocate)

O R D E R

The applicant was appointed as a Commission Vender by the respondents – Railway Department vide Annexure A-2 order dated 14.04.1982. The Commission Venders were craving for their absorption in the Railway Department. They filed W.P. (C) No.5175/1998 *titled Gurdas Ram & others v. Union of India & others*, together with other similar writ petitions, before the Hon'ble Delhi High Court. All these petitions were

disposed of by the Hon'ble High Court vide Annexure A-4 order dated 05.11.2012; operative part of which reads as under:-

“24. In the considered opinion of this Court, there is no rationale or justification to permit respondents to wriggle out of its stand taken in compliance affidavit of 14th January, 2005 conceding that job profile of commission vendors is equivalent to that of waiters in the Railway Administration. Therefore, a mandamus is issued to the respondents to absorb eligible petitioners who have not crossed age of 59 years in ‘Group C’ posts against vacant posts of this category after such eligible petitioners formally make an application to seek absorption in ‘Group ‘C’ posts.”

2. Pursuant to the directions of the Hon'ble High Court, the respondents regularized the services of eligible Commission Venders as Catering Waiters. The applicant was regularized as Catering Waiter vide Annexure A-6 order dated 16.07.2015. He retired from service on attaining the age of superannuation on 31.10.2015, i.e., after working for about 3 and half months as Catering Waiter. The applicant, vide his Annexure A-8 representation dated 07.11.2015, requested the Divisional Railway Manager (DRM), New Delhi – respondent No.2 for grant of pension and retirement benefits. He had contended therein that he had served the department from 10.04.1982 to 31.10.2015, i.e., for 33 and half years, and as such he is entitled for pensionary and retirement benefits.

3. Since no action was taken by respondent No.2 on his Annexure A-8 representation, the applicant approached the Tribunal in O.A. No.1720/2016, which was disposed of vide order dated 26.05.2016 (Annexure A-9) at the admission stage itself with a direction to the respondents to consider the representation dated 07.11.2015 of the

applicant by way of a reasoned and speaking order within 90 days from the date of receipt of a copy of the order.

4. In compliance of the *ibid* directions of the Tribunal, the respondents, vide impugned Annexure A-1 order dated 09.10.2016, have rejected the Annexure A-8 representation of the applicant. The main ground for rejection of the representation is that the applicant has served the Railway Department only for a period of 3 and half months, whereas a railway employee becomes entitled for pension only after serving for minimum period of 10 years in regular capacity.

Aggrieved by the impugned Annexure A-1 order, the applicant has approached this Tribunal in the instant O.A. and has prayed for the following main relief:-

“(b) Quash and setting aside the impugned consequential order dt. Nil.09/10.2016 issued by the respondents declining the request of the applicant for releasing the retirement benefits including pension also with a further direction to the respondents to consider and finalize the request of the applicant for releasing the retirement benefits including pension also with all other consequential benefits admissible to the applicant in accordance with the relevant rules and instructions on the subject i.e. arrears with interest from the date of his entitlement.”

5. Pursuant to the notices issued, the respondents entered appearance and filed their reply.

6. On completion of pleadings, the matter was taken up for hearing the arguments of learned counsel for the parties on 06.09.2018. Arguments of Mr. U Srivastava, learned counsel for applicant and Mr. Krishna Kant, learned counsel for respondents were heard.

7. The contention of Mr. U Srivastava, learned counsel for applicant was that identical issues have already been decided by the Ernakulam Bench of this Tribunal in O.A. No.417/2013 (**V.S. Syed Ali & others v. Union of India & others**), together with 3 other O.As., vide order dated 04.06.2014. He said that the applicants in those O.As. were also initially appointed as Commission Venders in the Railway Department and were seeking retirement benefits, including pension, by way of counting 50% of their service as Commission Venders for the purpose of determining their qualifying years of service for pension. He submitted that the relief claimed was allowed by the Ernakulam Bench. He also stated that the Ernakulam Bench in another identical case *titled Santa T.R. & another. v. Union of India & others* (O.A. No.523/2015) order dated 29.09.2016 has also granted similar reliefs to the identically situated applicants therein. He, thus, argued that the applicant is also entitled for the relief in terms of these judgments of the Ernakulam Bench.

8. Mr. Krishna Kant, learned counsel for respondents, on the other hand, opposed the contention of the applicant and argued that the applicant has put in only 3 and half months of regular service in the Railway Department and thus not entitled for pensionary benefits, as the qualifying service for such benefits is 10 years.

9. I have heard the arguments of learned counsel for the parties and have also perused the pleadings.

10. I have also gone through the two orders passed by the Ernakulam Bench of this Tribunal. The issue, as noted by the Ernakulam Bench, in **V. S. Syed Ali** (supra), is as under:-

“2..... whether the applicants are entitled to count 50% of their service as Commission Bearer/Vendor from the initial date of their engagement till their regular absorption in service, for the purpose of calculation of pension and gratuity. The above issue is no longer res-integra in view of a series of orders passed by two Benches of this Tribunal and confirmed by jurisdictional High Courts.”

11. The Ernakulam Bench, noted that identical prayer had been made in O.A. No.440/2003 (**C. P. Sebastian v. Chief Personnel Officer & others**) and a direction was issued therein to the Railway Department to count the service rendered by the applicant in that case as Commission/Salaried Bearer before his regular absorption for the purpose of pension and other terminal benefits on the analogy of the provisions contained in Indian Railway Establishment Code that half the service rendered by the casual labourers, who have joined on temporary status till regular absorption on the post, are entitled to count for pensionary purposes. It was also noted that the order of the Tribunal in **C. P. Sebastian** (supra) has been confirmed by the Hon’ble Kerala High Court in W.P. (C) No.15756/2006. Accordingly, the Ernakulam Bench allowed the said O.A.

12. I further notice that in **Santa T.R.** (supra) an identical issue was involved and identical relief has been granted, as could be seen from the relevant portion of the order extracted below:-

“12.....In all these cases, the issue was whether to count 50% of the period during which the applicants were working as Commission

Bearers/Vendors has to be treated as qualifying service for the purpose of their pensionary benefits after their regularization. The very same issue has been raised by the applicants in this case also.

13. Therefore, in order to maintain consistency, following the principles of *stare decisis et non quieta movere* (to adhere to precedents, and not to unsettle things which are established), this Tribunal is inclined to pass the same order as in Annexure A8 common order, the order in OA No.440/2003 and the orders of the co-ordinate Bench in Madras mentioned in the reply statement. Respondents shall extend the same benefits to the deceased applicant No.1 (through his legal heir substituted in this OA) and applicant No.2 also and appropriate orders in this regard shall be issued by the Railway within two months from the date of receipt of a copy of this order.”

13. I find that the case of the applicant in the instant O.A. is identical to the case of the applicants in the O.As. already decided by the Ernakulam Bench. Hence, this issue is no more *res integra*.

14. Accordingly, I allow this O.A. in terms of the orders of Ernakulam Bench passed in the cases of **V.S. Syed Ali** and **Santa T.R.** (supra) and direct the respondents to sanction pension to the applicant and release the retirement benefits of the applicant, including the arrears of pension, from the date of his eligibility, i.e., w.e.f. 01.11.2015. I also make it clear that the applicant shall not be entitled for any interest on the arrears of such benefits. No costs.

(K.N. Shrivastava)
Member (A)

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