CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00425 OF 2015
Cuttack, this the 28th day of June, 2017

CORAM
HON'BLE MR. R. C. MISRA, MEMBER (A)
…….

Laxman @ Laxman Mandia,
aged about 67 years,
S/o Late Kubera Mandia,
Permanent resident of Vill: Chainpur,
P.O. Motari, P.S. Delang, Dist-Puri.

…Applicant

(By the Advocate-M/s. R. K. Samantsinghar, S. K. Ray, S. P. Barik)

-VERSUS-

Union of India Represented through

1. The General Manager, East-Coast Railway, Rail Vihar, At/PO/PS. Chandrasekharpur, Bhubaneswar, Dist-Khurda.

2. The Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/PO/PS-Jatni, Dist-Khurda.

3. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO/PS-Jatni, Dist-Khurda.

…Respondents

By the Advocate- (Mr.S. K. Ojha)
……

O R D E R

R. C. MISRA, MEMBER (A):

The applicant, in this O.A., has approached the Tribunal being aggrieved by the order of the Railway authorities to deny him pension benefits. The specific case of the applicant is that in spite of the

order dated 11.11.2008 passed in O.A.No. 115/2006 and order dated 09.01.2014 passed in O.A.No. 72/2011 by this Tribunal, the Respondents have turned down the legitimate rights of the applicant. The prayer made by the applicant in this O.A. is quoted below:

> " In the facts and circumstances stated above the Hon'ble Court may kindly admit the Original Application and on hearing both the sides pass necessary orders by directing the respondents to implement the order vide dated 09.01.2014 passed in O.A. No. 72/2011(vide annexure-A/3) and direct to grant pensionary benefits to the applicant by quashing the Annexure-A/4 in the interest of justice and further direct the respondents to calculate the temporary status service of the applicant at par with the other similar situated persons who are getting the pensions in view of the order of this Hon'ble Court as well as Hon'ble High Court of Orissa.
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> And pass such other/orders as may deem fit and proper for interest of justice."

2. Briefly, the facts of this case may be stated as below:

The applicant was taken as a casual labour by the Railway authorities, who conferred temporary status on him on 01.08.1987. The applicant was taken to the regular establishment as a Trackman on 10.05.1990. The applicant was promoted as Sr. Trackman and, subsequently, retired from that post on 31.01.2003. However, on his retirement, he was not granted pension and gratuity and, thus aggrieved, he filed O.A.No. 115/2006, which was disposed of by the Tribunal by an order dated 11.11.2008. The application was allowed by the Tribunal

with certain observations. The paragraph 4 of the orders of the Tribunal is quoted below:

> "After perusing Annexure-A/1 and A/2, we find that there is force in the contention of the applicant and hence it is a matter to be looked into by the Respondents. Though the definite stand of the Respondents is that the applicant is not having required qualifying period for allowing pension, but if the period from 01.08.1987 to 10.05.1990 is taken into consideration, no doubt the applicant is entitled for pension as he will be getting pensionable service. In the above circumstances, we allow this Original Application and direct the Respondents to consider the claim of the applicant and pass appropriate orders thereon as early as possible at any rate within 60 days from the date of receipt of a copy of this order."

In pursuance of the orders of the Tribunal, the Respondent-authorities passed a speaking and reasoned order on 08.12.2008. After taking into account the observations of the Tribunal, the Respondents rejected the case of the applicant by taking a stand that his case was not coming within the ambit and rules and he did not possess minimum 10 years qualifying service for consideration of minimum pension. The Respondents also took a view that the applicant did not continuously worked as temporary status casual labour till his regularization. Thus, being aggrieved, by this order, the applicant again filed O.A. No. 72/2011, which was disposed of by an order dated 09.01.2014 by the Tribunal. In a very detailed order, the Tribunal dealt with all the facts of the case and passed the following orders:

> "In view of the discussions made above the prayer made in MA No. 59 of 2012 is allowed. The order dated 08.12.2008 denying the applicant pension is hereby quashed and the matter is remitted back to the Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, Khurda/Respondent No.2 to reconsider the case of the applicant for sanction of pension and pensionary dues by ante-dating his date of conferment of temporary status in terms of Estt. Srl. No. 129/84 dated 13.07.1984 and pass appropriate order within a period of 60(Sixty) days from the date of receipt of copy of this order.

As may be noted from the above, the Tribunal quashed the order of rejection and remitted the matter back to the Sr. Divisional Personnel Officer, E.Co.Railways, to reconsider the case of the applicant for sanction of pension by antedating his date of conferment of temporary status in terms of the Estt. Sl. No. 129/1984 dated 13.07.1984 and pass appropriate orders within a period of 60 days. In obedience to the direction of the Tribunal, the authorities have passed the order dated 07.03.2014, by which, after examining the facts of the case, they decided not to sanction pensionary benefits in this case. Thus aggrieved by this order, the applicant has entered into this third round of litigation against the Respondents, i.e. Railway-authorities.

3. The main ground on which the Ld. Counsel for the applicant has argued the case is that the Respondent-authorities have rejected the matter twice in spite of the fact that the Tribunal gave a positive direction to allow the pensionary benefits to the applicant. The

Respondents never challenged the orders of the Tribunal in O.A.No. 115/2006, in which the Tribunal had actually allowed his case and directed the Respondents to reconsider the claim by taking into consideration the period from 01.08.1987 to 10.05.1990. Therefore, the plea of the applicant is that the orders of the Respondent-authorities suffer from malafide and their decision is not in accordance with the letter and spirit of the orders of the Tribunal.

4. On the other hand, the Respondent-authorities by filing a detailed counter have submitted that the services rendered by the applicant were not continuous because of which he could not be considered for grant of pension. Even if his date of conferment of temporary status is antedated taking into consideration different broken spells from 1961 to 1964 as recorded in the service record, the pensionary benefits only will be considered in terms of the clarification provided under the Office Memorandum of Ministry of Finance and Rule 31 of the Railway Service (Pension) Rules, 1993. That means, half the period of casual service with temporary status from 10.05.1990 to 01.05.1996 and rest of the period of regular service from 02.05.1996 to 31.01.2003 shall be taken into account. As a consequence of the application of this rule, the net qualifying period for the purpose of pensionary benefits was calculated as 9 years, 8 months and 24 & ½ days. Since the requirement of 10 years of qualifying service has not been fulfilled, pension could not be sanctioned in terms of para 69 of the Railway Service (Pension) Rules, 1993. However, under the same

Rule, Service Gratuity, as admissible, has been paid. The applicant had submitted that the case of one Satrughan Samal was similar in nature and he was sanctioned pensionary benefits. Respondents have submitted that in case of Sri Samal, the qualifying service came to 9 years, 11 month and 13 & ½ days, which was nearly 10 years and, therefore, pensionary benefits were granted. It is also submitted that the authorities work within the statutory rules and they cannot pass any order unless the statutory requirement is fulfilled. There are thousands of cases where the employees could not be qualified for pension due to small shortage of minimum qualifying period. In all such cases, the Respondent-authorities, under rules, cannot order sanction of pension. The Respondents also submit that, as per the records, the applicant never rendered 120 days of work in a particular calendar year. It is also submitted that applicant had filed a Contempt Petition in the Tribunal, which was dismissed at the stage of admission. On the above grounds, Respondents have defended the orders passed by the authorities in obedience to the orders passed by the Tribunal.

5. Having perused the records of this case, I have also heard Ld. Counsels appearing for the parties.

6. Ld. Counsel for the applicant has vigorously submitted that the Tribunal had allowed the case of the applicant in O.A.No. 115/2006 and in spite of the positive direction of the Tribunal, the authorities did not comply with the same. On perusal of the said order, I find that the Tribunal had “allowed” the O.A. but, at the same time,

directed the Respondents to consider the claim of the applicant and pass appropriate orders. In obedience to this order, the authorities passed the order dated 08.12.2008, on perusal of which, it is noticed that the Respondents have gone through the service record of the applicant in great detail. The Respondents have specifically mentioned that the applicant did not continuously work as temporary status casual labour till regularization. Only in the year 1987, he worked for 119 days and, subsequently, also he worked in broken spells. The engagement as casual labour after attaining the temporary status with broken spells cannot be considered for the purpose of qualifying service in terms of Estt. Sl. No. 239/80. Thus the qualifying service was calculated by taking 50% of the casual service from the date of attaining temporary status, i.e. 10.05.1990 to the date of regularization and 100% qualifying service from 02.05.1996, i.e. date of regularization, to the date of retirement, i.e. 31.01.2003. This period comes to 9 years, 8 months and 24 & ½ days. The Tribunal in their orders had allowed the case but asked the authorities to pass an order taking into consideration the period from 01.08.1987 to 10.05.1995. In the order dated 08.12.2008, the Respondents did not consider the period from 1987 to 1990 because the applicant had not continuously worked but had worked only in broken spells. According to the calculation made by the authorities, the minimum, requirement of 10 years was not fulfilled in this case. The question here is whether the Respondent-authorities have violated the orders of the Tribunal by taking a different view on the basis of

examination of records in the face of the fact that the Tribunal while giving directions had allowed the claim of the applicant. Thereafter, the applicant filed O.A.No. 72/2011 challenging the order of the authorities, which was disposed of by a very exhaustive order dated 09.01.2014. The Tribunal had given a detailed consideration to the facts of this case but finally has after quashing the order dated 08.12.2008 remitted the matter back to the authorities for reconsideration by antedating the date of conferment of temporary status in terms of Estt. Sl. No. 129/84 dated 13.07.1984. In the speaking order dated 07.03.2014 again the case of the applicant has been rejected by the authorities. As per the direction issued by the Tribunal, the Respondents have observed that even though the conferment of temporary status is antedated taking into consideration the broken spells of work of 373 days as recorded in the service records, the minimum qualifying period has not been fulfilled by the applicant. Thus, even though in the O.A.No. 72/2011, the Tribunal again directed for consideration, the authorities have gone by the service record again and rejected the prayer of the applicant. A question here has been raised by the Ld. Counsel for the applicant that the orders passed by the Respondents are in fact violative of the orders of the Tribunal both in letter and in spirit. On the other hand, the orders are contemptuous. In this regard, it has been brought to my notice that the applicant had filed C.P.No. 16/2014, which was disposed of by the Division Bench by an order dated 09.07.2014. It was noted in this order that contempt is a

power conferred into the law Courts to punish an offender for his willful disobedience or contumacious conduct. It was also noted that in the case of J.S.Parihar Vs Ganpat Duggar and Others, 1996 SCC (L&S) 1422, the following law has been laid by the Hon'ble Apex Court.

> "The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the direction issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the Learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act…."

7. By taking into account the facts of the case and the law as laid down by the Hon'ble Apex Court, the Tribunal directed the Contempt Petition to be dropped. Therefore, the Division Bench of the Tribunal in this C.P. has already decided that the orders passed by the authorities, in obedience to the orders of the Tribunal, are not contumacious in nature. There is no further scope for the Single Bench

to go into this aspect. There is no doubt in this case that the applicant has been approaching the Tribunal repeatedly. However, the fact remains that the Respondents have taken decision as per the service records and as per the rules applicable. It will not be appropriate to give a direction to the Respondents to overlook or ignore the service records and implement the decision of the Tribunal in O.A.No. 115/2006 straightway. The scope for this Tribunal has further been limited by the fact that the Contempt Petition has already been dropped and it has been held that the Respondents are within their powers to pass a reasoned order taking into account the facts of the case. Therefore, the focus of attention of this O.A. shall be only on the merit of the order dated 07.03.2014, which has been passed in obedience to the orders of the Tribunal in O.A.No. 72/2011. There are two observations in this order, which are important. The first is that even though the applicant was granted temporary status on 01.08.1987, he did not work continuously except for the period from 10.05.1990 to 01.05.1996. The regularization of the applicant has taken place on 02.05.1996. The second aspect of this order is that the Respondents in obedience to the direction of the Tribunal have antedated the date of conferment of temporary status but even then by taking ½ of the casual service with temporary status and the full period of regular service calculated the qualifying service as 9 years, 8 months and 24 & ½ days. Therefore, the orders of the authorities are based on examination of service records. There are no contrary facts available to disbelieve the facts as submitted

by the Respondents, which was based on the record. Therefore, the issue with which I am confronted is that whether the Tribunal can overlook the set of facts presented by the Respondents based upon the official records. On this matter, I am of the opinion that Tribunal cannot traverse beyond the official records. The other question is whether the Tribunal can direct the Respondents to take the qualifying service, which has been calculated as 9 years, 8 months and 24 & ½ days, as 10 years, i.e. the minimum qualifying period. I have also reflected upon this issue and I am of the opinion that issuing such a direction will set a bad precedence since several other casual workers similarly placed may have small period of shortfall from minimum qualifying period. The Tribunal, therefore, in my view would not use the discretion to relax the period of shortfall unless the Respondents have clearly adopted the policy of relaxing certain periods of shortfalls to meet the minimum qualifying period of service. In the impugned order, it is found that as per the provisions of paragraph 69 of the Railway Service (Pension) Rules, 1993, the Respondents have already granted and paid service gratuity as admissible in lieu of pension.

8. In view of the aforesaid discussions, I do not find any infirmity in the orders dated 07.03.2014 passed by the Respondents. Accordingly, the O.A. being devoid of merit is dismissed without any costs to the parties.

(R.C.MISRA)
Member (Admn.)

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