

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

OA/021/00720/2017

Date of CAV : 15-11-2018  
Date of Order : 28-11-2018

Between :

1. Sri B. Hanumanthu aged 58 years,  
S/o Muthulu, Occ : Key Man, SC Railway,  
Res : of Rly Qrts., 1014/2, Chilkalaguda,  
Secunderabad. ....Applicant

AND

UOI rep by its,

1. The Chairman,  
Railway Board, Railbhawan,  
New Delhi.
2. The General Manager,  
S.C. Railway, Secunderabad.
3. The Divisional Railway Manager,  
S.C. Railway, Hyderabad Division,  
Hyderabad Bhavan, Secunderabad.
4. The Sr. Divisional Personnel Officer,  
S.C. Railway, Hyderabad Division,  
Hyderabad Bhavan, Secunderabad. ...Respondents

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Counsel for the Applicant: Mr. G. S. Rao

Counsel for the Respondents : Mr. M. Venkateswarlu, SC for Rlys

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CORAM :

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

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(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

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This application is filed under section 19 of the Administrative Tribunals Act, 1985 to

- (i) quash and set-aside (R3) letter No.SCR/P-HYB/565/ET.14/Court case/BH dated 13.07.2017 and direct the Respondents to consider the applicant voluntary retirement as on 01.07.2014 from service duly taking 50% of casual service for the purpose of qualifying service and
- (ii) extend all such consequential benefits attached to such voluntary retirement, pass such other order / orders as deem fit and proper in the interest of principles of natural justice.

2. The brief facts of the case are that the applicant sought for voluntary retirement under LARSGESS Scheme with effect from 01-07-2014 the same was rejected on the ground that the applicant has not completed 33 years of qualifying service. The applicant brought to the notice of the Respondents that the applicant would be completing 33 years of qualifying service if Casual service rendered by the applicant is to be added, he would be completing 33 years of qualifying service as on 01-07-2014. To this effect he has relied upon full bench judgment of A.P & T High Court orders in W.P No.25260/2002. In action of the same the applicant filed O.A No.1155/2016 for redressal of his grievances.

3. It is further submitted that the said OA was disposed of vide order dated 10.04.2017 without any relief to the applicant. Aggrieved such order the applicant filed WP No.17638/2017 before Hon'ble High Court and the same was disposed of in favour of the applicant directing the Respondents

to consider the applicant representation to count his casual service for qualifying service.

4. Aggrieved by order of the Hon'ble High Court the Respondents have admitted the fact that 50% casual service has to be counted for qualifying service and failed to count the same to the applicant for the purpose of voluntary retirement and extend the benefits of voluntary retirement benefits to the applicant. Hence the applicant challenging the rejection orders dated 13.07.2017 passed by the 3<sup>rd</sup> Respondent in this OA. Hence this OA.

5. Respondents have filed reply statement stating that the applicant was initially engaged on 19.02.1978 as Project Casual labour in Engineering Department under PSI/SE/MED. He attained temporary status on 01.01.1983 in Pay Rs.196/- in scale Rs.196-232 (Rs). He was absorbed as Yard porter on regular basis with effect from 17.01.1984 in Operating Department of Hyderabad Division /SC.

6. The Respondents further submit that the employee has applied for retirement and appointment of his ward under LARSGESS Scheme for the retirement Cycle 2-2016 vide this office notification dated 28.07.2014 and the same was received in this office. As per the notification, employees seeking retirement under LARSGESS Scheme has to complete 33 years of qualifying service (minimum of ten years in safety category) and within the age group of 55-57 years. On verification of the qualifying service and in

terms of Railway Board instructions, the employee has 30 years 11 months and 24 days as on 01.07.2014 as on the cut-off date, thus not fulfilled the requisite condition of 33 years of qualifying service in terms of the notification.

7. The Respondents submit that, in terms of Railway Board letter E(NG)11/78/CL/12, dated 16.10.1980 and letter dated 28.11.1986 and 19.05.1987 in cases of casual labour's half of the service rendered after attaining Temporary status is to be taken as qualifying service on their eventual absorption in regular posts. Further the same is reiterated in para 11.2 of Master Circular No.48 and also as per IREM-Vol-II, Para 2005, 50% of temporary status service is to be taken into account for pensionary benefits. In view of the above, 50% of service rendered from date of granting temporary status and the date of regular absorption ie from 01.01.1983 to 12.01.1984 is 01 year 0 months and 11 days. Therefore 50% of the service amounts to 06 months and 06 days and the same were taken into account for calculation of qualifying service and the position was advised to the employee vide office letter dated 23.09.2014.

8. The Respondents further submit that, the Full Bench of the Hon'ble High Court of Hyderabad in Writ Petition No.25260/2002 gave a verdict on 18.09.2015 to count 100% temporary service and also 50% daily rated casual labour service rendered as qualifying service. However, there are no such instructions from the Railway Board to count 50% of Casual Labour and 100% temporary service for the purpose of retirement under LARSGESS

Scheme.

9. The Respondents state that the Hon'ble High Court of Punjab & Haryana in Kala Singh & Others Vs. Union of India in CWP No.7714 of 2016 had directed the Railway authorities that hither to, before making any appointment under the LARSGESS scheme, let its validity and sustainability be revisited keeping in view the principals of equal opportune and elimination of monopoly in holding public office. However the judgment in the above cited cases was carried in an SLP before the Hon'ble Supreme Court by the Railway administration and the same is pending adjudication.

10. The Respondents further submit that the Hon'ble Supreme Court in A No.3938/2017 in SLP No.23723/2015 in the case of Uol & Ors Vs. Rakesh Kumar & Ors while deciding the extent of qualifying service to be counted for pensioner benefits in case of Casual Labour, held that Casual Labour are entitled for 50% of Temporary Status Service rendered before regular absorption and also 50% of Casual labour service before attaining temporary status followed by regular absorption. But however, there are no such instructions from the Railway Board to count 50% of Casual Labour and 100% temporary service for the purpose of retirement under LARSGESS Scheme. Any such policy decision is to be decided at Railway Board level keeping in view the financial implications as such decisions in issues having policy matter cannot be taken in select cases and the same was communicated to the employee vide letter dated 13.07.2017.

11. The Respondents further submit that the applicant retired from railway service on 31-08-2018 after superannuation, as per LARSGESS scheme the employee has to retire from service within the age group of 57 years and to appoint his ward under the scheme, the applicant having continuously served in the Railways beyond 57 years therefore cannot claim that his ward should be given appointment at the later stage. In view of the retirement from service on superannuation, the present OA is infructuous. In view of these submissions, the Respondents pray for dismissal of the OA.

12. I have heard Mr. G. S. Rao, learned counsel for the applicant and Mr..M.Venkaeswarlu, learned Standing Counsel for Respondent Railways.

13. Learned Standing Counsel for Respondents, in support of his contentions, relied upon the following orders in :

- (i) OA No.4202/2016, dated 25-10-2018 of CAT, Principal Bench, New Delhi
- (ii) OA No.960/2016, dated 31.10.2018 of CAT, Principal Bench, New Delhi; and
- (iii) RBE No.150/2018, dated 26.09.2018.

Admittedly the applicant got Temporary Status with effect from 01.01.1983. Therefore, as per the settled position of law, as held by the Hon'ble Supreme in the decision in the case of Union of India & Ors Vs. Rakesh Kumar & Ors, dated 24-03-2017 ( CA No.3938/2017 arising out of SLP (C) No.213723/2015), wherein it is held as under :-

- i) The casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularised on a regular / temporary post for the purposes of calculation of pension.
- ii) The casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.
- iii) Those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of Rules, 1993.
- iv) It is open to Pension Sanctioning Authority to recommend for relaxation in deserving case to the Railway Board for dispensing with or relaxing requirement of any rule with regard to those casual workers who have been subsequently absorbed against the post and do not fulfil the requirement of existing rules for grant of pension, in deserving cases. On a request made in writing, the Pension Sanctioning Authority shall consider as to whether any particular case deserves to be considered for recommendation for relaxation under Rule 107 of rules, 1993."

Besides that, the applicant served for different spells from 19.02.1978 to the year 1982 which comes to about 2 and ½ years. 50% of the said period has to be counted towards qualifying service of the applicant. Accordingly the applicant is entitled for the said relief for the purpose of qualifying service.

14. The Original Application is allowed to that extent. The Respondents to calculate the qualifying service of the applicant accordingly as per the directions given above and is entitled to the consequential benefits.

15. In the circumstances of the case, there shall be no order as to costs.

(SWARUP KUMAR MISHRA)  
JUDICIAL MEMBER

Dated : 28<sup>th</sup> November, 2018.

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