

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.021/00841/2017

Reserved: 28.09.2018

Order pronounced: 01.10.2018

Between:

Noor Khan, S/o. Kareem Khan,
Aged about 82 years, Occ: Retired Mason,
O/o. Inspector of Works, Bidar,
South Central Railway, Secunderabad Division,
R/o. Near Islam Pura Bungalow,
Parli Vaijnath, Beed Dist; Maharastra State.

... Applicant

A N D

1. Union of India,
Rep. by General Manager,
South Central Railway, Rail Nilyam, Secunderabad.
2. The Chief Personnel Officer,
South Central Railway, Rail Nilyam, Secunderabad.
3. The Senior Divisional Personnel Officer,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.

... Respondents.

Counsel for the Applicant	...	Mr. M.C. Jacob
Counsel for the Respondents	...	Mrs. A.P. Lakshmi, SC for Rlys

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
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ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

OA is filed against the impugned order dt 9.8.2017 of the respondents in refusing to grant pension to the applicant

2. Brief facts of the case are that the applicant joined the respondent organisation as casual labourer on 29.7.1978 and was granted temporary status with effect from 19.12.1978. His services were regularised on 9.1.1989.

Thereafter he grew to the level of Skilled artisan and retired on 31.7.1993. Applicant is eligible for pension if he has ten years of qualifying service. While calculating the length of service of the applicant the respondents have made errors and did not implement the judgment of the Honourable Supreme Court in the matter and therefore applicant claims that he was not granted pension. Hence the O.A.

3. The contention of the applicant is that the respondents have calculated his pension reckoning the service from 19.12.78 and worked it to 9 years 6months and 5 days instead of 9 years 9months 11 days. The applicant when he claimed pension as was granted to an employee in Vijayawada division based on the orders of the Honorable High Court for the State of Telangana and for the State of A.P in WP No.25260/2002 considering the period rendered as casual labour the respondents did not respond. Consequently the applicant when he filed OA 500/2017, this tribunal directed the respondents to consider his case but they rejected his claim. The applicant claims that the respondents have rejected his claim on the ground that a policy decision in regard to the Honourable supreme court judgment in Union of India vs Rakesh kumar is yet to be taken and hence they did not consider para 55 of the judgment which held that 50 percent of the service rendered as casual labourer has to be considered and also 50 per cent of service rendered after attaining temporary status should be reckoned. Based on the Honourable Supreme Court Judgment his qualifying service comes to 9 yrs 9 m and 11days. As per sub rule (3) of rule 69 of the railway services (pension) rules 1993 while working out the length of service, fraction of an year equal to 3 months and above is reckoned as equal to six months qualifying service. Based on this rule the applicant's qualifying service for pension will be more than 10 years and hence he is eligible for pension.

4. The respondents contend that the net qualifying service as 9 yrs 6 m and 5 days. As the applicant does not have the qualifying service of 10 years he was not granted pension. The respondents state that the casual labour service cannot be considered since there are no orders on this count from the Railway Board. The High Court judgment applied to the employee in Vijayawada division is not applicable in view of the Honorable Supreme Court Judgment in *UOI vs Rakesh Kumar*. Rounding of the fraction as per rule 69 (3) of pension rules is only for gratuity. Hence the applicant does not have the required service of 10 yrs to be granted pension.

5. Heard the learned counsel and perused the documents on record.

6. The learned counsel for the applicant has pointed out an arithmetical mistake in calculating the length of the period. Further the period of casual labour service rendered from 29.7.1978 to 19.12.78 has not been considered as per Honorable Supreme Court judgment. On doing so the total service works out to 9 years 9months 11 days as presented by the counsel for the applicant here under, which is correct.

Computation of Qualifying Service

Commencement of Casual Labour Service	29.07.1978
Grant of Temporary Status Casual Labor	19.12.1978
Regularization of service	10.01.1989
Retirement from Service	31.07.1993

Qualifying service calculation by Railways (Page 4 of the reply)

Date of regularization	10.01.1989-
Date of Temporary Status	<u>19.12.1978</u>
Length of Temporary status service	22d 0 m 10y
50 % of Temporary status service	<u>11d 0 m 5 y</u>
Retirement from service	31.07.1993-
Regular service from Regularization	<u>10.01.1989</u>

100% Regular service	21d 6m 4 y
Total Qualifying Service	11d 0m 5y + <u>21d 6m 4y</u>
Total	02d 7m 9y
<u>Addition of 50% casual labor service as per</u> <u>Supreme Court Judgment till grant of temporary status</u>	
Date of grant of Temporary status	19.12.1978-
Date of entry as casual labour	<u>29.07.1978</u>
Total casual labour service	19d 4m 00y
50% service	09d 2m 00y
Adding 50% casual service to qualifying service	02d 07m 09y+ <u>09d 02m 00y</u>
Total Qualifying service	11d 09m 09y

The ld counsel has cited the judgments of Hon'ble Delhi High Court in UOI vs. Sant Singh, 2003(1) SLJ 208 Delhi and Hon'ble CAT, Ernakulam Bench in OA 454/2010 in support of his case. The learned counsel for the respondents stated that the qualifying service being less than 10 years the applicant is not eligible and reiterated that the rounding of fraction of an year is applicable only to gratuity and not to pension.

7. The details let in as evidence do indicate that there was a mathematical error in the calculation by the respondents and also by taking into account 50 percent of the casual labour service as held at para 55 of Honorable Supreme Court in *Union of India vs Rakesh Kumar and ors* in CA No.3938 of 2017, the total length of service is 9 yrs 9 months 11 days. As per rule 69 (3) Railway Services (Pension) Rules, 1993, for calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as completed one half year and reckoned as qualifying service. This was upheld at para 9 by Honorable Ernakulam bench of this tribunal in OA no 454/2010 dt 9.1.2012. The respondents have also admitted that as per R.B.E No 187/90 dt 25.10.1990 that a

railway servant who has completed 9 yrs 9months and above service but less than 10 years will be deemed to have completed 20 six monthly periods of qualifying service and will be eligible for pension. The Delhi High Court has also held at para 3 that as per rule 49 (3) of the CCS pension rules fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service. Therefore as the applicant satisfies the rules prescribed for reckoning his service as 10 years and with the judicial pronouncements in favour of the applicant, the OA fully succeeds. The action of the respondents is against rules and the judicial decisions stated. Therefore the impugned order dated 9.8.2017 is quashed.

9. The OA is allowed. The respondents are therefore directed to consider granting pension due from the date the applicant is eligible along with arrears due within three months from the date of receipt of order. Under the said circumstances there is no order to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 1st day of October, 2018

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