

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/587/2016

Present: Hon'ble Ms. Manjula Das, Judicial Member

1. KASHI NATH

S/o Nanhakoo Shaw,
Aged about 73 years,
Worked as a Commission Bearer,
At Rajdhani Express, Rake No.3,
Eastern Railway, Howrah Division,
R/o Chauri, PO – Sikariya (Paligunj),
Dist.- Patna, Bihar – 801110.

2. BHAIRO NATH

S/o Ram Alam Tibary,
Aged about 72 years,
Worked as Bearer at Poorva Express,
Eastern Railway, Howrah Division,
R/o Vill – Reena, PO – Kurhana,
Chandauli, Dis. – Samastipur,
Bihar – 848115.

...APPLICANTS.

VERSUS

1. Union of India, through
The General Manager,
Eastern Railway,
17 N.S.Road,
Kolkata – 700001.
2. The Chief Personnel Officer,
Eastern Railway,
17 N.S.Road,
Kolkata – 700001.
3. The Chief Commercial Manager (Catering)
Eastern Railway,
5 Koilaghat Street,
Kolkata – 700001.

...RESPONDENTS.

For the applicant : Mr.B.Chatterjee, counsel

For the respondents: Mr.A.K.Banerjee, counsel

Heard on : 15.12.2017

Order on : 11.5.2018

O R D E R

Per Ms. Manjula Das, Judicial Member

Being aggrieved with the speaking order dated 26.5.2015 issued by the respondent No.2 whereby consideration of the case of the applicants were acceded to, approached before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs :

- a) Leave may be granted to file this application jointly under Rule 4(5)(a) of the Central Administrative Tribunals (Procedure) Rules, 1987;
- b) To quash and set aside the impugned speaking order dated 26th May, 2015 issued by the Chief Personnel Officer, Eastern Railway, Kolkata;
- c) An order directing the respondents to grant pension and other post retirement benefits to the applicants as were granted in the manner granted to the applicants in OA 545 of 1999 (Narayan Ram & Ors. -vs- UOI & Ors.);
- d) An order directing the respondent authority to calculate the past service for granting pension and other post retirement benefits which was rendered by the applicants;
- e) Pass such further or other orders as to the Learned Tribunal may deem fit and proper.
- f) Costs of this application to be paid by the respondents.

2. The brief facts of the case as narrated by the Id. Counsel for the applicant is that the applicants were initially appointed as Commission Bearers in the Catering Department of Eastern Railway in 1960. On 13.12.1976 Railway Board issued a circular deciding that Commission Bearers or Vendors would be absorbed progressively in the Railway service. In 1990 the railway authorities issued a provisional seniority list of Commission Vendors/Bearers of Catering Department for screened. The applicants were screened and declared eligible and subsequently on 14.1.1994 appointment order was issued in favour of the applicants. Thereafter the applicants retired from service on 31.10.2003 and 30.6.2003 respectively. The applicants represented before the respondent authorities for extension of the benefit of the order passed by the Tribunal in OA 545/1999 which was upheld by the Hon'ble High Court in WPCT No. 471/2006 with certain modification. The respondent authorities rejected their claim by the order dated 3.4.2012. The applicants made further representation before the respondent authorities and being rejected, they moved this Tribunal in OA 927/2012 which was disposed of by an order dated 19.4.2013. With the said order the applicants further represented before the respondent authorities and the same was rejected by the impugned speaking order dated 26.5.2015. Hence the applicants have approached this Tribunal in the present OA.

3. By countering the averments made in the OA, the respondents filed their reply dated 12.8.2016 and stated that the applicants in the present OA were

engaged as Commission Bearer in the Comml. Catering Department. w.e.f. 1.3.1960. Subsequently as per Railway Board's order dated they were absorbed in the Railway - Kashinath on 10.2.1994 and Bhaironath on 2.2.1994. Kashinath retired on 31.10.2003 and Bhaironath retired on 30.6.2003 at the age of 60 years respectively. In accordance with the rules contained in Railway Board's letter circulated by CPO's Serial No. 13/91, an employee is entitled to pension after rendering of 10 years qualifying service. Kashinath and Bhaironath rendered less than 10 years of qualifying service as such they were not entitled to pension. However, as per rule they were given all kinds of settlement dues except pension. Now, after a lapse of so many years they have approached this Tribunal for benefit of pension.

The respondents further stated that Railway Board vide their letter dated 6/4.5.2015 have clarified that the judgment of Hon'ble Supreme Court in SLP No. 25730 of 2009 dated 14.3.2011 [WPCT No. 471/2006 & OA 545/1999] is only applicable to the concerned petitioner i.e. Narayan Ram & others and not to any other person.

4. Heard Mr.B.Chatterjee, Id. Counsel for the applicants and Mr.A.K.Banerjee, Id. Counsel appearing on behalf of the respondents, perused the pleadings and materials placed before me and the decision relied upon.

5. In the case of Narayan Ram & others (supra) this Tribunal vide order dated 18.11.2005 along with analogous matters in OA 545/1999 and OA 109/2003 disposed of the said OAs in a common judgment declaring that

(a) "For the purpose of calculation of pension the services of the said applicants on commission basis from 1.12.1983 shall be reckoned for computing qualifying service. In case there is any shortfall of qualifying service. In that event, the service rendered before 1.12.1983 shall also be taken into consideration to the extent of the shortfall.

(b) The respondents calculated the pension and other retiral benefits in respect of applicants of OA 545/99 accordingly and disburse the same to them within four months from the date of communication of this

order.

(c) So far as the applicants of OA 109/2003 are concerned, the respondents shall pay them terminal/service gratuity according to law on the basis of emolument calculated at the minimum of the revised scale of pay computing their service for the period from 1.12.83 till their attaining the age of superannuation.”

6. Mr. Chatterjee, Id. Counsel for the applicant submitted that the respondent authorities of the said OA 545/1999 being aggrieved with the order passed by this Tribunal approached before the Hon’ble High Court vide WPCT 471/2006 where the Hon’ble High Court vide judgment and order dated 16.1.2008 held that the judgment and order of this Tribunal is quite justified in legal and factual aspects but it needs certain modification in view of Lordship’s observation. Therefore their observation is that the service period should be reckoned for the purpose of computation of pension from 1.12.1984 instead of 1.12.1983. In so far as reckoning of the service rendered prior to 1.12.1984 in the capacity of Commission Bearers/Vendors/Agents, as directed by the learned Tribunal, is concerned the same cannot be taken into consideration because the aforesaid principle has been drawn from the analogy derived from the Rules providing reckoning of service during casual employment. Thereafter the Railway authority approached Hon’ble Apex Court vide SLP 25730/09 and the same was dismissed by the Hon’ble Supreme Court in the year 2011.

It was vehemently argued by Mr.Chatterjee, Id. Counsel appearing on behalf of the applicant that the applicants are similarly situated with the above applicants of OA 545/1999 and OA 109/2003 where the identical issue has already been settled by the judicial pronouncement, thus the present applicants cannot be discriminated by way of rejecting their case vide impugned speaking order.

As such the impugned order dated 26.5.2015 is not sustainable under the law and the benefits be given to the applicants as given to the applicants in OA 545/99.

7. By countering the arguments advanced by Mr.Chatterjee, Id. Counsel for

the applicant, Mr.A.K.Banerjee, ld. Counsel for the respondents submitted the following :

- (i) The present OA is barred by limitation
- (ii) The present applicants have retired on 30.10.2003 and 30.6.2003 and after long years of retirement they have approached before this Tribunal.
- (iii) The decision rendered in OA 545/1999 is not in rem but personem and as such the applicants are not entitled to get the benefit as extended to the applicants of OA 545/1999.
- (iv) Mr.Banerjee, ld. Counsel for the respondents submitted that the speaking order is passed rightly and there is not such discrimination and as such the OA is liable to be dismissed.

8. Mr.Chatterjee ld. Counsel for the applicant, to substantiate his case on the point of limitation in terms of reply relied on the decision of Hon'ble Apex Court which is as hereunder :

- a) State of Karnataka & Ors. -vs- C.Lalitha [2006 SCC (L&S) 447]
- b) M.R.Gupta -vs- UOI & Ors. [1995 SCC (L&S) 1273]
- c) Inder Pal Yadav & Ors. -vs- UOI & Ors. [1985 SCC (L&S) 526]
- d) K.C.Sharma & Ors. -vs- UOI & Ors. [1990 SCC (L&S) 226]

He further submitted that the point of limitation cannot arise as the applicants prayed for grant of benefit of judgment passed by the Hon'ble High Court in WPCT 471/2016 which has been conferred by the Hon'ble Apex Court. Moreover, the applicant has challenged the speaking order within the limitation period as per the Administrative Tribunals Act, 1985.

9. For coming to a logical conclusion I am in hand of the case of the present applicants, where the applicants initially were appointed as Commission bearers in the Catering Department of Eastern Railway. Admittedly the applicants were engaged as Commission Bearer in the Comml. Catering Department w.e.f. 1.3.1960. Railway Board issued a Circular No.76 TG 111/639/11 dated 13.12.1976 where it was decided that the persons working as Commission Bearer or Vendors would be absorbed progressively in the Railway service. As the concerned Railway Division did not comply with their

own circular the aggrieved employee filed two writ petitions in the year 1982 before Hon'ble Supreme Court vide WP No. 6804-05/83 (Shital Singh & Anr. –vs- UOI & Ors.) claiming that the Commission Bearers and Vendors should be absorbed on permanent basis in Railway service as early as possible. Even though such order was issued by the Hon'ble Supreme Court in 1983 and notwithstanding the Railway Board's circular as referred to above issued in 1976, the present applicants who were working under Eastern Railway were not absorbed in due time.

However, subsequently in 1990 the Eastern Railway authorities issued a provisional Seniority List of Commission Vendors/Bearers of Catering Department for screening. The applicants were screened and declared eligible in 1990 but they were actually absorbed in the Railway service in 1994 and retired from Railway service on 31.10.2003 and 30.6.2003 respectively and admittedly they have not completed the qualifying 10 years of service. As such they have rendered 9 years few months as Railway employees after absorption.

As per Railway Board's letter circulated by CPO's serial No. 13/91 an employee is entitled to pension after rendering 10 years qualifying service. Admittedly the applicants had not completed 10 years of qualifying service as a regular employee after absorption. They have completed only 9 years few months.

10. In the case of OA 545/1999 the applicants were initially appointed as commission bearers in Catering Department of Eastern Railway in 1958, 1959 and 1960. Hon'ble Supreme Court in case of Shital Singh & Ors (supra) vide order dated 13.12.1983 disposed of the Writ Petitions filed by the applicants being aggrieved for non-absorption in the Railways. In pursuance of the circular No. 76 TG 111/639/11 dated 13.12.1976 where Hon'ble Supreme Court vide order dated 1983 disposed of the said Writ Petitions on the basis of Railway Board's circular No.76 TG 111/639/11 dated 13.12.1976 observing that commission bearers and vendors on permanent basis in Railway service as early as possible. Even though such order was issued by the Hon'ble Supreme Court on 13.12.1983 and despite the order of the Railway Board issued in

1976, the present applicants who were working under Eastern Railway were not absorbed in due time. Ultimately in 1990 the Eastern Railway authorities issued a provisional seniority list of Commission Vendors/Bearers of Catering Department for Screening. The name of the applicants in OA 545/1999 figured in the list after screening and they were eligible in 1990 but actually absorbed in Railway service in 1993-1994. The said applicants retired in 1998/2000 and thereafter on attaining the age of 58 or 60 years. The said applicants rendered only 5-7 years as regular Railway employees after absorption, whereas the present applicants in the instant OA have rendered more than 9 years of regular service. The said applicants also made representations before the Railway authorities unlike the present applicants but the respondents did not pay heed to their grievances. Having no alternative, the said applicants approached before this Tribunal vide OA 545/1999. By the said OA the applicants prayed for a direction to the respondents so that they may be granted service benefits like gratuity etc. by treating their entire service period and further direction so that they may be allowed to work as Commission Vendors on commission basis by quashing the order dated 17.1.2003.

11. By a subsequent order dated 17.1.2003 the Railway authority clarified that Commission Bearers/Vendors who had crossed the age of 60 years cannot be permitted to work and thereafter their license should be terminated.

The respondents therein contested the case inter alia since the applicants had already reached 60 years of age they could not be permitted to work as Commission bearers/vendors on commission basis as per rules and this was reiterated in the aforesaid order and hence the applicants cannot claim to work on commission basis beyond the age of 60 years. So far as service gratuity is concerned, it is stated that since the applicants were not absorbed, therefore they were not railway employees and hence they could not be paid any gratuity under law.

12. The two issues raised before this Tribunal vide the said OA 545/1999 and OA 109/2003 are –

- a) Whether those Commission Vendors/Bearers who were absorbed in the railway service and retired prior to rendering ten years of qualifying service, can be granted pension and other retiral benefits?
- b) Whether those Commission Vendors/Bearers who could not be absorbed because of their attaining the age limit of 58/60 years, can be granted service gratuity?

13. After discussing in details, this Tribunal in OA 545/1999 rendered the decision which reads as hereunder :

- a) Let it be declared that in respect of the commission bearers/vendors who have been absorbed in railway service, for the purpose of calculation of pension, their service on commission basis from 1.12.83 shall be reckoned for computing qualifying service. In case there is any shortfall of qualifying service, in that event, the service rendered before 1.12.83 shall also be taken into consideration to the extent of the shortfall.
- b) The respondents calculated the pension and other retiral benefits in respect of applicants of OA 545/99 accordingly and disburse the same to them within four months from the date of communication of this order.
- c) So far as the applicants of OA 109/2003 are concerned, the respondents shall pay them terminal/service gratuity according to law on the basis of emolument calculated at the minimum of the revised scale of pay computing their service for the period from 1.12.83 till their attaining the age of superannuation. The payment be made within four months from the date of communication of this order.

14. The issue raised by the present applicants in the instant OA is that the present applicants are similarly situated with the above applicants in OA 545/1999 and OA 109/2003 and the issue involved is identical and as such claiming for similar benefits. The present applicants were initially appointed as Commission Bearers in the Catering Department of Eastern Railway in 1960. Thereafter on screening they got their place for absorption w.e.f. 14.1.1994. Accordingly appointment orders were issued. However they were retired before completion of 10 years for which reason, the cases of the applicants were rejected for giving the benefits. The applicant approached this Tribunal in OA 927/2012 and in view of the order passed by this Tribunal in OA 927/2012, the respondent authorities passed a speaking order by rejecting their claim stating that the case referred to in OA 545/1999 and OA 109/2003 went upto Hon'ble Supreme Court and the benefit given there was in rem and not in personem. As such in view of the above principle the applicants were regretted by the respondent authorities from giving the same benefit.

15. The applicants have given a clear picture so as to come to a final conclusion as regards similarly circumstanced issue. I explored in details the two sets of cases where it appears that so far as the facts of the cases are concerned, both are similarly circumstanced. The scheme of the Railways provided for eligibility criteria for being benefitted for pension after 10 years continuous regular service or from their date of absorption. The applicants in OA 545/1999 were initially appointed in 1958, 1959 and 1960, they were absorbed in the Railway service in 1993-94 and were retired in 1998-2000. Apparently the said applicants did not complete their 10 years continuous service. They were ineligible in view of the scheme of the Railways which provided for eligibility of 10 years of continuous regular service. This Tribunal in OA 545/1999 as discussed in the foregoing paragraphs, has already granted the benefits by directing the respondent authorities to calculate their pension and other retiral benefits and accordingly disburse the same.

Next, I am coming to the case of the present applicants. They were initially appointed as Commission Bearers in the Catering Department of Eastern Railway in 1960, were absorbed in the Railway service in 1994 and retired from Railway service in 2003. Admittedly they have not completed 10 years of service but rendered 9 years few months as Railway employees after absorption. If I take note of the relied upon case of **Inderpal Yadav & Ors. -vs- Union of India & Ors. [1985 SCC (L&S) 526]** where Hon'ble Apex Court has held that "those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hand of this court", the similar benefits also have to be given to the present applicants in view of the ratio laid down in the case of Inderpal Yadav (supra).

16. The respondent authorities have raised the point of limitation. In the case of **M.R.Gupta -vs- Union of India & Ors. [1995 SCC (L&S) 1273]**, Hon'ble Apex Court has held that "the application to the extent of proper pay fixation is not time barred, although the claim of consequential arrears would be subject to law of limitation." The present

applicants although did not agitate in time before this Tribunal, however, similarly circumstanced employees have already agitated since 2005 and their matter attained finality only in the year 2011. Immediately the applicants made representations before the authorities on 1.3.2012 for awarding the similar benefits to them as given to the applicants in OA 545/1999. The benefit claimed by the applicants is mainly for the pension which involves calculation on the basis of the pay of the applicants. Therefore it is a recurring cause of action and I turn down the plea taken by the ld. counsel for the respondents so far as the point of limitation is concerned.

In the case of **K.C.Sharma & Ors. -vs- Union of India & Ors. [1990 SCC (L&S) 226]** Hon'ble Apex Court has held that

“However, when the Central Administrative Tribunal (Full Bench) in another case declared the notification invalid by its judgment dated 16.12.1993, the appellants claimed from the Railways, the benefit of the judgment and when the benefit was not extended to them, they filed application in the Tribunal in April 1994 – held, the delay in filing the application should have been condoned by the Tribunal and the appellants given relief on the same terms as was granted by the Full Bench of the Tribunal.”

17. From the factual aspects of the present case, it is clear that the present applicants are similarly situated with the applicants in OA 545/1999 and OA 109/2003 and in view of the ratio laid down in the cases of **Inderpal Yadav & Ors. -vs- Union of India & Ors.** (supra), I am of the view that the applicants have made out a good case to entertain the matter and after taking note of the entire conspectus of the case and in view of the above ratio laid down by the Hon'ble Apex Court, I dispose of the OA by directing the respondent authorities to extend the similar benefit as has been granted to the applicants in OA 545/1999 and OA 109/2003.

18. With the above observation and direction the OA stands disposed of. No order as to costs.

(MANJULA DAS)
JUDICIAL MEMBER

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