

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH



No. OA 350/01472/2015

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

SANTOSH DEB & ORS.

VS

UNION OF INDIA & ORS. (E.RLY.)

For the applicants : Mr.P.C.Das, counsel  
Ms.T.Maity, counsel

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

Order on : 21.1.16

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. The applicants have prayed for benefits of the decision rendered in the following :

**OA 117/07 of CAT, Patna Bench; affirmed in**

**Civil Writ Jurisdiction Case No. 20174/12 passed by Hon'ble High Court of Judicature at Patna; affirmed in**

**Special Leave to Appeal (Civil) No. 20041/08 passed by Hon'ble Supreme Court in UOI & Ors. -vs- Sarju.**

In the said decision of "Sarju" half of the casual service and the entire service spent on temporary status was directed to count towards pension.

3. In the matter of *Sarju (supra)*, the applicant Sarju was engaged as casual labour on 17.4.67, granted temporary status w.e.f. 11.11.90 regularized w.e.f. 18.9.95, after superannuation from service he filed OA 97/06 before Patna Bench for counting his total service for the purpose of retiral benefits. The Tribunal agreed that the applicant was entitled to get pension treating the

entire period of service of temporary status as pensionable and period for service rendered as casual labour as 50% pensionable. The view was upheld by the Hon'ble High Court of Patna in **CWJC 9604/06** and upheld in **Special Leave to Appeal (Civil) No. 20041/08**. The Hon'ble Apex Court opined that directions given by the Tribunal did not suffer from any legal infirmity and the High Court rightly declined to interfere with the same. The Hon'ble Apex Court also considered the import of the decision rendered in **UOI & Ors. -vs- K.G.Radhakrishnan Panikar & Ors. [1998 (5) SCC 111]** and found that the judgment had no bearing on the decision of the issue whether temporary service which was followed by regularization should be counted as part of the qualifying service for the purpose of retiral benefits. The respondents were directed to calculate the pension and other retiral benefits payable to the respondents (applicants in OA) keeping in view the directions given by the Tribunal and to pay arrears within three months with interest @ 12% from the date of their retirement on attaining the age of superannuation.

4. The respondents have submitted that the decision rendered in Sarju was a decision in personam and not in rem. Therefore the present applicants were not entitled to identical relief. They have further stated that once the applicants had opted for payment of gratuity and pension counting half of the service rendered in temporary status and full rendered on regular basis they could not turn around to claim more. They further submitted that as retired employees they could not claim benefits of **Sarju (supra)**.

5. I have heard Id. Counsel for the parties and perused the materials on record.

6. It is trite, axiomatic and settled law that the persons who did not approach the Court for a benefit should not be at a greater disadvantage to persons who approached in time and the Railway respondents could not discriminate in the matter of counting the temporary status service in full for one group while restricting it to 50% for the other.

7. Furthermore the following decisions would be profitable to quote :

(i) In State of **Karnataka & ors. -vs- C. Lalitha** [ (2006) 2 SCC 747]

Hon'ble Apex Court succinctly held :

"all persons similarly situated should be treated similarly irrespective of the fact that only one person has approached the court."

(ii) In **Maharaj Krishan Bhatt & Anr. -vs- State of Jammu & Kashmir & Ors.** [(2008) 9 SCC 24] it was categorically held by Hon'ble

Apex Court that :

"once a judgment had attained finality, it could not be termed as wrong, and its benefit ought to have been extended to other similarly situated persons."

(iii) In **K.C.Sharma -vs- UOI & Ors.** [1998 SCC (L&S) 226] Hon'ble Apex Court was of the view that similarly circumstanced persons should be treated alike.

8. In the aforesaid legal backdrop I am of the considered opinion that once the Hon'ble Apex Court, in the case of **Sarju**, (supra) permitted the service on temporary status to be count in full, inarguably the same benefits had to be allowed to identically circumstanced employees of the Railways or else it would result in invidious discrimination.

9. Here I would be tempted to quote the maxim :

IN CONSIMILI CASU CONSIMILE DEBET ESSE REMEDIUM (in a similar case the remedy should be similar)

10. Therefore, in view of the decisions rendered by the Hon'ble Apex Court in the case of "**Sarju**" (supra) and in absence of any specific denial of the fact that the present applicants were identically circumstanced to "**Sarju**", and Sarju <sup>being</sup> ~~was~~ also a retired employee alike the present applicants, the present OA is disposed of with a direction upon the respondents to consider the case of the present applicants in the light of the decisions supra and pass appropriate reasoned and speaking order in regard to the claim within three months,

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untrammelled by the earlier view that they had not approached the Court earlier or that **Sarju** was a judgment in personam.

11. In case the applicants are similarly circumstanced to the petitioners/applicants in **Sarju** (supra), identical benefits be conferred to them in accordance with the orders passed in the OA upheld by the Hon'ble High Court and Apex Court, as enumerated hereinabove.

12. The OA is accordingly disposed of. No order is passed as to costs.

(BIDISHA BANERJEE)  
MEMBER(J)

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