

**Central Administrative Tribunal
Lucknow Bench, Lucknow**

Original Application No. 332/00449/2016

This, the 10th day of September, 2018

By the Hon'ble Devendra Chaudhry, Member (Administrative).

Vishnu Kumar Sharma, aged about 69 years, son of Late Shri Mahaveer Prasad, Resident of – Village-Nagar Chaugawan, Post-Itaunja, Bakshi Ka Talab, Lucknow.

.....Applicant.

By Advocate : Sri Sudhanshu Srivastava for Sri Praveen Kumar.

Vs.

1. Union of India, through the General Manager, North Eastern Railway, Gorakhpur.
2. The FA & CAO, North Eastern Railway, Gorakhpur.
3. The Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow.
4. The Senior Divisional Finance Manager, North Eastern Railway, Ashok Marg, Lucknow.
5. The Senior Section Engineer (Signal), North Eastern Railway, Lakhimpur.

.....Respondents.

By Advocate: Sri Balendu Bhushan Tripathi.

Order [Oral]

The present Original Application (OA) is made with regard to following reliefs:

1. *To count 100% (Full) casual period from 01.05.1981 to 1997 towards qualifying services in the light of Railway Board Circular dated 25.11.2014 and revise the pensionary benefits of the applicant.*
2. *To pay difference of arrears of pensionary benefits alongwith interest @ 12% per annum after revision of pensionary benefits.*
3. *To pay pension at revised rate regularly.*

2. The facts of the case of the Applicant in brief are:

2.1 The applicant was engaged in the year 1981 as Casual Khalasi and worked till 15.06.1981 at BG Unit, Badshahnagar. Thereafter, with effect from 16.06.1981 till 1983, he was directed to work as Casual Assistant Fitter. Further, with effect from 1986, he was directed to work as Mechanical Signal Maintenance (in short known as MSM). Thereafter, after receiving various promotions, in the year 2006, the applicant was promoted as Technician-I in the year 2006. Finally, after attaining the age of superannuation, the applicant stood retired on 31.05.2007 and at the time of retirement, he was drawing salary Rs. 6938/- but, notwithstanding their salary, he was paid pension at lesser salary rate. On this, the Applicant has submitted that, at the time of payment of pension, the respondents computed pension amount only at the rate of 50% for the period from 1984 to 1997 while from 1997 to 2010, entire 100% rate of emoluments, salary has been counted. Consequently, thereby, his qualifying period has been considered to be 16 years 4 months and 5 days, and the respondents have skipped the fact that immediately after 120 days computed with effect from 01.01.1981, entire service rendered with the department, has to be computed.

2.2 That, the applicant represented against the same and ultimately, the respondents issued a revised PPO on 05.01.2011 revising the pensionary benefits to some extent but, the period as claimed by the applicant above was again not included. That as per Railway Board Circular 100% of the casual services rendered before absorption in regular service, was directed to be considered in the matter when a casual labour is unable to receive sufficient pension for want of sufficient qualifying services and the Respondents have not complied with their circular for purposes of evaluating the pension. Aggrieved with no action by the respondents, the applicant submitted a representation on 16.10.2015 to the respondent no. 3 & 4 but, no decision has been taken by the authorities so far, hence, this OA.

3. As against this, the Respondents have filed Counter Reply dated 23.03.2017 stating that averments of the OA are not accepted as being misconceive and wrongfully stated and that the Applicant got temporary status on 01.01.1984 and his services was regularized on 31.12.1997. That, accordingly, as per rules 50% of his casual period only can taken on computation of pension and pensionary benefits, is erroneous and that they are no direction from DoPT regarding the matter of

computation of 100% service period of casual labour of temporary status for pension and pensionary benefits.

4. The Applicant has further filed Rejoinder Affidavit and again denying the averments made by Respondents in the Counter Reply and reiterated that matter was considered at level of Railway Board and finally vide Railway Board Circular dated 25.11.2014 direction for issue for consideration of 100% of casual labour service for the pensionary purpose.

5. I have heard the arguments of both the parties and perused the material on record carefully.

6. During arguments, the Learned Counsel for the Applicant has prayed that the Applicant's representation dated 16.10.2015 (Annexure A-6) pending before the Divisional Railway Manager (DRM), N.E.R., Lucknow may be expeditiously decided as already almost three years have passed without any decision.

7. The Learned Counsel for the Respondents has argued that there is no such provision hence it is a waste of time to decide the representation of the Applicant and since certain circulars of DoPT would be required, hence, DoPT should also be made a party. With regard to DoPT being a Party/Respondent, the same is not necessary as unless otherwise barred or separately regulated, Ministry of Railways is as much a Ministry of the Government of India and seek clarification from DoPT which is also a Department under the Ministry of Personnel, Public Grievance & Pension of the Government of India. Further, with regard to representation by Applicant be decided upon by Respondents, the principle of Audi Alteram Partem requires that an opportunity of hearing should be given as far as possible. Three years have passed and there is no word on decision with respect to the representation dated 16.10.2015 of the Applicant (Annexure A-6). It is however observed that the Reliefs sought as per Para-8 of the OA 21.09.2016 does not enlist disposal of representation of Applicant dated 16.10.2015 although the same is mentioned by way of Interim Relief sought in Para-9 of the OA and can be considered to be concerned only vide point 4 (four) of the Relief (Para-8) of the OA praying any other relief deemed fit, just and proper.

8. In the interest of justice and upholding the principles of *Audi Alteram Partem*, therefore, I am of the view that representation is liable to be considered expeditiously and therefore it is held that DRM, NER, Lucknow may decide the representation dated 16.10.2015 (Annexure A-6) within a period of three months from the date of this order of the Tribunal. It is further clarified that the detailed merits of the Relief claimed by the Applicant sought vide Para-8 of the OA, have not been heard on merits in deciding this OA.

9. The Original Application is disposed of accordingly. There shall be no order as to costs.

**(Devendra Chaudhry)
Member (Administrative)**

JN