

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. No.050/00581/2016

Reserved on: 05.07.2018

Date of Order: 27.07.2018

C O R A M

HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER

1. Most. Sukhali Devi W/o late Suraj, resident of village lakhnipur (Maheshpatti) P.S.- Ujjiarpur, District- Samastipur.
2. Anil Kumar Sahani, S/o late Suraj, resident of village lakhnipur (Maheshpatti) P.S.- Ujjiarpur, District- Samastipur.
3. Sunil Kumar Sahani S/o late Suraj, resident of village lakhnipur (Maheshpatti) P.S.- Ujjiarpur, District- Samastipur.
4. Ranjit Kumar Sahani S/o late Suraj, resident of village lakhnipur (Maheshpatti) P.S.- Ujjiarpur, District- Samastipur.

..... Applicants.

By Advocate : Shri S.K. Mishra

-Versus-

1. Union of India through the Secretary, Department of Railway, Rail Bhawan, New Delhi.
2. The Chairman, Railway Board, New Delhi.
3. The General Manager, East Central Railway, Hajipur, Vaishali.
4. The Divisional Railway Manager, E.C. Railway, Samastipur.
5. The Divisional Personnel Officer, E.C. Railway, Samastipur Division, Samastipur.
6. The Divisional Railway Engineer (Traffic) E.C. Railway, Samastipur.

..... Respondents.

- **By Advocate :-** Shri S.K. Raj

O R D E R

Per Mr. Jayesh V. Bhairavia, M (J) :- The Applicant namely Suraj, son of late Shivam, had filed the present O.A aggrieved by the order dated 12.02.2016 passed by the Divisional Railway Manager whereby the claim of applicant to release the pensionary benefits has been turned down by the respondents on the grounds that the applicant has not completed the requisite service to be qualified for pensionary benefit. The applicant had rendered service for period of nine years, six months and two days only which was less than ten years of qualifying service as prescribed for pensionary benefits. During the pendency of the present OA, the applicant

died on 10.05.2017, therefore, the legal heirs of applicant were ordered to be substituted by this Tribunal. Therefore, the applicants pray for setting aside the impugned order and for extending the pensionary benefits and consequential benefits of late Suraj.

2. The brief facts of the case as submitted by the applicants are as under :-

2.1 That late Suraj was initially appointed as a casual labour on 26.06.1973 and thereafter his services was regularized on 31.07.1985 in the pay scale of Rs.5200-20100 and accordingly the deduction of P.F contribution and Group insurance amount was started. The deceased employee was retired/superannuated on 31.01.2015 having unblemished service record. The late Suraj had submitted all the required papers for the purpose of grant of pension, however, his pension and other retiral benefits were not released by the respondents. Thereafter, the said late Shri Suraj had sent a legal notice through Advocate on 25.06.2015 for release of pension which elicited no response.

2.2 Having no option, the applicant approached this Tribunal through O.A 905/2015 whereby this Tribunal vide order dated 14.12.2015 disposed of the said OA with a direction to respondent Divisional Railway Manager to dispose of the prayer of the applicant in terms of applicable rules and pass a reasoned and speaking order within a period of three months. Annexure A/1 refers.

2.3 The order communicated to the Divisional Railway Manager was received in office on 30.12.2015 and in compliance of

the order of this Tribunal, the respondents communicated the applicant that the claim of applicants to release the pensionary benefits has been turned down on grounds that the applicants have only completed nine years six months two days of service which is less than ten years of qualifying for the purpose of grant of pension.

2.4 In this regard the I/c for applicant submitted that applicant is said to be on leave without pay for thirteen years nine months thirteen days. The I/c for applicant submitted that the period spent on medical leave has to be counted for pensionary benefits but the respondents have not counted the same and the impugned order has been passed in mechanical manner which is wrong and erroneous assumption of facts, hence this O.A.

3. The respondents in their written statement have submitted that the deceased employee was engaged as Casual Labour and thereafter on 31.07.1985 he was granted temporary status after screening test. The I/c for respondents further submitted that the deceased employee has availed leave without pay (LWP of total 5028 days) therefore his qualifying service for pensionary benefit has been counted as per Rule 31 of Railway Service Pension Rule, 1993 and para 20 of Master Circular No. 54. The said rules are as under :-

Rule 31 of Railway Service Pension Rule, 1993 :-

"that half the service paid from contingency shall be taken into account for calculating pensionary benefit. (upheld by Hon'ble Apex court in Manager North West Railway & ors Vs Chanda Devi Case).

para 20 of Master Circular No. 54:-

"half of the period of service of Casual Labour after attaining temporary status, if it is followed by absorption in service as regular employee, counts for pensioner benefits."

The details of counting service of the deceased employee are as under :-

A	<i>Total length of service</i>	<i>29 years, 06 months & 01 day</i>
B	<i>50% of TS period i.e (31/07/1985 to 30.12.1997)</i>	<i>06 years, 02 months & 15 days</i>
C	<i>Non-qualifying service i.e 5028 days</i>	<i>13 years, 09 months & 13 days</i>
A-(B+C)	<i>Total qualifying service for pensionary benefits</i>	<i>09 years, 06 months & 02 days.</i>

The I/c for respondents further submitted that the provision of RBE No. 222/2009 stipulates that the minimum 10 years of regular service require to be qualify for becoming eligible for pension but in the instant case the total service of applicant is 09 years, 06 months & 02 days only which is less than requirement of continuous 10 years of service, hence the applicant is not entitled for any pension. The respondents have placed a copy of Railway Service (Pension) Rules 1993, (Annexure R/1) and a copy of RBE No. 14/94 (Master Circular No. 54) whereby the respondents have explained the manner and procedure needs to be followed for the purpose of counting qualifying service for pensionary benefit of the employee. (Annexure R/2 refers). The respondents have also placed the service book of the late Suraj. (Annexure R/4 refers). The respondents have also produced a copy of retirement benefit calculation sheet in respect to the applicant which indicates that the applicant was on leave for 13 years, 09 months and 13 days. The said period of absence of the applicant i.e LWP has been not counted as continuous service. Consequently, the applicant failed to met with the required qualifying service for the purpose of grant of pension. (Annexure R/5). Therefore, the counsel for respondents submitted that the applicant is not entitled for any relief.

4. Heard the parties and perused the records and considered their submissions.

5. Undisputedly, the applicant was granted temporary status on 31.07.1985 and after screening test his service was regularized on 31.12.1997 and was superannuated on 31.01.2015. During service period, the applicant has availed leave without Pay (LWP) of total 5028 days i.e (13 years, 09 months and 13 days).

6. It is noticed that, as per the provision of Rule 31 of Service (Pension) Rule 1993 and provision of Master Circular No. 54, the respondents have considered the case of the applicant for the purpose of grant of pensionary benefit. As per the provision of Rule 31 (Pension) Rules 1993, half service paid from contingency shall be taken into account for counting pensionary benefit on absorption on regular appointment. The applicant was granted temporary status for the period of 31/07/1985 to 30/12/1997, the half of the said service period under T.S. comes to 06 years, 02 months and 16 days. The applicant remained on leave for the 5028 days (13 years, 09 months and 13 days) therefore, the total qualifying service rendered by the applicant comes to 09 years, 06 months and 02 days (referred in para 4 supra). The minimum requirement of 10 years of continuous service require as qualifying service for becoming eligible to receive benefit of pension.

7 The applicant has claimed that, the respondents have not considered the leave of the late Suraj (deceased employee) which was approved as medical leave, the said leave cannot be counted as LWP. Moreover, it is submitted that, the respondents have not considered the 50% of casual service before obtaining the temporary status for the purpose of pension. For the said submission, the I/c for applicant has relied upon the judgement passed by the Hon'ble Apex Court in the case of Union of India &

ors Vs Rakesh Kumar and others, reported in 2017 (3) PLJR page 83. It is noticed that the Hon'ble Apex Court in the said judgement in para 48 and para 55 held as under :-

Para 48 :-

We, however, are of the view that the period of casual labour prior to grant of temporary status by virtue of Note-1 Rule 31 has to be counted to the extent of 50% for pensionary benefits.

Para 55 :-

In view of foregoing discussion, we hold :-

(i) The casual worker after obtaining temporary status is entitled to reckon 50% of his service till he is regularized 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 fulfill the requirement of existing rule 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.

8. It is noticed that, in the instant OA, the applicant i.e late Suraj was stated to be engaged as a casual labour on 26.06.1973 and he was granted T.S. on 31.07.1985. For such period, the deceased employee had remained as casual worker before obtaining the temporary status, the respondents has not considered such period of service for purpose of pension. As observed in para 7 above, the Hon'ble Apex Court (supra) held that the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for the purpose of pension. The respondents are required to consider the case of applicant in the light of judgment passed by the Hon'ble Apex Court (supra).

9. In conclusion, in view of the factual matrix as stated hereinabove and discussion aforesaid, I am of the opinion that, applicant's case is required to be reconsidered by the respondents. Accordingly, the respondents are directed to reconsider the claim of the applicant in the light of the judgement passed by the Hon'ble Apex Court (supra) for the purpose of counting qualifying service for pensionary benefits within six weeks from the date of receipt of copy of this order.

10. Accordingly, the O.A is partly allowed. No costs.

[Jayesh V. Bhairavia]
Member (J)

/mks/