

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PATNA BENCH, PATNA****O.A. No.050/00408/2017 with MA 258 of 2017**

Reserved on: 23.07.2018

Date of Order:

**C O R A M****HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER**

1. Bado son of late Bhukhli, Resident of village and P.O.- -Kurha, P.S.- Sahebpur Kamal, Distt- Begusarai.

..... Applicants.

By Advocate : Shri Kumar B. Bariar

-Versus-

1. Union of India through the General Manager, East Central Railway having its office at Hajipur, Dist- Vaishali (Bihar), Pin-844101.
2. The Divisional Railway Manager, East Central Railway, Sonapur, District-Saran (Bihar), 841101.
3. The Asst. Personnel Officer, East Central Railway, Hajipur, Distt- Vaishali (Bihar), Pin-844101.
4. The Asst Divisional Accounts Officer, East Central Railway, Sonapur, District-Saran (Bihar), Pin- 841101.

..... Respondents.

- By Advocate(s) :- Shri Bharat Bhushan

**O R D E R****Per Mr. Jayesh V. Bhairavia, M (J) :-** This is second round of litigation.

Earlier, the applicant had approached this Tribunal through O.A No. 536/2002, however, the said OA was dismissed on 02.09.2004 for want of prosecution. The instant OA has been filed for a direction upon respondents to grant pension and other retirement benefits after considering & recalculating the total period of service of the applicant as Gangman which is 33 years 10 months and 21 days i.e from 07.05.1964 to 31.03.1998 and consequential benefits.

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

- 2.1 The applicant namely Shri Bado was initially appointed as a 'Gangman' on 07.05.1984 and he was superannuated from the post of Head Gangman (Engineer Deptt.) on 31.03.1998.
- 2.2 At the time of retirement, the last pay drawn by the applicant was Rs.3730 + DA as per the service certificate issued by the respondents on 24.3.1998. (Annexure A/2). Accordingly, his pension was fixed at Rs.1275/- per month w.e.f. 01.04.1998 after commutation vide PPO order dated 15.04.1998. Annexure A/4 series refers.
- 2.3 The applicant has contended that, after his retirement, the respondents i.e Senior Divisional Engineer, E.C. Railway, Khagaria, vide his letter dated 26.03.2002 addressed to competent authority, it was informed that due to clerical mistake/administrative lapses, the increment due on 01.03.1998 could not be provided to the applicant as such the applicant ought to be given Rs.3800/- w.e.f. 01.03.1998 instead of Rs.3730/- and this fact has been admitted by the respondent in their letter dated 26.03.2002 (Annexure A/3). Therefore, the applicant is claiming that his pay is required to be recalculated and to pay the consequential benefits.
- 2.4 It is further contention of the applicant that while considering the quantum of pension, the respondents have erroneously considered 12 years 04 months and 22 days as "period of not qualifying for pension". The respondents have considered only 21 years, 06 months and 03 days as total length of qualifying service, however, as per the

applicant, he has worked from 07.05.1964 to 31.03.1998 continuously and rendered service approximately 34 years to the respondents department. Therefore, amount of pension should have been fixed approximately Rs.2100/- per month instead of 1275/- per month and the applicant is suffering loss of Rs.825/- per month.

2.5 It is further submitted by the applicant that in identically and similarly placed co-employee i.e one Shri Subaklal who was appointed in the year 1963 and retired in 1997, the respondents had fixed his pension approximately Rs.2200/- p.m. as basic pension. However, in the case of applicant, he is treated differently and his pension was fixed less than the identically situated employee.

2.6 It is further submitted that after retirement when he came to know about his less fixation of pension amount, he submitted a representation before the competent authority and thereafter a legal notice through advocate was also issued on 19.12.2000 to the respondents but the applicant did not received any response to it. The applicant, thereafter, the applicant had filed a complaint case no. 21/2002 before the District Consumer Forum, Begusarai on the basis of legal advice provide by an advocate, the said complain cased was dismissed at admission stage itself by the Hon'ble District Consumer Forum vide its order dated 08.05.2002 (Annexure A/6 refers).

2.7 It is further submitted that the applicant had filed OA No. 536/2002 for redressal of his grievance, however, vide order dated 02.09.2004, the said OA was disposed of due

to non-prosecution with observation that it was presumed that the grievance of the applicant has been redressed as submitted by the I/c for respondents, this O.A is disposed of with liberty to proceed in the matter as per law, if his grievance is still survive. The copy of the said order has been placed on record by the applicant in his application for condonation of delay i.e 258/2017 in O.A No. 408/2017 (Annexure A/1 of MA).

- 2.8 The I/c for applicant submitted that the applicant was not informed about the disposal of his OA by his the then counsel. Subsequently, the applicant had approached another lawyer and on his legal advice, the said advocate had sought information under RTI with respect to the OA No. 536/2002 vide his application dated 08.06.2016 and in response to it, the competent officer of this Tribunal had supplied the information vide communication dated 28<sup>th</sup> June 2016 about the disposal of his earlier OA 536/2002 and order thereon dated 02.09.2004.

Thereafter, on receipt of legal advice and the grievance of applicant still exists in respect of fixation of correct amount of his pension, the applicant has preferred the present OA alongwith MA for condonation of delay and submitted that the claim for pension is a continuous cause of action and considering the poor condition of the applicant, the delay caused in filing the present OA be condoned in the interest of justice.

3. The respondents in their written statement denied the contention of the applicant and further contended that, this case is hit by Article 102 of

Limitation Act, 1908 (Article 7 in 1963 Act) as the applicant has filed this O.A after about 20 years. The I/c for respondents further submitted that the applicant was appointed on 07.05.1964 as a casual labour and he was confirmed from 20.02.1989. From 07.05.1964 to 20.02.1989, the applicant had worked as Time Scale Khalasi and as per Railway Policy, only half period of time scale service is countable for qualifying service. Accordingly the period from 07.05.1964 to 20.02.1989 were counted as half of service i.e 12 years 05 months and the period from 20.02.1989 to 31.03.1998 was taken as full i.e 09 years 02 months in total service period comes to 21 years 07 months only. It is misconception on the part of applicant that for computing the qualifying service for the purpose of pension, the applicant had rendered total 34 years service. In this regard, the I/c for respondents placed reliance on the provision of Rule 31 of Railway Service (Pension) Rules. (Annexure R/2 refers). A copy of service book of the applicant was also placed on record by the respondents and submitted that for the purpose of grant of pension on the basis of qualifying service, the total service period comes to 21 years 07 months only instead of 34 years as claimed. (Annexure R/3 & R/4 refer).

4. The I/c for respondents further submitted that in terms of Rule - 50 of the Railway Services (Pension) Rules 1993, the pension and retiral benefits of the applicant was calculated. According to the provision of Rule 50 the average emoluments of actual pay drawn in the last "TEN" months of retirement i.e from June 1997 to March 1998 salary was taken into consideration. The applicant was drawing salary Rs.3730/- from June 1997 to March 1998, therefore his all benefits were calculated and determined with reference to average emoluments drawn by the railway servant during the last ten months of his service. Therefore, the pension was fixed correctly in terms of Rule-50 of Railway Services (Pension) Rules 1993. Annexure R/2 refers. The I/c for respondents further submitted that actually the basic pay

of the employee should be Rs.3800/- with effect from 01.03.1998 however due to clerical mistake the pay of Rs. 3730/- which was exists on the 31<sup>st</sup> December 1997 was continue till his retirement on 31.03.1998. It is submitted that, in view of provision stipulated in provision in Rule 50, the applicant was not entitled to get benefit of basic pay of Rs.3800/- because a average emoluments should be required to be taken into consideration with reference to emoluments drawn by a railway servant during the last 10 months of service. Therefore, applicant is not entitled for any relief, and as such, the applicant retired on 31.03.1998 and after 20 years the applicant has filed the present OA which is grossly delayed and therefore also, applicant is not entitled for any relief.

5. Heard the parties and perused the records and considered their submissions. It is noticed that this is second round of litigation. The earlier OA filed by the applicant was disposed of on 02.09.2004 by this Tribunal, however, according to the applicant his grievance about fixation of correct amount of his pension was not redressed and the same still exists and considering the reasons stated in the MA, in the interest of justice the MA for condonation of delay filed by the applicant is allowed.

6. So far, the prayer sought in OA by the applicant is concerned, I have examined the material on record, It reveals that the applicant was appointed on 07.05.1964 as a Casual Labour and subsequently he was confirmed as regular employee w.e.f. 20.02.1989. For the said period i.e 07.05.1964 to 20.02.1989 the applicant had worked as Time Scale Khalasi and as per the railway policy only half period of time scale service is countable for qualifying service, accordingly, the service period was counted as half of service i.e 12 years 05 months.

7. From 20.02.1989 to 31.03.1998 (the date of retirement), the applicant had worked as regular appointee and for the said period the

respondents had considered as full time of service i.e 09 years 02 months, accordingly, in total 21 years 07 months service period had been counted as qualified service of the applicant. The said calculation of qualifying service in the case of the applicant is based on provision of Rule 31 of Railway Services (Pension) Rules 1993. Accordingly, the respondents had fixed the pension of the applicant and granted all other retiral dues. It is also noticed that as per the provision of Rule 50, the emoluments drawn by the applicants during the last then months of his service was taken into consideration and according to it Rs.3730/- has been considered as last drawn emoluments. The said decision of the respondents in deciding the qualifying service of the applicant and fixation of amount of pension as well as grant of other retiral benefits is found to be correct and therefore no interference is required.

8. In view of the above, the O.A stands dismissed with no order as to costs.

[ Jayesh V. Bhairavia ]  
Member ( J )

/mks/