

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 981 of 2013

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Kanduri Jena, aged about 65 yers, S/o Late Dama Jena, at –
Talapada Paikasahi, PO – Makapada, PS – Delanga, Dist. – Puri.

.....Applicant

VERSUS

1. Union of India represented through General Manager, East Coast Railway, Railway Sadan, Chandrasekharpur, Bhubaneswar, At/PO – Bhubaneswar, Dist. – Khurda.
2. Divisional Railway Manager, East Coast Railway, Khurda Division, At/PO – Jatani, Dist. – Khurda.
3. Senior Divisional Personnel Officer, East Coast Railway, Khurda Division, At/PO – Jatani, Dist. – Khurda.
4. Sr. Divisional Commercial Manager, East Coast Railway, Khurda Division, At/PO – Jatani, Dist. – Khurda.

.....Respondents.

For the applicant : Mr.S.Pattnaik, counsel

For the respondents: Mr.T.K.Mandal, counsel

Heard & reserved on : 15.3.2019

Order on : 27.3.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant, through this Original Application (in short OA) seeks the following reliefs:-

“To admit the Original Application, call for the relevant records and after hearing the counsel for parties quash the impugned order dtd. 1.10.2007 and 23.4.2013 under Annexure A/1 and Annexure A/2.

And further direction may kindly be issued to respondents to sanction/grant pension and all other retirement benefits, as per the law from the date of his retirement till date and there after regularly in every month, to the applicant within the time fixed by the Hon'ble Tribunal.

And pass such other order(s) as this Hon'ble Tribunal deem fit and proper in the interest of justice equity and fair play.”

2. The facts in brief are that applicant was first engaged as a casual worker under the respondent-railway since 1977 and his services were regularized as a peon on 7.10.1996 i.e. after serving about 19 years as a casual worker. He superannuated on 30.4.2006 after a regular service of about 9 year 6 months

23 days of regular service. He was not allowed any pensionary benefit although he represented for addition of 50% of his service as a casual worker which was rejected vide order dated 1.10.2007 (Annexure-A/1) on the ground that there was a discontinuity in his service from 8.4.2006 to 6.10.1996 and till 8.4.2006 there was no continuous service as a casual worker.

3. The applicant followed up with a series of representation and when no decision was taken by the respondents, he filed the OA No. 1090/2012 which was disposed of by the Tribunal directing the respondents to dispose of his representation vide order dated 7.2.2013. The respondents again rejected his case vide order dated 24.4.2013 (Annexure-A/2). Challenging this order of rejection the applicant filed another OA which was withdrawn with liberty to file a better application. Then, the present OA was filed by the applicant on the following grounds:-

- (i) He had worked for 2286 days as a casual worker i.e for about 6 years.
- (ii) Applicant was not responsible for allotment of duty. He was always present for the duty, but the respondents did not allow duty to the applicant on some days with malafide intentions, although work was available.
- (iii) The applicant has not earned any disqualification for pension which appears to be duty.
- (iv) The applicant was deliberately not given work for a very short span of time of about 5 months which was an artificial break in his service.
- (v) Absorbing him in a permanent post was delayed by the respondents. Hence, the authorities have violated Article 21 of the Constitution of India.
- (vi) The authorities are responsible for the break in his service period from 8.4.1996 till 7.10.1996 and there is rule to take into account the service rendered by the applicant as a substitute.

4. The respondents have filed their Counter without disputing the facts, but stating that the applicant's engagement in the past period prior to his regularization was not continuous and his total qualifying service was found to be 9 years 6 months 22 days which was less than 9 years 9 months and 1 day required for pension eligibility. Hence, the applicant was not eligible for pension. It is further stated in the Counter that as per the rule 31 of the Railway Services (Pension) Rules, 1993 (in short 'Rules', 93) half of the service period paid from contingencies will be counted as qualifying service subject to the conditions stipulated in the said rules and in case of the applicant, these conditions are not fulfilled since his casual service period was not continuous and followed by regularization. Similarly, the rule 32 for the substitutes, the

service as a substitute is required to be continuous with the regular service period and the applicant's service period as casual or substitute was not continuous with his regular service. It is also stated that for these reasons, applicant's service from 1983 till 1996 in broken spells cannot be taken into account as qualifying service as per the rules.

5. The applicant has filed Rejoinder, mainly reiterating the averments made in the OA and denying the averments in the Counter. It is stated that the applicant was not responsible for the shortage in his service and was not aware of it as all the records were with the respondents. Even his duplicate service book was not given to him in spite of requests as stated in para 5(i) of the OA.

6. We heard learned counsels for both the sides and perused the material available on record. Learned counsel for the respondents raised the issue of limitation by stating that after the applicant's retirement in 2006, he raised the issue of pension when he filed the first OA in the year 2012. The respondents have issued the order dated 1.10.2007 (Annexure-A/1) rejecting the claim for pension by stating as under:-

"Your application dtd 18.9.2007 has been examined thoroughly and it is stated that as per Est. Sl. No. 239/80 the process of inclusion of casual/substitute service for pensionary benefit is that if the casual/substitute service followed by regular absorption without break exists, then the 50% of casual/substitute service can be taken into account for pensionary benefit. But in your case, the aforesaid condition is not fulfilled as the casual/substitute service period rendered by you in broken spells from 1.1.85 to 8.4.96 and appointed in regular service from 7.10.96.

Hence, your case cannot be considered taking the casual/substitute service periods into account for pensionary benefit, as per extant rules."

7. The order of rejection dated 24.4.2013 (Annexure-A/2) stated the following reason for rejecting the applicant's claim for pension:-

"2. That, as revealed from the working particulars given by CTI[I/C]KUR and SMR/KUR, you were working as substitute TTE Porter/TWM against day-to day casualties with effect from 1.1.1983 to 8.4.1996 in different broken spells,. Your service sheet/record is silent about engagement as substitute, and after being declared fit in Bee One (B1) medical category by Sr. DMO/KUR vide Fit Certificate No. 152353 dated 5.9.1996, you were working continuously with effect from 7.10.1996.

3. That, with regard to substitute service for the purpose of pensionary benefits,. Railway Board's instructions/guidelines communicated under Establishment Sl. No. 239/80 "the service as Substitute will count for pensionary benefits from the date of completion of 6 months (three months in the case of teachers) continuous service as substitute provided it is followed by absorption in regular Class - III/IV service without break".

4. That, in your case there was a break of approximately 6 months between last date of engagement i.e. 8.4.1996 and actual date of regular absorption i.e. 7.10.1996 against permanent vacancy,. Your substitute period of service was not coming under the purview of instructions contained in Establishment

substitute period of service was not coming under the purview of instructions contained in Establishment Srl. No. 239/80. Thus total qualifying service from the date of regular absorption to date of retirement i.e. from 7.10.1996 to 30.4.2006 rendered by you was 09 years, 06 months and 22 days.

5. That, you are not entitled for minimum pension as per Rule-69 of RSPR-1993, since you have not completed minimum qualifying service period of 10 years. In lieu of Pension an amount of Rs.56,810/- as service gratuity was paid to you in addition to gratuity of Rs.28,405/- as per rule in terms of Railway Board's guidelines/instructions contained in ERBE No. 112/2008. However, Xerox copy of service record in 10 pages, Estt. Srl. No. 239/80 dated 31.10.80 in 04 pages, Rule No. 32 regarding counting of service of a substitute and also Rule No. 69 regarding amount of pension of RSPR-1993 in 02 pages are enclosed for your reference."

8. The respondents have stated in their Counter that as per the rule 31 and 32 of the Rules, 93 the applicant is not entitled to the pension. The rule 31 states as under:-

"31. Counting of service paid from Contingencies- In respect of a railway servant, in service on or after the 22nd day of August, 1968, half the service paid from contingencies benefits on absorption in regular employment, subject to the following condition namely: -

- (a) the service paid from contingencies has been in a job involving whole- time employment;
- (b) the service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned such as posts of malis, chowkidars and khalasis;
- (c) the service should have been such for which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly basis and which, though no analogous to the regular scales of pay, borne some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period by staff in regular establishments;
- (d) the service paid from contingencies has been continuous and followed by absorption in regular employment without a break;

Provide that the weightage for past service paid from contingencies shall be limited to the period after 1st January 1961 subject to the condition that authentic records of service such as pay bill, leave record or service-book is available."

As stated by the respondents in letter dated 1.10.2007 (A/1), the service of the applicant from 1.1.1985 till 8.4.1996 as a Casual or Substitute worker was in broken spells. From 9.4.1996 till the date of regularization of his service w.e.f. 7.10.1996, there is break during which the applicant was not given any engagement. Hence, as per the rule 31 and 32 of the Rules, 93 the applicant will not be entitled to count his service as substitute or casual worker since it is undisputedly not continuous to the regular service of the applicant from 7.10.1996 till 30.4.2006, which is less than the minimum qualifying service required for pension.

9. Learned counsel for the applicant had cited the judgment of Hon'ble Supreme Court in following cases in support of the applicant's case :-

- i. AIR 1986 SC 180, Olga Tellis & Ors, vs. Bombay Municipal Corp. & ors.
- ii. AIR 2014 SC 2714, State Bank of Patiala vs. Pritam Singh Bedi & Ors.
- (iii) AIR 2018 SC 1548, Netram Sahu vs. State of Chhatisgarh & another.

In the case of Olga Tellis (supra), the issue was relating to the squatter colonies in urban area and it was held that action of a public authority must be within the scope of the authority conferred by law and it must be reasonable. The cited case is factually distinguishable for the OA before the Tribunal. In the case of Pritam Singh Bedi (supra), it was held that for the purpose of qualifying service of the employees of the bank opting for voluntary retirement, broken period of more than 6 months of service is to be treated as 1 year as per the Regulation 18. It is seen that in this case, there was a specific regulation relating to broken period, unlike the present OA.

10. In the case of Netram Sahu (supra) cited on behalf of the applicant, the dispute related to the eligibility for gratuity of an employee who did not have minimum 5 years of continuous service before superannuation, but had worked uninterruptedly for more than 22 years as daily wager before being regularized. From the facts of the case, there was no interruption between his stint as daily wager and regularization. In such circumstances, Hon'ble Apex Court in that case held that the employee should be deemed to have worked continuously for more than 5 years for the purpose of his entitlement of gratuity. In the present OA, the applicant did not have continuous service as a substitute till his services were regularized. Hence, the ratio of the judgment in the case of Netram Sahu (supra) is inapplicable to the present OA.

11. It is noticed from the order at Annexure-R/2 furnished by the respondents that the applicant had been found to be suitable for regularization since the year 1984. His serial number in the list annexed to the Annexure-R/2 is 107 in which the year of his initial appointment has been shown as 1977. This shows that although the applicant was engaged since 1977 in different broken spells and was found suitable for regularization in 1984, but regularization of his service was finally approved vide the order dated 19.8.1996 (Annexure-R/3) in response to which, the applicant joined on 7.10.1996. But unfortunately for the applicant, his total qualifying service fell short by about two and half months from the minimum period of qualifying service of 9 year 9 months and 1 day (as stated in the para 5(H) of the Counter, for which he was found ineligible for pension even after serving the Railways from 1977 in different broken spells. It is noted further that the applicant was found suitable for regularization in the year 1984 after screening, but his regularization was delayed till 1996. In para 11 of the Counter, it is stated that due to non-availability of vacancy the applicant with similarly situated persons

waited for regularization in turn as per the list at Annexure-R/2 which was exhausted in phased manner. It was also stated that the applicant's serial number being 107 out of 160, all could not be accommodated on one date.

12. The reasons furnished by the respondents in the Counter for delaying the regularization of the applicant for 12 years after being found suitable for regularization after screening are not at all convincing. A bland statement that no regular post was available for the applicant till 1996 without any details about the vacancies cannot be accepted as a reasonable explanation for delay in regularizing the applicant's service, which has seriously affected his livelihood for no fault that can be assigned to the applicant. Hence, the case of the applicant deserves to be considered sympathetically.

13. In view of the factual circumstances as discussed above, the respondents are directed to examine if there was a vacancy available so as to modify the date of regularization by about two and half months prior to 7.10.1996 which is the date of regularization of the applicant's service. If such a vacancy is found, then the applicant will be deemed to be regularized from that date and the service between that date till 6.10.1996 be treated as regular service as extraordinary leave without any pay for this period which is to be counted as qualifying service in view of the provisions of the rule 42(2) of the Railway Services (Pension) Rules, 1993 read with the rule 36.

14. In case no regular post is available for adjusting the applicant about two and half months prior to 7.10.1996 as mentioned in para 13 above, then the case of the applicant be moved by the respondent no.1 to the competent authority for relaxation of the provisions of the Railway Services (Pension) Rules, 1993 in view of the extreme hardship of the applicant as discussed in the preceding paragraphs of this order. Such relaxation of the rules is possible under the rule 107 of the Railway Services (Pension) Rules, 1993 which states as under:-

"107. Power to relax – Where the pension sanctioning authority is satisfied that the operation of any of these rules causes undue hardship in any particular case, that authority, may for reasons to be recorded in writing, approach the Ministry of Railways (Railway Board) for dispensing with or relaxing the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner. The Ministry of Railways (Railway Board) shall examine each such case and arrange to communicate the sanction of the President to the proposed dispensation or relaxation, as it may consider necessary keeping in view the merits of each case and keeping in view of an other statutory provisions:

Provided that no such order shall be made without concurrence of the Department of Pension and Pensioners' Welfare, in the Ministry of Personnel, Public Grievances and Pensions, Government of India."

15. The OA is disposed of in terms of the directions in paragraphs 13 and 14 of this order, which are to be complied by the respondents within four months from the date of receipt of a copy of this order. There will be no order as to costs.

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath