

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 48 of 2012

Date of order : 25.3.2019

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. Shakuntala Gosain, aged about 45 years, D/o Late Narasingh Gosain
2. Rama Chandra Gosain, aged about 44 years, S/o Late Narasingh Gosain.
At present residing at C/o Krushna Chandra Das, Badahata Colony, Keonjhar, Odisha.

.....Applicants.

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. Chief Administrative Officer/Con/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
3. Deputy Chief Engineer/Con/East Coast Railway, Jajpur Keonjhar Road, At/PO – Jajpur Road, Town/dist – Jajpur.
4. Sr. Personnel Officer/Con/Co-ordination/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
5. Sr. Divisional Personnel Officer, East Coast Railway, Waltair. Division.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.R.N.Pal, counsel

O R D E R (ORAL)

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed this OA being aggrieved by reversion vide order at Annexure-A/6 from the post of Driver Grade II to the post of Ty. Box Carrier which was his substantive post for the purpose of finalizing the settlement dues and non-counting of the period of service from 1.5.1965 till 4.2.1987 as qualifying service for the purpose of pension. The applicant was initially appointed w.e.f. 1.5.1965 as Driver Gr.I and was removed from service w.e.f. 4.2.1987 as a disciplinary measure. On appeal, he was appointed afresh by the respondents as Ty. Box Carrier w.e.f. 5.2.1988 and then had got promotion to Driver Grade II on ad-hoc basis till his retirement from service on 31.5.2002 on superannuation. As stated in para 8 of the counter, the applicant had applied

for voluntary retirement w.e.f. 31.3.2001 prior to 31.5.2002, but it was not accepted by the respondents.

2. We heard learned counsels for the rival parties. The respondents have taken a stand that the applicant is not entitled for any relief and his settlement dues have been correctly finalized by the respondents. The applicant has accepted the removal from service due to misbehaviour w.e.f. 4.2.1987 and the respondents have averred that he is not entitled for counting the period of service till 4.2.1987 as qualifying service for the purpose of pension as he was removed from service. The applicant has accepted his fresh appointment w.e.f. 5.2.1988 with orders of the appellate authority who did not pass any order for counting of his past services. Hence, the applicant will not be entitled to claim that his past service till 4.2.1987 be counted as qualifying service for pension.

3. Regarding the reversion order dated 8.1.2011 (Annexure-A/6) long after his retirement on 31.5.2002, the respondents have justified the same because of the circular dated 19.8.2010 of the Railway Board as stated in para 11 of the counter. But the said circular dated 19.8.2010 was later on withdrawn by the Railway Board vide the circular dated 9.6.2011 (Annexure-R/17 to the counter) and as stated in para 12 of the counter, although the applicant was entitled for pensionary benefits based on the pay scale of Driver Grade II as per the circular dated 9.6.2011, but his case was not taken up as the applicant did not apply to the authorities for consideration of his settlement as per the circular dated 9.6.2011.

4. We are unable to accept the averments of the respondents in para 11 of the counter filed on 13.7.2012 as the applicant was entitled for the benefit of the Railway Board circular dated 9.6.2011 (Annexure-R/17) even though the applicant did not make an application for the purpose. Further, as stated in para 11 of the counter, the applicant's settlement dues were finalized as per the circular dated 19.8.2010 after receipt of the said circular. Thus the dues of the applicant were settled after 19.8.2010 and since his case was not finalized prior to 19.8.2010, the case of the applicant should have been reviewed by the respondents in accordance with the circular dated 9.6.2011 (R/17). In this

regard, it is noticed that the applicant' s settlement dues were ordered to be finalized based on the pay scale of Driver Gr.II as per the order dated 29.11.2006 (Annexure-R/16 to the counter).

5. In view of the foregoing discussions, we are of the view that the applicant is entitled for the benefit of the Railway Board circular dated 9.6.2011 and he should be allowed such benefit and be paid the arrear differential pensionary benefits as per law in accordance with the order dated 29.11.2006 (Annexure-R/16) passed by the respondents. Therefore, the applicant be paid all the consequential benefits of the order dated 29.11.2006 read with the Railway Board circular dated 9.6.2011 by the respondents within three months from the date of receipt of a copy of this order, if the same have not been paid already to the applicant. While complying these directions, the respondents are to ignore the order dated 8.1.2011 (Annexure-A/6). Accordingly, the OA is allowed in part and disposed of with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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