

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00782/2017

Thursday, this the 31st day of January, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

M. Prabhakaran Nambisan, aged 70 years, S/o. P.V. Krishnan Unni,
 (Retd. Server, Vegetarian Refreshment Room, Southern Railway,
 Ernakulam Junction), Residing at : Parakket House, Kallur, Mattannur,
 Porora PO, Kannur District – 670 702. **Applicant**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager,
 Southern Railway, Head Quarters Office, Park Town PO,
 Chennai – 600 003.
2. The Chief Personnel Officer, Southern Railway,
 Head Quarters Office, Park Town PO, Chennai – 600 003.
3. The Chief Commercial Manager, Southern Railway,
 Head Quarters Office, Park Town PO, Chennai – 600 003.
4. The Senior Divisional Personnel Officer, Southern Railway,
 Thiruvananthapuram Division, Thiruvananthapuram -
 695 014. **Respondents**

(By Advocate : Mr. Sunil Jacob Jose)

This application having been heard on 29.01.2019 the Tribunal on
 31.01.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

“(i) Call for the records leading to the issue of Annexure A9 and quash
 the same;

(ii) Declare that the applicant is entitled to reckon 50 percent of the Commission Bearer service rendered from 22.1.1982 up to 1.7.2000 and the whole of the service with effect from 2.7.2000 to 31.12.2006 for the purpose of pension and retirement benefits and direct the respondents accordingly;

(iii) Direct the respondents to reckon 50 percent of the applicant's Commission Bearer service from 22.1.1982 up to 1.7.2000 and the whole of the service from 2.7.2000 up to 31.12.2006 for the purpose of the applicant's pension and other retirement benefits and direct further to grant the monthly pension and other retirement benefits with effect from 1.1.2007 with all the consequential benefits, including arrears of pension and allowances, within a time frame, as may be found just and proper by this Hon'ble Tribunal;

(iv) Award costs of and incidental to this application;

(v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicant is a retired Server of the Departmental Vegetarian Refreshment Room, Ernakulam Junction of Southern Railway, Thiruvananthapuram Division. He superannuated from service on 31.12.2006. The grievance of the applicant relates to grant of pensionary benefits despite 33 years of dedicated service to the Railways. In this regard he submitted representations Annexures A4 & A5. However, when there was no response from the respondents he filed OA No. 794 of 2016 wherein this Tribunal was pleased to dispose of the OA directing the applicant to file a fresh representation with all relevant records and respondents were directed to dispose of the same within two weeks after giving an opportunity of hearing to the applicant. However, the respondents rejected the claim of the applicant. Aggrieved the applicant has filed the present OA.

3. Notices were issued to the respondents. They were represented by Shri Sunil Jacob Jose who filed a detailed reply statement contending that the commission bearers were not engaged as contract labourer or casual labourer. Thus, there was no employer-employee relationship between the Railway and the commission bearers. Further there is no statutory provision to reckon the period of engagement of commission bearers for service and pensionary benefits. Therefore, the applicant is not eligible for counting of the period of engagement as commission bearer as qualifying service for the purpose of pensionary benefits under Rules 14(xiv), 24 and 31 of the Railway Services (Pension) Rules, 1993.

4. Heard Shri T.C. Govindaswamy, learned counsel appearing for the applicant and learned Standing Counsel appearing for the respondents. Perused the records.

5. The short question to be decided in this case is whether the applicant is entitled to count 50% of his service as commission bearer from the initial date of his engagement till the regular absorption in service for the purpose of calculation of pension and gratuity ?

6. The above issue is no longer *res-integra* in view of a series of orders passed by the different Benches of the Tribunal and confirmed by the jurisdictional High Courts. Moreover, this Bench of the Tribunal in OA No. 417 of 2013 – ***V.S. Syed Ali (Retd.) & Ors. v. UOI & Ors.*** and connected cases considered the very similar issue and passed the following order:

“Since a common issue is involved in these four Original Applications, they are being disposed of by this common order.

2. The pivotal issue that has cropped up for consideration in these Original Applications is whether the applicants are entitled to count 50% of their service as Commission Bearer/Vendor from the initial date of their engagement till their regular absorption in service, for the purpose of calculation of pension and gratuity. The above issue is no longer res-integra in view of a series of orders passed by two Benches of this Tribunal and confirmed by jurisdictional High Courts.

3. In Original Application No.440 of 2003 (C.P.Sebastian Vs. Chief Personnel Officer & Ors.) a Division Bench of this Tribunal issued a direction to the Railway Administration “to count half the service rendered by the applicant in the above case as Commission/Salaried Bearer before his regular absorption for the purpose of pension and other terminal benefits on the analogy of the provisions contained in Indian Railway Establishment Code that half the service rendered by the casual labourers who have joined on temporary status till regular absorption on the post are entitled to count for pensionary purposes.” The above order was confirmed by a Division Bench of the Kerala High Court in Writ Petition (C) No.15756 of 2006.

4. Still later, in Original Application No.311 of 2010 (V.Lawrence & anr. Vs. Union of India & anr.) a similar view was taken by this Tribunal following the decision in Original Application No.440 of 2003. It is also on record that the Madras Bench of this Tribunal in Original Application No.360 of 2011 (P.Sampath & ors. Vs. Union of India & ors.) took the same view following the decision of this Tribunal in Original Application No.440 of 2003 (supra). It is the admitted position that a Division Bench of the Madras High Court has dismissed Writ Petition (C) No.10422 of 2013 filed by the Administration against the above order.

5. Shri.Siby J Monipally, who appears for the applicants, points out that in all the above cases the Administration has already implemented the orders passed by the Tribunals and confirmed by the High Courts. In this context, he has also invited my attention to a communication dated February 25, 2014 issued by the Headquarters' Office, Personnel Branch, Chennai. In this communication/order the entire previous history of the above litigations had been elaborately dealt with and the Headquarters Office had issued the following directions :-

Therefore, it is requested to take urgent necessary action to count half of the commission Bearer service from the date of initial engagement on commission basis till the date of regular absorption based on the date mentioned/recorded in the Security Deposit Cash Receipt for initial engagement and SR entry for regular absorption of each applicants and further to take action for computing pensionary benefits as under :-

For retired staff	: Immediate action should be taken.
For serving employees	: Action to be taken at the time of retirement

The direction of the Hon'ble Central Administrative Tribunal/Ernakulam Bench in O.A.No.440/2003 (C.P.Sebastian case) (relied by the Hon'ble Tribunal/Madras Bench and Hon'ble High Court of Madras in the present case) is to count half the period of service as commission Bearer from initial engagement to regular absorption for calculation of pension and other terminal benefits only. Therefore any relief claimed beyond the above court verdict may be rejected/contested accordingly duly producing order copy in O.A.No.440/2003, W.P.No.15756/2006 and S.L.P.No.17410/2010.

6. Learned counsel submits that in view of the settled legal position and also the fact that the Administration has implemented the earlier orders passed by the Tribunal in the cases of several other similarly placed employees, the Administration is not justified in refusing to extend similar benefits to the applicants as well. There is considerable force in the above contention.

7. It is brought to my notice that the applicants in Original Application Nos.417 of 2013 and 469 of 2013 have already retired from service. Applicants in the other cases are still in service. Learned counsel for the applicants points out that in Original Application No.780 of 2013 the claim made by the applicants seeking the above relief was rejected by the respondents as could be seen from Annexure A-1(a) to Annexure A-1(k) orders. For the reasons aforesaid the above orders passed by the Administration cannot be sustained. Accordingly, Annexure A-1(a) to Annexure A-1(k) orders are quashed.

8. Keeping in view the entire facts and circumstances, I am satisfied that the respondents have to necessarily extend similar benefits as those which were granted to the applicants in the cases referred to above to the applicants also. Appropriate orders in this regard shall be issued by the Administration within two months from the date of receipt of a copy of this order.”

7. Therefore, keeping in view the entire facts and circumstances, this Tribunal is satisfied that the respondents have to necessarily extend similar benefits as those which were granted to the applicants in the cases referred to above to the applicant also. Accordingly, appropriate orders in this regard shall be issued by the respondents within two months from the date of receipt of a copy of this order.

8. The Original Application is disposed of as above. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00782/2017

APPLICANTS' ANNEXURES

- Annexure A1** - True copy of order bearing No. J/C101/22/LRS dated 17.12.1973 issued from the Southern Railway/Divisional Office/Commercial Branch/Olavakkot.
- Annexure A2** - True copy of order in OA No. 209/2003 dated 2.4.2003 rendered by this Hon'ble Tribunal.
- Annexure A3** - True copy of order rendered by this Hon'ble Tribunal in OA No. 417/2013 and connected cases dated 4.6.2014.
- Annexure A4** - True copy of representation dated 15.7.2015 submitted to the 2nd respondent.
- Annexure A5** - True copy of representation dated 16.1.2016 submitted to the 2nd respondent.
- Annexure A6** - True copy of order in OA No. 794/2016 dated 22.9.2016 rendered by this Hon'ble Tribunal.
- Annexure A7** - True copy of detailed representation dated 2.10.2016 with all relevant documents addressed to the 4th respondent.
- Annexure A8** - True copy of Lawyer Notice dated 16.1.2017 addressed to the 4th respondent.
- Annexure A9** - Letter bearing No. P(S)353/III/SCB/OA794/16/ERS dated 10.8.2017 issued on behalf of the 2nd respondent.
- Annexure A10** - True copy of order bearing No. C.84/V/7 dated 22.1.1982 issued by the Chief Commercial Superintendent.

RESPONDENTS' ANNEXURES

- Annexure R1** - Agreement specimen form of the Commissioner Bearers.
- Annexure R2** - Orders of Hon'ble Supreme Court in WP No. 191/86.
- Annexure R3** - Judgment of Hon'ble Supreme Court in K.V. Baby's cases reported in (1998) 9 SCC 252.
- Annexure R4** - Order No. 2003/TG-III/639/13/SR passed by the Chairman/Railway Board.

Annexure R5 - Rules 14(xiv) 24 and 31 of the Railway Services (Pension) Rules, 1993.

Annexure R6 - Orders of this Hon'ble Tribunal dated 19.1.2000 in OA No. 65/2000.

Annexure R7 - Chief Commercial Manager/PS letter No. C.84/7/v/cv/99-2000.

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