

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 435 of 2015

Reserved on 8.2.2019
Pronounced on 15th March, 2019

Hon'ble Ms. Jasmine Ahmed, Member-J

Jagdamba Prasad, aged about 63 years, S/o Late Tilai, R/o Kaira Nayee Basti, Bargaon, Gonda

..... Applicant

By Advocate : Sri Mayankar Singh

Versus.

1. Union of India through its General Manager, North Eastern Headquarter Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Lucknow.
3. Senior Divisional Personnel Officer, North Eastern Railway, Lucknow.
4. Senior Divisional Finance Manager, North Eastern Railway, Lucknow.

..... Respondents

By Advocate : Sri Rajendra Singh

O R D E R

By means of this O.A, the applicant has sought the following main relief(s):-

- (i) *That the Hon'ble Tribunal may kindly be pleased to set-aside the impugned order dated 30.1.2015 passed by Divisional Personnel Officer, North Eastern Railways, Lucknow, contained as Annexure no. 1 to this Claim Petition.*
- (ii) *That the Hon'ble Tribunal may kindly be pleased to direct the Opposite parties to issue revised PPO in favour of the applicant after counting the length of services w.e.f. 25.6.1967 and accordingly the entire post retiral benefit may be refixed alongwith the arrears thereof.*
- (iii) *That the Hon'ble Tribunal may kindly be pleased to direct the Opposite parties to pay interest @ 18% P.A. over the delayed payment of the aforesaid fixation.”*

2. The case of the applicant, in brief, is that the applicant was initially engaged as Service Boy in the non-statutory canteen at Gonda Railway station, which was duly recognized by the Railways. It is averred that in the case of MMR Khan & Others Vs. Union of India & Others the Hon'ble Supreme Court has held that the employees working in the

statutory canteen or in the non-statutory canteen, but recognized by the Railways, then they would be treated as Railway Servant w.e.f. 1.4.1990 and in compliance thereof, the Ministry of Railways issued a circular dated 19.11.1990 whereby the judgment rendered in the case of MMR Khan's case has been implemented by regularizing the canteen employees. It is also pleaded that the case of the applicant ought to have been considered under clause 3(iii) whereby it provides that the benefit of Railway Pension Rules were extended to applicant's category by holding that the services rendered prior to 22.10.1980 and 1.4.1990 to the extent, it qualified for pensionary benefits, will be taken into account. The services of the applicant and 07 others were regularized by means of order dated 31.7.1992 wherein the name of the applicant finds place at sl. No.1. The applicant retired from service on 30.11.2011 on attaining the age of superannuation from the post of Canteen Manager at Gonda Railway Station. The applicant was issued PPO from which he came to know that the services rendered by him were counted w.e.f. 1.4.1990 and pensionary benefits were accordingly paid. However, the services rendered by the applicant from 25.6.1967 to 1.4.1990 have not been taken into account nor the period from 22.10.1980 to 1.4.1990 has been counted. Being aggrieved, the applicant preferred a representation to the respondents on 26.9.2012 claiming the parity of one Sri Devta Deen, who was appointed alongwith the applicant and had retired from service on 31.7.2002 and in his case the past services rendered by him (w.e.f. 21.10.1980 to 1.4.1990) has been counted for the purposes of pensionary benefits. When no heed was paid by the respondents, the applicant preferred another representation on 24.12.2012, that too the respondent did not pay heed. The PPO was issued to the applicant showing the initial appointment of the applicant w.e.f. 22.10.1980 and the date of retirement has been shown as 30.11.2011 by mentioning the total qualifying service to be 26 years and 04 months. Hence, this O.A.

3. The respondents have resisted the claim of the applicant by filing a detailed Counter Reply wherein they have stated that the services rendered by the applicant w.e.f. 22.10.1980 to 1.4.1990 has been taken into account for pensionary benefits and the same has been paid to the applicant. The respondents have further stated that pursuant to directions of Hon'ble Supreme Court, the appointment given to the applicant has been made permanent w.e.f. 1.4.1990 and that Annexure

no.3 pertains to promotion of the applicant on the higher post. According to Annexure no.2, all the benefits have been paid to the applicant and nothing is due to him. As regards Sri Devta Deen is concerned, the respondents have stated that the said Sri Devta Deen had been engaged as Substitute and as a consequence thereof, he has been given the benefits accrued there-from; whereas the applicant was appointed as Canteen Manager in non-statutory canteen with the result he has been given the service benefits w.e.f. 22.10.1980. The respondents have further pleaded that the case of the applicant does not fall within the Sewa Niyamawali meant for the Substitutes like Devta Deen. The respondents have further averred that the total qualifying service of the applicant from 22.10.1980 till the date of retirement (30.11.2011) comes to 31 years, 01 month and 09 days and non-qualifying service comes to 04 years, 08 months and 20 days and after deducting the non-qualifying service in total service, the qualifying service comes to 26 years, 04 months and 19 days, which would be revealed from the PPO issued to the applicant. The respondents have also taken the stand that in the service book of the applicant, the appointment date has been mentioned as 25.6.1967, which has been mentioned by the Consumer society, which is a non-statutory canteen and that as per the directions of Hon'ble Supreme Court, the applicant has been made permanent w.e.f. 1.4.1990. They have also stated that at the time of retirement of the applicant, he has again been paid the balance amount i.e. the services rendered by him from 22.10.1980 till 1.4.1990 by calculating 50% during the aforesaid period and nothing is due to the applicant. They have further pleaded that the case of the applicant has been forwarded to Headquarters, but no reply has been received from there. Lastly they have stated that the O.A. filed by the applicant bereft of merit and the same is liable to be dismissed.

4. Rejoinder has been filed by the applicant by negating the contentions of the respondents made in the Counter Reply while reiterating the averments already advanced in the Original Application.

5. I have heard the learned counsel for the parties and also perused the pleadings available on record.

6. The short question involved in this case is whether the applicant who was appointed as Canteen Manager in non-statutory canteen at Gonda Railway station is entitled to be treated as Railway Servant w.e.f. 1.4.1990 or not? Admittedly, the applicant was working in non-statutory canteen initially as Office Boy and subsequent as Canteen Manager at North Eastern Railway Station Gonda. The Hon'ble Supreme Court in the case of MMR Khan's case (supra) has held that the employees working in the statutory and non-statutory canteen would be treated as Railway servant w.e.f. 1.4.1990 subject to the canteens were recognized by the Railways. In compliance of the judgment of Hon'ble Supreme Court, the Ministry of Railways issued a circular dated 19.11.1990 whereby the judgment rendered in the case of MMR Khan's case has been implemented by regularizing the canteen employees by clearly stating therein that the employees of non-statutory canteen subsidized recognized canteens covered by the judgment of the Supreme Court will be entitled to drawl of pension w.e.f. 1.4.1990. Pursuant to the order of Railway Board, the services of the applicant has been regularized vide order dated 31.7.1992. In the said order, the name of the applicant (Canteen Manager) finds place at sl. No.1 while the name of Devta Din (Seller) finds place at sl. No.2 and one Sri Musai (Assistant Cook) finds place at sl. No.7 from which the applicant is claiming parity by stating that their past services have been counted towards pensionary benefits, but the claim for the same has been ignored. From the perusal of Annexure no.3, which is a copy of regularization order, it would reveal that the applicant, Devta Din and Musai have been shown at sl. Nos. 1, 2 and 7 respectively, but in the cases of Devta Din and Musai, the past services rendered by the respondents while calculating the pensionary benefits; whereas the claim of the applicant, who was working on the post of Canteen Manager, has been left out without any rhyme and reason. It is also clear from the facts stated above that the applicant has been discriminated, though the past services rendered by the persons, who are admittedly junior to the applicant have been counted.

7. It is trite principle of law that double yardstick cannot be permitted to use on the one issue. In the instant case, the past services rendered by the applicant has not been taken into consideration while calculating the pensionary benefits; while the past services rendered by the employees, who are admittedly junior to the applicant, have been

counted towards pensionary benefits. It is also noteworthy to point that in the same set of employees, no discrimination can be made in granting the relief(s). From the perusal of Annexure nos. 7,8 and 9, it would reveal that the persons mentioned therein have been given the benefit of past services rendered by him by calculating the pensionary benefits. The Annexure nos. 7, 8 and 9 filed with the O.A. has not been denied by the respondents in their Counter Reply. Hence, it is clear that the applicant has been discriminated from the employees mentioned above, who are admittedly junior to the applicant. In view of the facts stated hereinabove, the impugned order dated 30.1.2015 passed by the respondents is not legally sustainable and is liable to be quashed.

8. In view of the above, O.A. succeeds. The order dated 30.1.2015 (Annexure-1) is quashed. The respondents are directed to count the past services rendered by the applicant, as has been done in the case of Devta Din and Musai etc., for the purposes of pensionary benefits by revising the PPO after taking into account the past services rendered by him and the arrears thereof shall be paid accordingly. The aforesaid exercise shall be completed within a period of four months from the date of receipt of a certified copy of this order. There shall be no order as to costs.

(Ms. Jasmine Ahmed)
Member-J

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