

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/00577/2018

DATED THIS THE 05th DAY OF SEPTEMBER, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

R.Jayaraj
S/o.Sri.Rajamanickam
Aged about 61 years
Retired Sr.Blacksmith/Construction/BNC
#136/1, First Floor
Opp. to St.Peter Clever Convent
Hennur Cross, Kalyannagar
Bangalore-560043.

....Applicant

(By Advocate Sri K.Shivakumar)

Vs.

1. Union of India
Rep. by General Manager
South Western Railway, Hubli.
2. Senior Divisional Personnel Officer
S.W. Railway, Bangalore.
3. Deputy Chief Personnel Officer (Construction)
S.W.Railway, Bangalore Cant.

...Respondents

(By Advocate Sri J.Bhaskar Reddy)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant in this case was initially appointed on 26.01.1981 and was empanelled and absorbed as Artisan on 19.6.1992 in compliance to the direction of this Tribunal in OA.No.1490-1495/95 vide order dtd.19.4.1999(Annexure-A1) issued by the 3rd respondent. The applicant was promoted to various grades

during his service and retired as Sr.Blacksmith on superannuation on 28.02.2017. As per the provisions of IREM, 50% of service rendered from date of temporary status to the date of empanelment and 100% of service rendered from the date of empanelment to the date of superannuation to be counted for payment of pensionary benefits. In the case of the applicant, though the order on empanelment has been issued by the respondents in compliance to the orders of the Tribunal, it has been conveniently ignored by the respondents while calculating the net qualifying service at the time of his retirement. The date of regular service(empanelment) has been calculated from 5.10.96 instead of 19.6.92 which is applicant's date of regular absorption and the total service has been calculated wrongly as 20 years instead of 28 years duly ignoring the service rendered in temporary service from 26.1.1981 to 18.6.1992 as per the service certificate issued by the respondent at the time of arranging the settlement dues(Annexure-A2). Further before retirement, the settlement forms were filled up with the assistance of the Welfare Inspector of the Construction Organisation and though the commutation in the pension to the extent of 40% was opted by him, the same has been ignored by the respondents and the commutation value has been shown as zero in the details of terminal benefits furnished by the respondents. Since, the wrong calculation of qualifying service resulted for less payment of retirement gratuity and the non payment of commutation value was against the option exercised by him which caused his inability to meet out the financial commitments, the applicant approached the office of the respondents and made oral representations many a time and as nothing was forthcoming, he submitted a written representation on 6.6.2018(Annexure-A3). Since the

respondents have not taken any action on the oral and written representation, he filed the present OA seeking the following relief:

- i. Order the respondents to re-calculate the qualifying service and pay the difference in retirement gratuity with 18% interest.*
- ii. Order for the payment of commutation value in the pension payable as per the option exercised by him.*

2. Per contra, the respondents have submitted in their reply statement that the applicant who was working as Sr.Technician(Blacksmith trade) under Dy.CE/CN/Stores/BNC retired upon superannuation on 28.2.2017. The applicant was engaged as Casual Labour and was granted temporary status w.e.f. 26.1.1981. He was regularly absorbed on 5.10.1996. Though the office order dtd.19.4.1999 was issued by the respondents provisionally absorbing him in the trade of Artisans w.e.f.19.6.1992, there is no entry in the service register of absorbing him in the above category and the reason is unknown. Based on the entries of the service register, the qualifying service duly considering the 50% casual labour service from the date of attaining temporary status w.e.f. 26.1.1981 and up to regular absorption i.e. 5.10.1996 and full service till the date of retirement i.e. 28.2.2017 has been taken for the purpose of net qualifying service and the DCRG has been claimed. The correct qualifying service of 28 years has been taken into consideration instead of 20 years of service as is claimed by the applicant in the OA and the gratuity amount has been paid.
3. The respondents submit that every retiring railway employee is to submit the duly filled pension booklets to the settlement section of Personnel Branch at least three months before the date of retirement. In spite of many advices, the applicant has approached the administration only on 22.2.2017 i.e. only 6 days prior to his retirement and the Staff and Welfare Inspector has filled the pension booklet based on his request. The pension booklet was handed over to the

settlement section only in the evening of 22.2.2017 and there were only 4 working days prior to his retirement. Extra effort was undertaken by the railway administration to ensure that there was no delay in payment of the settlement dues to the applicant and the settlement dues were paid to him on the last working day of Feb.,2017. While filling the pension booklet, the applicant was explained about the procedure for payment of Commutation of Pension. The applicant has desired for obtaining his full pension without any portion of the pension getting deducted for commutation of pension. Accordingly, it was recorded as 'not opted for commutation' in bold letters in the top para of commutation of pension application form and the applicant has endorsed his consent by signing on the application form(Annexure-R1). Since he had not opted for commutation of pension at all, the question of commutation of pension and not paying it does not arise. The applicant was empanelled on 5.10.1996 as Blacksmith-III in Bengaluru Division with reference to office orders dtd.13.10.1999, 22.2.2000 & 25.2.2000 as per the entry available in the service register which has been recorded in the History of service statement vetted by the Associate Accounts of Construction Organisation, SW Rly., Bengaluru Cantonment(Annexure-R2). The total qualifying service has been calculated duly considering 50% of the service rendered from the date of attaining temporary status as casual labour i.e. 26.1.1981 till the date of regular absorption i.e. 5.10.1996. Service taken for calculation of qualifying service is 7 years 10 months 4 days which is 50% of 15 years 8 months and 9 days. Adding this to the service rendered from the date of regular absorption i.e. 5.10.1996 till 28.2.2017 i.e. 20 years 4 months 23 days, the gross qualifying service works out to 28 years 2 months and 27 days which is rounded to 28 years. The gratuity has been

taken as 28 years only and gratuity amount of Rs.6,22,608/- has been paid. The applicant seems to be ignorant of the fact that qualifying service taken from the date of empanelment till the retirement comes to 20 years 4 months and 23 days. Therefore, the averment of the applicant that his gratuity has been calculated by not taking the service rendered as temporary status casual labour is completely denied and all the grounds raised by the applicant are baseless and incorrect. Accordingly, the OA is liable to be dismissed.

4. The respondents have filed additional reply as per the direction of the Tribunal to justify the stand taken by Railway Administration of making entry of the date of empanelment of the applicant as 5.10.1996 instead of 19.6.1992 in the service register and submitted that the office order dtd.30.12.1999(Annexure-R5) was traced, as per which the date of absorption in favour of the applicant who was absorbed as Blacksmith has been revised/modified as 5.10.1996 instead of 19.6.1992. Therefore, the entry made in the service register as 5.10.1996 the date of provisional empanelment holds good.
5. We have heard the Learned Counsel for both the parties and perused the materials placed on record. There are two main issues in this case. The first one relates to the qualifying service of the applicant from attaining the temporary status as casual labour i.e. 26.1.1981 till the date of regular absorption i.e. 5.10.1996. Vide Annexure-A1, the applicant would claim that his temporary service should be with effect from 19.6.1992 whereas it has been calculated till the date of regular absorption i.e. 5.10.1996 since there are no records in his service register for the same. The respondents, however, would state that vide Annexure-R5 dtd.30.12.1999, the date of absorption of the applicant has been modified w.e.f. 5.10.1996 based on the directive of this Tribunal vide its orders in

OAs.No.1490 & 1495-1513/1995 & OA.No.366/1996 dtd.9.6.1998. From the set of documents given by the respondents vide order dtd.10.1.2000, the revised pay of the applicant is also very clearly mentioned with the date of effect taking from 5.10.1996. The applicant was very much aware of these proceedings since he himself was a party in the OA cited above. Therefore, his claim that he should be absorbed from 1992 instead of 1996 is clearly misplaced and in fact an attempt at abuse and misuse of the judicial process by suppression of the relevant facts. His action in filing the OA having known the full details of the same is clearly condemnable.

6. The second issue relates to the commutation of pension. The respondents would state that vide Annexure-R1, it is mentioned at the top of the said form that the applicant has not opted for commutation of pension. We find that the form itself is for commutation of a fraction of pension without medical examination and in the body of the said form, it is clearly stated that the applicant desires to commute a fraction of pension in accordance with the provisions of the Railway Services (Commutation of Pension) Rules, 1993. Vide SI.No.7, the fraction of superannuation pension proposed to be commuted is also shown as 40%. It is not clear as to why despite this clear option for commutation of 40% pension, the respondents would cite the noting made at the top that the applicant had not opted for commutation of pension. The applicant has clearly opted for commutation of pension and therefore the respondents have to necessarily go by his option. This they may do so within next three(3) months from the issue of this order. However, for filing the OA with suppression of certain material facts relating to his regularisation dates, we deem it appropriate to impose a cost of

Rs.5000/- on the applicant to be paid to the Karnataka State Legal Service Authority.

7. The OA is accordingly disposed of.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicants in OA.No.170/00577/2018

Annexure-A1: Copy of O.O.No.E.Cell 47/99 dtd.19.4.99

Annexure-A2: Copy of service certificate

Annexure-A3: Copy of representation dtd.6.6.18

Annexures with reply statement:

Annexure-R1: Copy of Annexure-II of the Pension booklet

Annexure-R2: Copy of History of Service Statement

Annexure-R3: Copy of Statement of qualifying service vetted by Associate Accounts

Annexure-R4: Copy of covering letter with pension booklet

Annexures with additional reply statement:

Annexure-R5: Copy of letter dtd.30.12.1999
