

**Central Administrative Tribunal
Madras Bench**

OA/310/01529/2015

Dated the 20th Day of August Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

M.Moorthy,
S/o M.Munusamy,
Helper Grade II/MAS,
New No.46, New Street,
Agravaram, Katpadi,
Vellore 632 007. .. Applicant
By Advocate **M/s.J.Muthukumaran**

Vs.

1. Union of India, rep by its
General Manager,
Southern Railway,
Chennai.
2. The Divisional Personnel Officer,
Southern Railway,
Chennai.
3. The Financial Adviser & Chief Accounts Officer,
Southern Railway,
Chennai 600 003. .. Respondents

By Advocate **Mr.R.Krishnamurthy**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“....to call for the records of the relating to order of the 2nd respondent vide his proceeding No.M/P353/CC/OA/123/2013 dated 18.4.2013 and quash the same and to issue consequently direction to the respondents to count 50% the service of applicant from 25.1.1989 to 21.10.1999 as commission Bearers/Vendor in the catering Establishment of Southern Railway alongwith his regular service till retirement till 31.10.2015 to reckon the total qualifying service for pension and pass a reasoned order forthwith and pass such other order(s) or direction(s) as deemed fit and proper in the circumstances of this case and thus render justice.”

2. The case of the applicant is that he joined the Railway as Bearer on commission basis in the year 1989 and thereafter he was regularized on 21.10.1999. The 2nd respondent issued appointment to the post of Helper Grade II accordingly. The applicant submits that some of the similarly placed commission bearers who were absorbed in the Railways had filed OA 194/2010 for a direction to treat the services of those applicants from the initial date of appointment in the catering establishment for reckoning the qualifying service for pension. Similarly, some other similarly placed persons had filed OA 440/2003 before the Ernakulam Bench of the Tribunal and the Ernakulam Bench had allowed the said OA and it was confirmed by the Hon'ble High Court of Kerala in WP(C) No.15756/2006 dated 20.3.2009. SLP filed before the Hon'ble Supreme Court was also dismissed. Eventhough the applicant has made a representation on 29.2.2014 the respondents had not considered

the same for granting the benefits and he filed OA 123/2014 before this Tribunal for a direction to pass a speaking order on the representation filed by him. The respondents had rejected the representation on 18.4.2013 and did not grant the benefits as provided to the applicants who had approached the Tribunal earlier. So, he wants to consider 50% of his service as commission bearer to be treated for pensionary benefits and filed this OA.

3. The respondents entered appearance and filed a detailed reply admitting the appointment of the applicant as stated by him. But according to the respondents, the earlier judgment were implemented treating it as judgment in personam and hence the applicant is not entitled to get the same benefit as granted to the applicant in OA 194/2010.

4. When the matter came up for hearing, the counsel for the applicant submitted that this matter is already decided by this Tribunal in OA 194/2010 and subsequently in a batch of cases in OA 1193/2014 this Tribunal has granted the same benefit to 97 applicants by order dated 26.10.2016. There is no reason why the same dictum cannot be applied in the applicant's case also. The respondents had implemented the order passed by the Tribunal in the batch of cases and it cannot be considered as a judgment in personam as the benefits were given to lot of employees working under the respondents. The respondents cannot arbitrarily deny the benefits which were given as per the directions of the CAT in OA 194/2010 and OA 1193/2014 & Batch of cases arbitrarily.

5. We have heard the counsel for the applicant and the counsel for the

respondents. We have perused the pleadings of both sides. On a perusal of the pleadings, it can be seen that the facts and circumstances in the present OA is similar to the facts and circumstances of the OAs mentioned above and the applicants therein were granted the benefit of 50% of past service rendered by the applicants to be counted for calculation of qualifying service for the purpose of pension benefits. There is no merit in the contention put forward by the respondents that the implementation of orders passed in OA 194/2010, OA 440/2003 of the Ernakulam Bench and OA 1193/2014 & Batch of cases were done as if those judgments were judgments in personam. It is pertinent to note that the Hon'ble Supreme Court in ***State of U.P. & Ors. v. Arvind Kumar Srivastava & Ors. [reported in 2015 (1) SCC 347]*** has held as follows:-

“(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

This is a clear case where the earlier decision of this Tribunal is confirmed by the Hon'ble High Court has to be applied in this case also.

6. Accordingly, OA is disposed off in terms of the decision taken in OA 1193/2014 & Batch of cases as follows. **“The respondents are directed to count 50% of past services rendered by the applicant before he is regularized in Railway Services, till his retirement to reckon the total qualifying service for the purpose of pensionary benefits after verification of the service particulars of the applicant with reference to similarly placed persons in OA 1193/2014 & Batch of cases and pass a reasoned order. With these observations OA is disposed off. No costs.”**

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

20.08.2019

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