

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/276/2017

Reserved on: 23.07.2019

Pronounced on: 29.07.2019

Between:

P. Ramakrishna, S/o. P.B. Chandra Kalavathy,
Aged about 51 years, Asst. Loco Pilot,
(T. No. 223, P.F. No. 09680408) (Compulsory Retired),
O/o. The Chief Crew Controller, S.C. Railway,
Guntur Division, Guntur, District Guntur.

... Applicant

And

1. Union of India, Rep. by
The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
2. The Chief Personnel Officer,
South Central Railway, Rail Nilayam,
Secunderabad.
3. The Divisional Railway Manager,
South Central Railway, Guntur Division, Guntur.
4. The Senior Divisional Personnel Officer,
South Central Railway, Vijayawada Division,
Vijayawada.
5. The Senior Divisional Personnel Officer,
South Central Railway, Guntur Division, Guntur.
6. The Senior Divisional Mechanical Engineer,
S.C. Railway, Guntur Division, Guntur.
7. The Assistant Divisional Mechanical Engineer,
South Central Railway, Guntur Division, Guntur.
8. The Chief Crew Controller,
S.C. Railway, Guntur Division, Guntur.

... Respondents

Counsel for the Applicant ... Mrs. Rachna Kumari

Counsel for the Respondents ... Mr. Sreehari, Advocate for
Mr.D. Madhava Reddy,
SC for Rlys

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed for not granting pension and pensionary benefits.
3. Brief facts of the case are that the applicant while working as Diesel Assistant in the respondents organisation was on unauthorised absence in 1991 for 91 days leading to initiation of disciplinary action and resulting in his removal from service w.e.f. 24.12.1992. On appeal, applicant was reappointed as diesel assistant on 17.4.1995. Thereafter, due to marital disputes on the home front applicant opted for voluntary retirement on 20.7.2009, which was not considered and instead, major penalty proceedings were initiated and he was compulsorily retired w.e.f. 11.10.2010. On retirement, he was not granted pension and pensionary benefits. Applicant represented vide his letters dated 11.4.2012 & 16.9.2013 for treating the period of removal as dies-non and grant pension. As there was no response, applicant filed OA 1449/2014 wherein it was directed to dispose of the representations which, respondents did by rejecting his request for pension on 6.12.2016. Aggrieved over the rejection OA is filed.
4. The contentions of the applicant are that since he was retired compulsorily, he is eligible for compassionate appointment. Representations made to treat the period of removal as dies-non were not considered. Applicant has put in 23 years of service and as per pension

rules 10 years is enough to grant pension. Applicant is due for retirement only in 2026. The punishment is harsh.

5. Respondents state that there is no impugned order which has been challenged by the applicant. Applicant was compulsorily retired vide order dt. 1/4.11.2010 and benefits due were paid on 24.4.2013 whereas OA was filed after the limitation period. No application for delay has been filed. Applicant was reappointed and not reinstated vide order dated 17.4.1995. Applicant is habituated to being absent in an unauthorised manner. For one such absence of 91 days he was removed from service on 24.12.1992 which, on appeal, was modified to reappointment on 17.4.1995. Thereafter, applicant did not mend his ways but continued his habit of unauthorised absence and for the same, he was proceeded and imposed the penalty of compulsory retirement on 1/4.11.2010, which was not appealed against. The applicant's request for voluntary retirement was rejected as he did not put in 20 years of service. Eligible gratuity, PF, CGEGIS were released. There is no provision in the rules to treat the period of removal as dies-non.

6. Heard both the counsel and perused the pleadings on record.

7. I) The preliminary objection of the respondents is that there is no impugned order. However, Ld. counsel for the applicant submitted that the OA has been filed consequent to the disposal of the representation made as per directions contained in OA 1449 of 2014 and hence the cause of action is improper disposal of representation. In regard to limitation, as applicant is seeking pension, which is a

continuous cause of action, objection raised by the respondents in this regard is not tenable.

II) Now coming to the issue *per se*, applicant is found to be not attending to duties regularly. Often, it is seen that he was on unauthorised absence from duty. Consequently, respondents removed him for unauthorised absence on 24.12.1992, but on appeal, reappointed him as a fresh entrant to the service at the bottom of the grade on 17.4.1995. As per Rule 40 of Railway Services (Pension) Rules 1993, applicant forfeits his past service on removal/dismissal. The rule reads as under:

“40. Forfeiture of service on dismissal or removal-Dissmissal or removal of a railway servant from a service or post shall lead to forfeiture of his past service.”

Therefore, service rendered by the applicant prior to 24.12.1992 is forfeited in accordance with the cited rule.

Besides, qualifying service is defined as the service rendered on duty or otherwise as per Rule 3(22) of the Pension Rules, which is reproduced hereunder:

“3(22) “qualifying service” means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules;”

The service rendered by the applicant on duty is less than 10 years. When the service is less than 10 years, as per Rule 69(1) applicant would be eligible only for gratuity and not pension. Applicant has actually put in only 9 years 6 months and 27 days service and hence is not eligible for

pension. Therefore, respondents released only gratuity due to the applicant in accordance with the referred rule which is extracted hereunder:

“69 Amount of Pension. --

(1) In the case of a railway servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six-monthly period of service.

The request of the applicant to treat the period of removal as dies non has not been conceded to by the respondents, since they claim there is no rule provision to do so. The applicant did seek voluntary retirement but, since he did not render the minimum of 20 years of service as per Rule 67 of Pension Rules required to be considered for voluntary retirement, his request was negated. Rule 67 reads as under:

“67. Retirement on completion of 20 years qualifying service –(1) At any time after a railway servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to appointing authority retire from service:”

Lastly, any deficiency in service cannot be condoned as per Rule 48 of the cited Rules, which is extracted hereunder:

“48. Deficiency in service: - Any deficiency in the qualifying service of a railway servant shall not be condoned.”

Due to the deficiency of service, often being on unauthorised absence, applicant has been penalised twice, once with removal and later with

compulsory retirement. Hence, the deficiency in qualifying service due to removal cannot be regularised by granting dies-non.

III) The learned counsel for the applicant submitted stated that in calculating the length of qualifying service, fraction of year equal to 3 months and above shall be treated as completed one half year and reckoned as qualifying service as per Rule 69(3). By doing so, applicant would get the qualifying service. In this regard, it must be mentioned that the respondents adopt the Central Govt Rules and accordingly they followed the CCS (Pension) Rules in regulating the pensions of the Railway servants as well. The equivalent Rule to 69(3) of Railway Services (Pension) Rules is Rule 49(3) of CCS (Pension) Rules. In regard to Rule 49 (3) of CCS (Pension) Rules, a clarification was given as to how to treat qualifying service of more than 3 months but less than 6 months by the Ministry of Home Affairs vide letter dated 13th October, 1983 as under:

(2) Three months and above but less than six months treated as one - half year. - The intention of sub-rule (3) of Rule 49 is that the period of three months and above but less than six months would be treated as a completed one-half year and reckoned as qualifying service for determining of pension. The period of nine months would, therefore, be two half years. [D.O. No. 28 (15)/83-PU, dated the 13th October, 1983, from Shri K.S. Mahadevan, Under Secretary to the Government of India, Ministry of Home Affairs, addressed to Shri P. Muthuswamy.]

The applicant has not put in 9 months or more service, beyond 9 years, to treat the qualifying service as two half years and thereby making it as

10 years. Hence even under this relaxation clause the applicant qualifying service falls short of 10 years to be eligible for pension.

IV) Thus the action of the respondents is as per rules. Applicant has not qualified for being granted pension as per rules in vogue. The OA thus lacks merit and hence dismissed with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 29th day of July, 2019

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