

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/00335/2019
DATED THIS THE 27th DAY OF NOVEMBER, 2019
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

R.Karunanidhi
S/o. A.Rajavel
Aged about 61 years
Ex-Track Man
Amaravathinagar
2nd Main Road
12th 'B' Cross
Bangarpet-563 114.

....Applicant

(By Advocate Shri K.Hanifa)

Vs.

1. Senior Divisional Personnel Officer
South Western Railway
Station Bangalore City
Bangalore-560 023
2. General Manager
South Western Railway
Hubli-580 020.

...Respondents

(By Advocate Sri J.Bhaskar Reddy)

ORDER

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

The case of the applicant is that he joined the department as a casual labourer in the year 1978 and temporary status was granted in the year 1983. His service was regularized in the year 1991 in the post of Trackman. Further he was posted as Tower Wagon Driver in the year 1992 as per the letters dtd.7.7.1992(Annexure-A1 series) and on regular measure from 1997 onwards for having qualified in the GRS course on 6.2.1997 as per letter dtd.15.5.1998(Annexure-A2) issued by the 1st respondent. As such from 1992 to 2014 nearly 22 years he had worked as Tower Wagon Driver in PB-1 with GP

2400. Hence, total service he put in the department from 1978 to 2014 works out to more than 36 years. But while calculating his qualifying service for pension fixation, only 27 years is taken as net qualifying service by reducing Grade Pay from Rs.2400 to Rs.1800 which resulted him to draw less pension vide PPO dtd.4.12.2015(Annexure-A10). The applicant submits that he had worked from 1978 to 1983 i.e. 5 years as Casual Labour, from 1983 to 1991 i.e. 8 years in temporary status and worked from 1992 to 2014 nearly 22 years regularly as Tower Wagon Driver. So more than 36 years, the applicant had worked in the department from 1978 till his retirement on 10.4.2015. As per Railway Provident Fund Pension and Retirement Benefits R.B's No.(E)III/86/PNI/21 dtd.9.1.1987(Annexure-A8), all his above services are to be taken as qualifying service for pension calculation. The qualifying service includes the period of permanent, temporary or officiating service without interruption by confirmation in the same or other post excluding leave without pay other than covered by medical certificate. But in his case, the service of 5 years casual labourer and the 22 years service rendered as Tower Wagon Driver is only taken as net qualifying service as 27 years by leaving temporary service of 8 years from 1983 to 1991 till his regularization without any valid reasons and also reduced the Grade Pay from Rs.2400 to Rs.1800 from 1.1.2006 till his retirement from service under LARGESS w.e.f. 10.4.2015 as per Memorandum dtd.22.7.2015(Annexure-A4) which is arbitrary, unjust and unfair.

2. The applicant submits that his son was given appointment on LARGESS with GP Rs.1800 based on which the applicant had been repatriated to Trackman from the post of Tower Wagon Driver, in which post he was working since 1997 to 2014 on regular measure as per the letter dtd.3.8.2012(Annexure-A3) submitted

to Sr.DPO, SBC. Except saying in Railway Establishment Rules and LARGESS in column No.14(Annexure-A9) that 'since the safety related retirement scheme is a package having no nexus with any of the existing schemes, no weightage towards qualifying service will be admissible'. As such in the LARGESS scheme, nowhere said that the weightage towards qualifying service for pension calculation is not admissible. Hence, his service of 36 years is to be taken as qualifying service as per Railway Establishment Provident Fund Pension and Retirement Benefits Rules and his pension is to be calculated accordingly, which will fetch more monthly pension with all consequential benefits to the applicant. The applicant submits that receiving less pension every month is a recurring cause action as per Hon'ble Apex Court order in the case of *S.M.Munawalli vs. State of Karnataka [AIR 2001 SCW 5193 (2)]* (Annexure-A11) and hence the limitation is not attracted in his case. The applicant submitted representations dtd.30.8.2017, 10.10.2018 & 8.2.2019(Annexures-A5, A6 & A7 respectively) to the respondents. But so far no reply is received. Aggrieved by the same, the applicant has filed the present OA seeking the following relief:

- a. Call for the relevant records leading to the issuance of the PPO No.20157350600590 dtd.4.12.2015 at Annexure-A10 issued by the respondents and direct the respondents to take his total qualifying service into account as said in para 3 above and fix the pension of the applicant correctly and to draw all consequential benefits eligible to the applicant. And*
 - b. Pass any other order or direction as deemed fit by this Hon'ble Tribunal including an order for award of cost of this application in the interest of justice and equity.*
3. The respondents, on the other hand, have submitted in their reply statement that the applicant was initially engaged in Railways on 11.12.1978 as Casual Labourer. He was granted temporary status on 1.1.1983 as Khalasi after completion of 360 days of continuous service and was absorbed as Gangman

w.e.f.4.4.1991 vide memorandum dtd.26.3.1991. While working as Trackman under Sr.Section Engineer/P.Way/Kolar, he voluntarily retired from service under LARGESS Scheme w.e.f. 10.4.2015 as per letter dtd.9.4.2015. He was paid all his retirement benefits taking into account his qualifying service, in accordance with existing rules. Pension Payment Order vide PPO No.20157350600590 to draw his monthly pension was issued to the applicant. While calculating qualifying service at the time of settlement, his service counts for all purposes only from his empanelment and absorption date as per Rule 31 of Railway Services (Pension) Rules, 1993. Since, the employee was empanelled for absorption on 4.4.1991, his service was counted from 4.4.1991 to 10.4.2015 for all pensionary benefits, which was calculated as 24 years, 00 months and 6 days. It is submitted that the applicant was under unauthorised absence/suspension for period of 11 months, 24 days as per the absentee statement prepared at the time of processing his case for retirement benefits(Annexure-R1). As per Rule 31 of Railway Services (Pension) Rules, 1993, only half of the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment(Annexure-R2). Hence, the temporary service rendered by the applicant from 1.1.1983 to 4.4.1991 was arrived as 8 years, 3 months and 3 days out of which only half of the service i.e. 4 years, 1 month and 6 days was added to the regular service after deducting the absence period of 11 months, 24 days. According to the statement, the total qualifying service of the applicant is 27 years 1 month and 24 days which is rounded off to 27 years (Annexure-R3). For the service rendered by the applicant as Casual Labourer from 1978 to 1983, only gratuity is payable as per Gratuity Act 1972, subject to production of documentary evidence by the applicant for having worked as Casual Labour from

1978 to 1983. Hence, the period of casual labour service was not taken into consideration for calculating pensionary benefits. The contention of the applicant that he lost 8 years of service is not correct and the total qualifying service of 27 years taken for calculation of pensionary benefits is in order as per Railway Services (Pension) Rules, 1993. Hence, the applicant is not entitled for any relief and the OA is liable to be dismissed in limine.

4. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that the period of suspension from 6.4.1997 to 13.4.1997 for 8 days, 25.9.1999 to 22.2.2000(151 days), 31.8.2001 to 16.9.2001(17 days) & 7.7.2002 to 18.7.2002(12 days) shown in column Nos.2,5,7 & 10 respectively at Annexure-R1 was treated as qualifying service for drawing eligible pension benefits as per Annexures-A13, A17, A19 & A18 respectively. But for the suspension period from 8.2.2002 to 31.2.2002(6 days) at column No.9, the particulars pertaining as to how this period was treated by the respondents was not informed. Further the period of absence from 14.10.1994 to 6.12.1994(54 days) shown at column No.1 at Annexure-R1 is not correct as the applicant was absent from 27.10.1994 to 6.12.1994 as he was under Medical treatment for which he had submitted medical certificate along with fitness certificate at Annexure-A16 series. This period works out to only 36 days and not 54 days as shown at Annexure-R1. Column No.3 of Annexure-R1 shown 1 day absent on 28.8.1999. But as per Duty Roster dtd.6.9.1999(Annexure-A14), the applicant had performed his duty on 28.8.1999 and it is to be included in his qualifying service. For the period of absence from 10.9.1999 to 22.9.1999(13 days), he had given medical certificate dtd.29.9.1999(Annexure-A15 series). Further at column No.6, 8 & 11, the applicant was shown as absent on 26.7.2001(1 day),

26.11.01(1 day) & 25.10.2002 to 8.11.2001(15 days) respectively. But as per Annexures-A20, 21, 22 & 23 which are pay slips for July 2001, Nov.2001, Oct.2002 & Nov.2002 respectively, the period of absence is to be included for drawing his pension as qualifying service as he was paid full pay for the said periods. Further in column 12 at Annexure-R1, the applicant was absent from 4.9.2003 to 26.11.2003(83 days). But the respondents had not issued particulars pertaining to this period as to how this absence period is treated. The respondents in para-5 of the reply statement submitted that the total qualifying service of the applicant is 27 years 1 month and 24 days but in para-7, the total qualifying service is rounded off to 27 years, thereby 1 month 24 days was left out without having support of any authority or Rule to show that as to how it is rounded off to 27 years and the Rule 31 of Railway Services (Pension) Rules, 1993 does not speak about this aspect. Hence, the respondents should not have left out or rounded off the qualifying service of 1 month 24 days while calculating his pension benefits which is to be rectified. In response to para-6 of the reply statement, the applicant produced the documents pertaining to the service rendered by him as Casual Labourer from 1978 to 1983 issued by the Executive Engineer dtd.26.12.1984(Annexure-A12) for taking necessary action to make payment of eligible gratuity amount as per Gratuity Act 1972.

5. We have heard the Learned Counsels for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small compass. The applicant claims that his services for about 8 years from 1983 to 1991 in temporary status was not counted for his pensionary benefits which the respondents have refuted with details. The respondents have also deducted certain periods from his pensionable service due to unauthorised absence,

suspension etc. The applicant has filed rejoinder explaining that certain periods should have been considered as duty with certain documents. Since he has furnished these documents, we direct the respondents to take into consideration the documents produced by him and modify the Pension Payment Order accordingly if it is found that he was eligible for the periods he mentions. The applicant has also requested for payment of eligible gratuity amount for the period he worked as casual labourer from 1978 to 1983. This may also be considered by the respondents and appropriate orders may be passed within a period of two(2) months from the date of issue of this order. The applicant is at liberty to approach the Tribunal if he is aggrieved by the orders to be issued by the respondents.

6. The OA is disposed of as above. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00335/2019

Annexure-A1: Letter No.B/P 535/III TRD/VII.II dt.7.7.1992

Annexure-A2: O.O.No.P/Elec 40/1/98 dt.15.5.1998

Annexure-A3: Application for seeking Voluntary Retirement under LARSESS
dtd.3.8.2012

Annexure-A4: Memorandum for fixing the pay of the applicant after repatriation
dt.22.7.2015

Annexure-A5: Representation dtd.30.8.2017

Annexure-A6: Representation dtd.10.10.2018

Annexure-A7: Representation dtd.8.2.2019

Annexure-A8: Provident Fund-Pension and Retirement Benefits-R.B's No.F(E)III/86/PN
I/21/dtd.9.1.1987

Annexure-A9: Railway Establishment Rules and LARGEES dtd.2.3.2004

Annexure-A10: PPO dtd.4.2.2015

Annexure-A11: Apex Court order dtd.12.3.2001-AIRSCW 5193 (2) S.M.Munawalli V
State of Karnataka

Annexures with reply statement:

Annexure-R1: Statement showing details of the NQS

Annexure-R2: Rule 31 of RS(Pension) Rules, 1993

Annexure-R3: Statement showing details of NQS and QS

Annexures with rejoinder:

Annexure-A12: Memorandum dt.26.12.1984

Annexure-A13: Divisional Office Letter dtd.26.4.2001

Annexure-A14: Duty Roster dtd.6.9.1999

Annexure-A15 series: Medical Certificate dtd.29.9.1999

Annexure-A16 series: Representation dtd.17.9.2010 with medical certificates dt.6.12.94

Annexure-A17: Divisional Office Letter dtd.23.2.2000

Annexure-A18: Divisional Office Letter dtd.19.7.2001

Annexure-A19: Divisional Office Letter dtd.19.9.2001

Annexure-A20: Pay slip for July 2001

Annexure-A21: Pay slip for Nov 2001

Annexure-A22: Pay slip for October 2002

Annexure-A23: Pay slip for Nov 2002
