

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2681/2018

Order Reserved on: 30.10.2019
Order Pronounced on: 31.10.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Janak Singh, S/o Khubi Ram,
Aged about 56+ years,
Compulsory Retired Group 'D'
Working Trolley Man
Under Senior Section Engineer/Permanent Way,
Moradabad, UP
R/o A/2, House No.0.55.3,
Gali No.6, Indira Marg,
Delhi-110092 - Applicant

(By Advocate: Mr. KK Patel)

Versus

1. The Union of India
Through General Manager,
Northern Railway,
Baroda House, New Delhi-110001
2. Divisional Railway Manager,
Northern Railway,
Moradabad, UP - Respondents

(By Advocate: Mr. A.K. Srivastava)

ORDER

The applicant has filed the present OA, seeking the following reliefs:-

- “(a) Call for the records of the case
- (b) Direct the Respondents to grant pensionary benefits as provided under the Railway Service Pension Rules, 1993 from the date he is entitled under the statutory instructions of Railway

Board as well as the law laid down by the Apex Court in the matter of Union of India & Ors. Vs. Rakesh Kumar & Ors. decided on 24.03.2017 in CA No. 3938 of 2017.

- (c) Direct the Respondents to pay salary and other allowances for the period he was not been paid till 04.07.2016 when the punishment from removal of service was reduced to compulsory retirement by the Appellate Authority.
- (d) Direct the respondents to grant interests on delayed payments till the actual date of payment of pensionary benefits.
- (e) Award exemplary costs of the proceedings.
- (f) Pass such further order or orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

2.1 It is the case of the applicant that he was appointed to the post of Gangman on temporary basis on 15.11.1987 and continued to discharge his duties as such till his regularization, i.e. 15.03.1997 on substantive basis and thereafter continued to complete his service in the post of Gangman till 14.08.2006. The applicant has submitted that after issuance of charge sheet, the punishment of removal from service had been reduced to reinstatement vide order dated 14.05.2007 and he was reinstated in service on 01.06.2007. The applicant has further submitted that a penalty of removal from service w.e.f. 23.04.2011 was again imposed on him but the same too was reduced to compulsory retirement by the respondents vide order dated

04.07.2016 on filing an appeal before the appellate authority. The applicant has thus submitted that the entire period of about 29 years of service has to be included for assessing the qualifying service for grant of pensionary benefits in view of the Rule 20 of Chapter II of Railway Services (Pension) Rules, 1993.

2.2 The applicant has also submitted that he had earlier filed an OA No. 2758/2017 which was disposed of by the Tribunal on 18.08.2017 directing the respondents to pass a reasoned and speaking order on his representation dated 18.08.2016, but the respondents, vide their order dated 21.11.2017, have rejected his claim without considering the statutory instructions of Railway Board and the ratio laid down by the Hon'ble Supreme Court of India in the case of **Union of India & Ors. v. Rakesh Kumar & Ors.** (Civil Appeal No.3938/2017) on the same issue. Hence, the applicant has filed the present OA challenging the order of the respondents dated 21.11.2017.

3. In reply to the above, the respondents have filed their Counter Affidavit in which they have stated that during the temporary status of the applicant from 15.11.1987 to 14.03.1997, he remained absent 1718 days (4 years, 4 months and 17 days) and during his permanent service, i.e. from 15.03.1997 to 23.04.2011, he became absent for 4316

days (11 years, 10 months and 1 day) and as such, applicant's qualifying service is only 4 years 6 months and 28 days and therefore, the applicant is not entitled for pensionary benefits under the statutory instructions of Railway Board. They have thus prayed for dismissal of this OA.

4. After hearing the learned counsel for the parties and perusing the pleadings available on record, it necessary to examine the order dated 21.11.2017 of the respondents passed in compliance with Tribunal's order in OA No.2758/2017 and which reads as under:-

“But the employee's period of non qualifying service or absentee period is 1718 days during temporary service, i.e. between 15/11/1987 to 15/03/1997 and the period of non qualifying service during permanent service is 4316 days or the period of the absentee w.e.f. 15/03/1997 to 23/04/2011. In this way, the total qualifying service is only 04 Year, 06 Months and 28 days.

While for pensionary benefits, minimum qualifying service needs 10 years. Therefore, the employee is not entitled for pensionary benefits. The service record of employee with leave account and the case file of D&AR is being sent for kind decision and further order please.”

5. A perusal of this order passed by the respondents on 12.03.2018 establishes that the applicant had remained absent from 15.11.1987 to 15.03.1997 during his temporary service for a period of about 1718 days and for a

period of 4316 days w.e.f. 15/03/1997 to 23/04/2011 during his permanent service and as such, the applicant had rendered only 04 Years, 06 Months and 28 days of qualifying service. It is thus clear that the applicant had not completed the requisite qualifying service under Rule 20 of Railway Services (Pension) Rules, 1993 for grant of pensionary benefits and as such, in view of the non completion of minimum qualifying service by the applicant, the judgment relied upon by him in the case of **Rakesh Kumar's** case (supra) will also not be applicable in his case as well. Hence, in view of the same, we do not find any infirmity in the order passed by the respondents which has been impugned by the applicant in the present OA.

6. In view of the above factual position, the OA lacks merit and is accordingly dismissed. No costs.

(Nita Chowdhury)
Member (A)

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