

(2019) 09 CAT CK 0001
In the Central Administrative Tribunal
Case No : Original Application No. 156 Of 2019

Arvind Kumar

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

Railway Services (Pension) Rules, 1993 — Rule 20, 107

Citation : (2019) 09 CAT CK 0001

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Ranbir Singh Sandhu, A.K. Srivastava

Final Decision : Allowed

Judgement

1. The applicant pleaded that he has worked under the respondents - Railway as a daily rated casual labour and thereafter he was given a temporary post on 15.01.1984. He claims that he was screened and regularised on 24.02.1989 and in due course he superannuated on 31.08.2017.

2. At the time of retirement, a Pension Payment Order (PPO) was issued on 30.08.2017 which showed his qualifying service as 30 years. Applicant was not granted 3rd MACP also on the plea that his service was less than 30 years. Feeling aggrieved, he made a representation on 25.10.2018 and once again on 19.12.2018 pleading that his qualifying service should be 33 years 7 months and 15 days as against 30 years shown in the PPO.

3. Respondents - Railway replied on 21.12.2018 as under:

"In reference to your representation received in this office it is informed that your DOA - 15/1/84 and DOS - 24/2/89 you retired on superannuation on 31/08/2017. On re-examination of your service record it has been found that qualifying service is 29 yrs. 09 months and 26 days after deducting your non qualifying service of 475 days. As you have not completed 30 yrs of qualifying service as required for MACP in grade 5200-20200-2400 you request for MACP in

Grade 5200-20200+2400 cannot be considered."

Here DOA stands for date of appointment and DOS stands for date of screening. Screening is the procedure undertaken for regularisation.

4. Feeling aggrieved, applicant has filed the instant OA wherein a photocopy of his service record has also been annexed as Annexure A-2. A perusal of this service record indicates following entries at the beginning:

"Revised Scale given vide Acct ---- L No.12E/Sec in 1984 in

Gr Rs.200-250 (RS)

Pay as on 15-1-84

= 200/-

15-1-85

= 203/-

15-1-86

= 206/-

Sd/-

AEN-II

Allotted in new scale of pay against 4th Pay Commission

as Rs.775-1025

Pay fixed as on

1-1-86

= 799/-

15-1-86

= 811/-

Sd/-

AEN-II

1-1-87

= 823/-

1-1-88

=

835/-

1-1-89

=

847/-

1-1-90

=

859/-

1-1-91

= 871/-

1-1-92

= 885/-

Tfr & posted under GF (Diesel)

TKD vide APO/NDLS No. 293E/

384/PLDS P-5 dt. 12/91 spared

on 3/2/92 AN

Sd/-

AEN/WIN"

5. Applicant pleads that a temporary post was given to him on 15.01.1984, as the regular scale of Rs.200-250 was granted on this date. In respect of calculation of qualifying service for the purpose of pension, the subject matter had come up for adjudication before Hon"ble Apex Court in Union of India and others vs. Rakesh Kumar and others, Civil Appeal No.3938/2017, which was decided on 24.03.2017. In this case, Hon"ble Apex Court has given the following ruling:

"55. In view of foregoing discussion, we hold :

i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularised on a regular/temporary post for the purposes of calculation of pension.

ii) the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.

iii) Those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of Rules, 1993.

iv) It is open to Pension Sanctioning Authority to recommend for relaxation in deserving case to the Railway Board for dispensing with or relaxing requirement of any rule with regard to those casual workers who have been subsequently

absorbed against the post and do not fulfill the requirement of existing rule for grant of pension, in deserving cases. On a request made in writing, the Pension Sanctioning Authority shall consider as to whether any particular case deserves to be considered for recommendation for relaxation under Rule 107 of Rules, 1993."

6. On this basis applicant pleaded that he was granted a temporary post on 15.01.1984. His qualifying service is to be worked out as per Clause (iii) of the judgment of Hon"ble Apex Court (supra) and with this, his qualifying service would be 33 years 7 months and 15 days as against 30 years worked out by respondents as shown in PPO.

Applicant pleaded that once qualifying service is corrected, he is to be granted consequential benefits also by way of correction of the PPO, grant of 3rd MACP and refixation of his pension.

7. Per contra, the respondents opposed the OA. It was pleaded that grant of scale on 15.01.1984 does not indicate a temporary post. It only indicates that he was granted temporary status on that day and even with this scale he continued to be a casual labour, though not as a daily rated worker but as a scale rated worker. Keeping this in view, para (iii) of judgment of Hon"ble Apex Court (supra) is not attracted.

It was pleaded that with this, the calculation of qualifying service is correct and no further correction is called for.

8. Matter has been heard at length. Sh. Ranbir Singh Sandhu, learned counsel represented the applicant and Sh. A.K.Srivastava, learned counsel represented the respondents.

9. It is noted that the photocopy of service record as submitted at Annexure A-2, does not clearly show as to when the applicant was granted temporary status or when he was given a temporary post or when he was screened and regularised. It would be necessary that for working out qualifying service, the dates for these land mark events in his service need to be clearly known.

Once that is established, judgment by Hon"ble Apex Court will need to be applied. The reply by respondents dated 21.12.2018, is also not clear in this regard. The counter reply and the additional affidavit submitted by respondents also does not clarify this aspect.

10. In view of the foregoing, the respondents are directed to review the service record and work out the qualifying service for the applicant, duly applying the principles laid down by Hon"ble Apex Court in Rakesh Kumar (supra).

This exercise be completed within a period of two months and a clear date-wise statement showing land marks therein, be prepared and advised to the applicant.

It goes without saying that if as a result of this exercise certain consequential reliefs are required to be granted, the same shall also be granted to the applicant

within a further period of one month. Applicant shall have liberty to approach the Tribunal, if any grievance still subsists. No costs.