

(2019) 11 DEL CK 0554

In the Delhi High Court

Case No : Civil Writ Petition No. 12073 Of 2016, 3307 Of 2017, 4535 Of 2019,
Civil Miscellaneous Application No. 30010 Of 2018, 20184, 38976 Of
2019

Om Prakash & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 21-11-2019

Acts Referred:

Railway Services (Pension) Rules, 1993 — Rule 14(xiv), 24

Citation : (2019) 11 DEL CK 0554

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : Neelima Rathore, Jagjit Singh, Shipra Shukla, Vipin Chaudhary

Final Decision : Allowed /Allowed/Dismissed

Judgement

Dr. S. Muralidhar, J

1. These three petitions involve a common issue and are accordingly being disposed of by this common order.

2. W.P.(C) 12073 of 2016, which has been filed by 22 Petitioners and W.P. (C) 3307 of 2017 by 9 Petitioners, are directed against the same impugned order dated 12th February, 2016 passed by the Central Administrative Tribunal ("CAT"), Principal Bench, New Delhi in OA No.219 of 2016 rejecting the prayer of the Petitioners for grant of pensionary benefits.

3. The third petition W.P.(C) 4535 of 2019 is by the Union of India through the Northern Railway and is directed against an order dated 19th September, 2018 passed by the CAT, Principal Bench, New Delhi allowing OA No.4079 of 2016 and directing the Union of India to sanction pension including retirement benefits to the Respondent with effect from 1st November, 2015.

4. The factors common to the Petitioners in the first two writ petitions and the

Respondent in third is that they were all appointed as "Commission Bearers/ Vendors" on different dates by the Railways. On 13th December, 1976 a circular was issued by the Railways on the subject of "bearers/ vendors purely on commission basis." It was stated therein that action would be taken to progressively absorb the Commission Vendors/ Bearers in regular vacancies.

5. There have been a series of writ petitions on the issue of absorption of the Commission Vendors in the Railways. On 13th December, 1976 the Supreme Court disposed of W.P. (C) 6804 of 1982 (Sital Singh v. Union of India) where a direction was issued for progressive absorption of the Commission Bearers/ Vendors in terms of para 3 of the aforesaid memorandum dated 13th December, 1976.

6. Subsequently, in an order dated 8th September, 1987 in W.P. (C) 1670 of 1987 (TI Madhavan, General Secretary AIRCS Workers Union v. Union of India), a further direction was issued regarding the progressive absorption of all persons working as Commission Bearers and Vendors on various railway platforms belonging to the Central Railway and South Central Railway in terms of the same memorandum dated 13th December, 1976 "as and when vacancies to the posts of bearers in the Railway Catering Service occur". It was further reiterated that as already directed in the case of Sital Singh (supra), the Railways would first absorb all the Bearers registered in accordance with the aforesaid memorandum and thereafter, the Vendors who are so registered, and until all the Bearers and Vendors are accordingly absorbed, the Railway Administration shall not recruit or appoint any person either as a Bearer or Vendor on permanent basis in the Railway Catering Service from any other source.

7. Relevant to the case at hand, is a judgment of this Court dated 5th November, 2012 in W.P.(C) 5175 of 1998 (Gurdas Ram v. Union of India), where a learned Single Judge was dealing with a batch of writ petitions by Commission Vendors, who sought the relief of regularization, and in the alternative, absorption in Group "C" posts. While the learned Single Judge, negatived the plea of regularization, the other relief, viz., absorption against vacant Group "C" posts was allowed, provided the Petitioners had not crossed 59 years. The Railways was directed to consider the case of such Petitioners expeditiously i.e. within 12 weeks or so. A reference was made to the Railway's circulars dated 1st December, 2005 and 7th June, 2007 in this context.

8. The Petitioners before the CAT, including the Respondent in W.P.(C) 4535 of 2019, were all absorbed pursuant to the above order of the learned Single Judge in Group "C" Posts in 2015. They then approached the CAT with OA No.219 of 2016 praying for further consequential relief of grant of pensionary/retirement benefits. It was contended that the total service of each of the Applicants rendered prior to their absorption in the Railways should be counted for towards "qualifying service" for the purpose of such retirement/pensionary benefits.

9. In the first impugned order dated 12th February, 2016 the CAT has referred to

the decision of the learned Single Judge in Gurdas Ram (supra) and held that since the said judgment declined the prayer of regularization, it was not possible to entertain the plea of the Applicants for counting the past service without questioning the absorption orders, "even for pensionary benefits." That according to the CAT would amount to reviewing the above order in Gurdas Ram (supra), which would be impermissible.

10. However, as regards the application OA No.4079 of 2016 filed by Munsu Ram (the Respondent in W.P.(C) 4535 of 2019) another bench of the CAT chose to follow the decision dated 4th June, 2014 of the Ernakulam Bench of the CAT in OA No.417 of 2013 (V. S. Syed Ali v. Union of India) and the decision dated 29th September, 2016 of the Ernakulam Bench of the CAT in OA No. 523 of 2015 (Santa T.R. v. Union of India), where identically situated Applicants had been granted the relief of grant of pensionary benefits. Correspondingly, it is the Railways which has filed W.P. (C) 4535 of 2019, questioning the said order dated 19th September, 2018 of the CAT in OA No. 4079 of 2016.

11. This Court has heard the submissions of Mr. Sanjay Parikh, learned Senior Counsel, appearing for the Petitioners in W.P. (C) 12073 of 2016 and W.P.(C) 3307 of 2017 and of Mr. Jagjit Singh, learned Senior Standing Counsel, appearing for the Railways (which is the Petitioner in W.P.(C) 4535 of 2019), in all three petitions.

12. The Court finds that the issue is really not one of regularisation or absorption of the Commission Bearers/Vendors as far as the present round of litigation is concerned, since all of the Applicants before the CAT already stand absorbed in the Railways. The question really was of grant of pensionary benefits to them.

13. On this limited issue, there have been several petitions filed not only before the CAT in Ernakulam but before its Benches in Madras, Bangalore and Bombay.

14. On 21st April 2008 the High Court of Bombay disposed of W.P. No.190 of 2006 filed by the Western Railway questioning an order dated 24th June, 2005 passed by the CAT Mumbai in OA No.238 of 2004, as well as an order dated 30th November, 2005 in Review Petition 30 of 2005, accepting the grievance of the members of the Paschim Railway Karamchari Parishad that 50% of the service rendered by them as Commission Vendors along with services rendered by them as regular employees of the Railways shall be calculated towards qualifying service for pension. The Bombay High Court while rejecting the plea of the Western Railways found that the CAT had already passed an earlier order in OA No.538 of 1996 upheld by the Bombay High Court in W.P.(C) 498 of 2002 granting an identical relief. Special Leave Petition (Civil) 2146 of 2009 filed against the said judgment by the Railways was dismissed by the Supreme Court on 14th March, 2011.

15. As far as the Ernakulam Bench of the CAT is concerned, there have been a series of orders apart from the order in V. S. Syed Ali (supra) and Santa T. R. (supra) granting the relief as prayed for in these matters to identically situated

persons. On 20th March, 2009, the High Court of Kerala dismissed W.P. (C) 15756 of 2006 (S) (Chief Personnel Officer v. C. P. Sebastian) filed by the Railways, questioning the orders of the CAT Ernakulam Bench in OA No.440 of 2003, directing the Railways to count 50% of the service rendered by the Applicant, who had been absorbed as a Commission Bearer on contract basis for the purposes of granting pensionary benefits. In the said order in C. P. Sebastian (supra), the Kerala High Court referred to Rule 14 (xiv) of the Railway Services (Pension) Rules which reads as under:

"14. Periods which shall not be treated as service for pensionary benefits:

Periods of employment in any of the following capacities shall not constitute service for pensionary benefits, namely,

(i)

(xiv) on contract basis except when followed by confirmation"

16. The Kerala High Court in in C. P. Sebastian (supra) also referred to Rule 24 which reads thus:

"24. Counting of service on contract:

(1) A person who is initially engaged by the Railways on a contract is subsequently appointed to the same or another post in a substantive capacity, without a break in service, such contract period of service shall be treated like any other permanent service, in the railway and be taken into account for calculating for the pensionary benefits, subject to the conditions laid down in these rules-(1) Provided that

(i) the period of contract of service, during which the Contract officer did not subscribe to the State Railway Provident Fund (Contributory), shall count to the extent indicated above, if during such period, the railway servant concerned did not receive any inflated rates of pay by reason of absence of any retirement benefits;

(ii) if the railway servant concerned has subscribed to the State Railway Provident Fund (Contributory) during a period of service, he shall have the option either-

(a) to refund the Government contribution in the Provident Fund together with interest thereon, and Special Contribution to Provident Fund, if any, for the period in question and to count the contract service for pensionary benefits to the extent indicated above, or

(b) to retain the Government contribution to the Provident Fund with interest thereon including any other compensation and Special contribution to Provident Fund, if any, and not to count the period of contract service in question for pensionary benefits.

(2) The option, referred to in sub-clause (a) or sub-clause (b) of clause (ii) of

sub-rule (1), shall be exercised within three months of the date issue of the order of confirmation of the railway servant concerned in a substantive post and if he is on leave on that date, within three months of his return from leave, whichever is later.

(3) If no option is received from the railway servant, within the period referred to in sub-rule (2), he shall be deemed to have opted for retention of monetary benefits referred to in sub-rule (2), he shall be deemed to have opted for retention of monetary benefits referred to in sub-clause (b) of clause (ii) of sub-rule (1).

(4) Where a railway servant (on contract basis) who was admitted to the State Railway Contributory Provident Fund opts for the alternative in sub-clause (a) clause (ii) of sub-rule (1) above, the amount of Government contribution together with interest thereon including other compensation standing to his credit in the State Railway Provident Fund (Contributory) and the Special Contribution to the Provident Fund, if any, shall be surrendered and such amount shall be credited to the Consolidates Fund of India.

Provided that in a case where the Government contribution and the Special contribution, if any, have been paid to the railway servant, he shall be required to refund the amount received by him together with compound interest on the amount actually received from the date(s) of payment to the date of final refund, at the rate which would have been applicable to the Government contribution, if that amount would have remained in the fund and earned interest. In case where the railway servant dies before the entire amount is refunded, the amount which remains to be refunded shall be adjusted against the death gratuity which may become payable to the family of such railway servant."

17. The operative portion of the order of the Kerala High Court in C. P. Sebastian (supra) reads thus:

"In this case, we notice that the applicant worked on contract basis from 22.1.191 to 8.7.1994. Thereafter, he was absorbed in regular service. So, going by Rule 14 (xiv) and Rule 24 of the Pension Rules, we find nothing wrong with the direction of the CAT. In the light of the above rules, we uphold the claim of the applicant to the extent the same was upheld by the Tribunal. In the result, the writ petition fails and it is dismissed"

18. The above order of the Kerala High Court in in C.P. Sebastian (supra) was challenged by the Railways in SLP (C) No.17410 of 2010 (Chief Personal Officer v. C. P. Sebastian), which came to be dismissed by the Supreme Court on 22nd November, 2010 on the ground of delay.

19. The Kerala High Court on 18th September, 2004 again dismissed OP (CAT) No.144 of 2014 filed by the Railways questioning the orders passed by the CAT Ernakulam Bench in OA No.617, 419 and 780 of 2013 which was in identical terms as the order passed in C. P. Sebastian (supra) and V. S. Syed Ali (supra).

The Kerala High Court noted that an identical claim had already been upheld by the Kerala High Court in C. P. Sebastian and that, accordingly, the said writ petition was dismissed.

20. The said judgment of the Kerala High Court was again taken up by the Railways in the Supreme Court by SLP (Civil) CC Nos.17696-99 of 2015 which was dismissed as withdrawn on 4th December, 2015 with liberty to seek review of the High Court's order. Following the above order, a Review Petition 275 of 2016 was filed by the Railways in the Kerala High Court which was again dismissed by it on 5th April, 2017.

21. Turning now to the Madras Bench of the CAT, by an order dated 24th August, 2012 in OA No.198 of 2010 (R.V. Sarasvati v. Union of India), the CAT allowed the said application which sought for directions to the Railways to count 50% of the services of the Applicants, who had been directly recruited as Commission Bearers on a commission basis from 1985 till 1998, for reckoning the qualifying service for the purposes of pension. The decision of the Kerala High Court in C. P. Sebastian (supra) was referred to in this order.

22. The decision of the Madras Bench of the CAT was affirmed by the High Court of Madras by dismissal of W.P. (C) 10422 of 2013. The Southern Railway took a conscious decision, on advice by the Railway Board by its letter dated 11th April, 2014, not to file a special leave petition. This was communicated by the General Manager Southern Railway by a letter dated 17th June, 2016 to the Secretary (Establishment) of the Railway Board. The said orders of the CAT Madras Bench in R. V. Sarasvati (supra), therefore, stood implemented.

23. As far as Bengaluru is concerned, the CAT Bengaluru by a judgment dated 10th June 2015 in OA No. 1327 of 2014 (S. Raja v. Chief Personal Officer) granted identical relief to the those engaged as Commission Bearers. This too has been accepted and implemented by the Railways.

24. In view of the above decisions, resulting in the Railways accepting similar pleas of the absorbed Commission Bearers/Vendors elsewhere in the country as noted hereinbefore, there is absolutely no reason that a similar relief should not be granted to identically placed commission bearers/ vendors absorbed in the Northern Railway. In its impugned order dated 12th February 2016 in OA No. 219 of 2016, the CAT, Principal Bench at New Delhi erred in observing that in view of the order of the Single Judge of this Court in Gurdas Ram (supra), it was precluded from granting relief of counting 50% of the service for the purposes of pension. While in Gurdas Ram (supra) the plea of regularisation was declined, a specific direction was issued for absorption. The said decision, therefore, did not preclude any subsequent claim by the absorbed commission vendors/bearers for grant of pensionary benefits.

25. Consequently, the Court while affirming the order dated 19th September, 2018 passed by the CAT, Principal Bench, in OA No. 4079 of 2016, sets aside the order dated 12th February, 2016 passed by it in OA No.219 of 2016 and directs

that the Northern Railway will now proceed to grant the relief of counting the 50% of service of the Applicants in OA No. 219 of 2016 and OA No. 4079 of 2016 before the CAT for computing the qualifying period for grant of pensionary benefits on par with the relief granted to all other similarly situated persons by the various orders of the CAT, the High Courts and the Supreme Court. The necessary circulars by way of implementation will be issued not later than 8 weeks from today.

26. Accordingly, WP (C) 3307 of 2017 and WP (C) 12073 of 2016 are allowed and W.P. (C) 4535 of 2019 is dismissed in the above terms. All the pending applications are also disposed of.