

(2023) 04 CAT CK 0043

In the Central Administrative Tribunal

Case No : Original Application No. 1178 Of 2018

Ram Naval Shukla

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 18-04-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Railway Service Pension Rules, 1993 — Rule 20, 21, 22
Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 10

Citation : (2023) 04 CAT CK 0043

Hon'ble Judges : Dr. Sanjiv Kumar, Member (A)

Bench : Single Bench

Advocate : R.K. Updhayay, A.K. Updhayay, K.K. Ojha

Final Decision : Dismissed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. The instant OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking relief to set aside the impugned order dated 29.06.2018 passed by the Divisional Personnel Officer, North Central Railway, Allahabad to treat the entire period of casual labour commencing from the date 25.12.1975 to 05.12.1980, including the period of temporary service starting from the date 06.12.1980 to 17.08.1990 as well as the total period of earned leave with pay on medical certificate being absent as leave without pay being granted as medical leave with pay as for the purpose of granting the benefit of the retirement along with the benefit of the pension in accordance with law granting arrears with 18% interest and any other suitable order and to award cost.

2. The fact of the applicant is that he was appointed as casual labour on 25.12.1975. He was directed to appear for medical examination on 30.11.1980 and thereafter his services were regularized on 06.12.1980. The applicant has discharged the duties of permanent Khalasi sincerely from 13.01.2009 to 30.09.2015.

3. The applicant states that on his inquiry he found that he was selected in service since 1989 and his service is treated since 1990 and he several times requested supreme authorities of the department to treat his service since 06.12.1990 as permanent Khalasi from the date when the Divisional Medical Officer issued a medical certificate in his favour, is not proper and the same should be regularized from 06.12.1980.

4. He states that on further inquiry it was disclosed to him that he was appointed as casual labour on 25.12.1975 and different spells discharged his duties in the department upto 05.10.1980 and he was granted temporary status on 06.12.1980 and he was regularized on 17.08.1990. But he wants to be deemed regularized on 06.12.1980.

5. He further says that on inquiry he found that as para 2005 (b) of Indian Railway Establishment Manual Vol. II the casual labour who acquires a temporary status will not be brought on the permanent or regular establishment and will not be treated as regular employee on until and unless they are selected through regular selection board from the Group ?D? post in the manner as laid down from time to time. He came to know that casual labour shall be eligible to count to only half period of service as rendered by him, after attainment of temporary status on completion of prescribed period of continuous employment and before regular absorption as qualifying for the purpose of pensionary benefits. For the pensionary benefits between 06.12.1980 to 17.08.1990 only 50% of the service is counted as qualifying service and his services from 06.12.1980 for granting pensionary benefits was not covered by para 2005 (b) of Indian Railway Establishment Manual Vol. II.

6. He further says that he had submitted an application dated 17.1.1998 for casual leave between 17.10.1998 to 19.10.1998 as his mother was not well and he had submitted an application dated 01.07.1999 that he was absent due to serious illness of his mother hence the said period should be treated in accordance with law. He further says that Khand Abhiyanta Kanpur in his letter dated 21.09.1999 informed Mandal Chikitsa Adhichhak Loko Hospital, North Central Railway Kanpur requesting him that applicant has submitted report of his unauthorized leave from 29.07.1999 to 23.09.1999 showing his absence due to serious illness and submitted a medical certificate and his medical examination may be permitted, so that he might join his duties.

7. He further says that on 23.09.1999 also he sent an application for casual leave as he was receiving treatment. He further says that he submitted an application on 24.10.1999 for appointment as casual labour on 25.12.1975 and he has discharged duties upto 29.11.1980 and after that on 25.12.1980 he was directed to be examined medically on 30.11.1980 and he was regularized on 06.12.1980, but in his service book it is shown to have regularized on 17.08.1990 which is totally illegal as he was regularized on 06.12.1980 and not on 17.08.1990. He further says that he submitted an application on 23.09.1999 to permit the applicant to join his duties after taking medical leave from

18.07.1999 to 28.07.1999 and from 29.07.1999 to 22.09.1999 but the period of sanction earned leave has not been counted with the regular service of period showing him as absent. He further says that on 21.09.2000, Assistant Divisional Engineer, Railways, Allahabad reduced his punishment of removal to the reduction in same time pay scale by two stages for a period of two years without cumulative effect and allowed him to join his services, and his total period of absence from the date of removal dated 16.05.2000 to the date of joining was treated to be leave without pay, which is wholly illegal as the removal order was revoked on his appeal.

8. He further says that he submitted an application on 15.04.2005 to issue annual increment. Vide official document dated 28.07.2006 he came to know of deductions from his salaries. He further says that on 15.12.2014 he submitted an application to resolve 2418 days as leave without pay as he alleges that one Mr. Rakesh Kumar Srivastava, Senior Khand Engineer Pradhan with malafide intention has illegally treated the total period of absence from his duties amounting to 2418 days as leave without pay. He further says that he submitted an application on 22.09.2015 to count his casual labour and temporary period for the purpose of pension, but the same was not agreed. Applicant retired on 30.09.2015 and he received Provident fund of Rs. 1,33,6919/- (wrongly mentioned), DCRG of Rs. 2,56,790/-, commutation of Rs. 2,16,125/-, leave encashment of Rs. 1,44,354/- and GIS Rs. 10,016/-, totalling to 7,64,204/- which was based on unrevised and amended pay scale of the applicant without counting the period of casual labour and the temporary period. Further, the applicant made a representation on 30.01.2018 to respondent No. 5 requesting that his casual labour period from the date of 25.12.1975 to 29.11.1980 and temporary period from 30.11.1980 to 05.12.1980 have not been counted and added with regular service and total period of leave without pay of 2461 and 1392 days may also be directed to be added and counted as qualifying service for granting retiral benefits in view of Rule 20, 21 and 22 of the Railway Service Pension Rules 1993, but the same was not decided by the respondents. Hence, he requests that his sought relief should be granted as he is entitled for the same.

9. The respondents have filed counter affidavit wherein the basic facts of the applicants are not disputed. The applicant started as casual labour commencing from 25.12.1975 and till 05.12.1980 intermittently and then on 06.12.1980 he attained temporary status and on 17.08.1990 he was regularized. In terms of para 2005 (b) of IREM Vol. II, such casual labour who acquires temporary status will not however be brought on to the permanent or regular establishment or treated as regular employee on Railways until and unless they are selected through regular selection board for Group ?D? post in the manner laid down from time to time. Such casual labours are entitled to certain rights and benefits admissible to temporary Railway servant as laid down in Chapter XXIII of this Manual. Their service period to the absorption to temporary/permanent/ regular cadre after the required selection / screening will not be count for the purpose of seniority. Casual labours who have attained temporary status will also be entitled

to carry forward their leave at their credit to new post on absorption in regular service. Daily rated casual labour will not be entitled to these benefits. They say that in terms of para 1501 of IREM Vol. I A, temporary railway servant means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include the casual labour including casual labour with temporary status, a contract or part time employee or an apprentice. Therefore, temporary status services of the applicant from 06.12.1980 to 16.08.1990 cannot be termed as temporary service in terms of Railway Service (Pension) Rules, 1993. They further say that as per leave records of the applicant, he has been sanctioned total of 2452 days leave without pay for various spells of period from 1992 to 2003 and this period cannot be sanctioned as leave on half average pay at this belated stage, as it is sanctioned by the competent authority only in the case of medical ground duly supported by medical certificate. Hence, the request of the applicant to consider him deemed permanent from 25.12.1978 is not supported by any rule as he has clearly been regularized from 17.08.1990, hence benefit of counting only half the period of services rendered by the applicant after attaining temporary status and regularization of service from 17.08.1990 has been taken as qualifying service for the purpose of pensionary benefits. The applicant has not supported his claim that he has certificate from Railway doctor to substantiate a claim to leave on medical grounds, and due to that his absence period was as unauthorized leave and the same cannot be regularized at this belated stage.

10. They further say that the applicant superannuated on 30.09.2015 and had filed earlier OA No. 436 of 2018, although that OA was time barred. They further state that casual labour card No. 67214 clearly shows that he was merely a casual labour and he was granted temporary status only on 06.12.1980 and given a scale of Rs. 196 – 232 of the post of Khalasi. His claim that from the date of medical examination in 1980 he should be considered as regularized in service is entirely erroneous and not acceptable. From the rules it is very clear that for counting of qualifying service for retirement benefits of a Railway employee half period from temporary status to regularization and full period from regularization to retirement is counted as per para 2005 of IREM Vol. II as eligible.

11. The respondents also denies all the claims of applicant and say that various leave applications were all rejected as it were not supported by any doctor's certificate as dated between 17.10.1998 to 19.10.1998 and application dated 01.07.1999, and his absence from 17.10.1998 to 20.03.1999, the applicant was sent for medical examination on 21.09.1999 and was declared unfit for duty after medical examination. The applicant was again unauthorizedly absent between 29.07.1999 to 23.12.1999 as is evident from his earned leave account. He was removed from service on 16.05.2000 due to unauthorized absent from duty and on his appeal to the reviewing authority and after reconsideration, reviewing authority reinstated and reduced the punishment from removal from service to reduction in same time scale by two stages for a period of two years without cumulative effect.

12. They further aver that it is completely false to say that 2018 days shown as unauthorized absence is by malafide intention of the then official Shri Rakesh Kumar Srivastava, where as it is seen from the earned leave account of the applicant that the applicant was accustomed to unauthorized absenteeism. His representation dated 30.01.2018 has already been decided vide competent authority letter dated 29.06.2018 in compliance of the order dated 03.05.2018 passed by this Tribunal in OA No. 436 of 2018 and the contention of the applicant that his permanence in service should be counted from the date of his medical examination is not based on any rules as he was regularized only on 17.08.1990. His services rendered after attaining temporary status as regularization of service has been taken as qualifying service for all pensionary benefits. They further emphatically argued that all his pensionary benefits are properly calculated based on following points:-

- i. Minus unauthorized absence.
- ii. 50% from the date of temporary status to the date of regularization.
- iii. 100% from the date of regularization to the date of retirement.

13. Hence, they say that there is no merit in the OA and the same should be dismissed.

14. Rejoinder affidavit has been filed by the applicant in which he reiterates his facts as submitted in the OA and nothing new has been disclosed.

15. The case came for last hearing on 10.04.2023. Shri R.K. Updhayaya, learned counsel for the applicant and Shri K.K. Ojha, learned counsel for the respondents were present and heard. I have gone through the records carefully and considered the rival contentions.

16. From the record it is evident that basic facts are not contested. The fact remains that the applicant joined as casual labour on 25.12.1975 and he attained a temporary status from 06.12.1980 and was regularized on 17.08.1990 and he retired on 30.09.2015. From the submissions in the OA it is evident that facts narrated therein is neither very coherent nor convincing, it also suppresses many facts important amongst them was that there was another OA No. 436 of 2018 filed earlier by the applicant wherein an order was issued on 03.05.2018 and pursuant to that order the impugned order has been passed, which is challenged in this OA, but this point has not been highlighted. It is also clear that the rules are not contested but application of rules whether period between 1975 to 1980 were intermittently the applicant was in casual employment should be counted for the purpose of pensionary benefits? As rules are clear that only when they attained temporary status they get a scale as well as from that day onwards to the date of regularization the period is counted 50% for the purpose of pensionary benefits, and rightly the respondents have taken it into account. And after 1990 when the applicant was regularized then full period is to be taken for the purpose of pensionary benefits, and rightly the respondents have taken that

period also into account. Furthermore, the period of unauthorised absence which have been deducted from the period of qualifying service is also convincing as from the service record and the averments from both sides it is very evident that the applicant was a habitual unauthorized absentee and all his acts and omissions of unauthorized absence are reflected in the service record and it is further corroborated by very few application letters which the applicant himself submitted as his evidence, without supporting documents from any doctor etc. And, at this belated stage trying to open those old cases of unauthorized absence being marked against him, to be regularized considering his period of absence as on duty will be completely impermissible. Each event of unauthorized absence was distinct and different cause of action for appeal, and if he has not preferred those appeal in time, in the respective years and months, the applicant cannot be allowed to contest them at this belated stage. The said act is having unexplained delay and latches as well as the same is hit by rule 10 of pleural remedies of the Central Administrative Tribunal (Procedure) Rules, 1987. As adjudicating on each separate act of unauthorised absence, together collectively will only confuse the onlookers as to proof for each event has to be different and distinct. And at this belated stage, those periods of unauthorized absence have to be taken as such and nothing before me has been placed, which can convince me that I can interfere with the stand of the respondents in treating those periods as unauthorised absence. Picking holes in the service record at this belated stage is inadmissible and cannot substantiates the claims of the applicant about the unauthorised absence. If I examined the impugned order dated 29.06.2018, it reads following:-

"Sub:- OA No. 436/2018 filed by Shri Ram Nawal Shukla V/s UOI & Others decided by Hon?ble CAT/ALD on 03.05.2018.

While deciding OA No. 436/2018 on 03.05.2018, Hon?ble Central Administrative Tribunal, Allahabad has disposed of the OA which the direction to the respondent No. 5/competent authority to consider the representation dated 30.01.2018 of the applicant as per extant Rules and pass a reasoned and speaking order to be communicated to the applicant within 03 months from the date of receipt of a certified copy of the order.

Before going into the case it is to mentioned here that you have retired on superannuation under the jurisdiction of DA&CAO/NC Railway/ALD on 30.09.2015. However, you have made Divisional Authorities including of FA&CAO/NC Railway/ALD as respondents in the subject OA. Your case was sent to FA&CAO to decide your representation but since you made Divisional Authorities as respondents also, it has been decided to decide your representation dated 3.01.2018 by Divisional Authorities as respondents in compliance of Hon?ble CAT/ALD?s order dated 30.05.2018 in subject OA.

After perusal of your representation dated 30.04.2018 (Annexure 17 of OA). It is seen that earlier you had filed OA No. 681/2016 before Hon?ble CAT/ALD which was decided vide order dated 23.05.2016. The contents of your representation

dated 22.09.2015 decided vide this office letter No. EA/Lit/CAT/146/16 dated 31.05.2017 in compliance of Hon'ble CAT/ALD's order dated 23.05.2016, are about similar as of your present representation dated 30.01.2018 which is to be decided. You have brought out the fact of your earlier OA No. 681/2016 filed before Hon'ble CAT/ALD and decided by the respondent No. 1 of this Railway in the present OA. Even though in compliance of Hon'ble CAT/ALD's order in the subject, I have gone through your representation dated 30.01.2018. In your representation, you have brought out mainly the following points:-

1. You were appointed on 25.12.1975 under SSE (HQ)/CNB. You have worked from date of appointment to 29.11.1980 as Casual Labour. You were sent for medical examination on 30.11.1980. Your service was regularized in scale of Rs. 196- 232 from 06.12.1980 after you submitted medical fit certificate on 05.12.1980 in the office of SSE(HQ)/CNB.

2. You were working from 13.01.2009 till date of retirement in NCR/HQ/ALD. On enquiry, it was disclosed that you have been selected in service in 1989 and your service will be regularized from 1990. You have requested several time to the Supreme Authorities of the department to treat your service regularized from the date 06.12.1980, not from the date of 06.12.1990.

3. As per requirement of law as laid down in the Railway Service (Pension) Rules, 1993 even the period of casual service as well as period of temporary service as rendered by the employer shall be duly counted for the purpose of granting the benefit of pension.

4. Having regard to the facts and circumstances it is desirable to treat entire period of Casual labour commencing from the date of 25.12.1975 to the date of 29.11.1980 including the period of temporary service starting from 06.12.1980 to 16.08.1990 as well as total period of 2461 days and 1392 days being absent as leave without pay, being granted as medical leave with pay, as qualifying service for the purpose of granting the benefit of the retirement dues along with the benefit of pension.

I have carefully examined your representation dated 30.01.2018, your Service Record and settlement papers and find that;

(i) AS per Your Casual Card Record you were appointed as casual Labour on 25.12.1975 and worked in various spells upto 05.10.1980. You have been granted temporary status from 06.12.1980. As per ADEN (HQ)/CNB letter No. E/4/Regularization/96 dated Nil; your service has been regularized from 17.08.1990.

(ii) In terms of para 2005(b) of IREM Vol. II, Casual Labour who acquire temporary status, will not, however, be brought on the permanent or regular establishment or treated as in regular employment pm Railways until and unless they are selected through regular selection Board for Group D posts in the manner laid down from time to time.

(iii) In terms of 2005(b) of IREM Vol. II, Casual Labour including project Casual Labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment.

(iv) In terms of Para 1501 (i) of IREM Vol. I, a temporary servant means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include "casual labour", including "casual labour with temporary status", a "contract", or "part time" employee or an "apprentice".

Therefore, your temporary status service from 06.12.1980 to 16.08.1990 cannot be termed as temporary service in terms of Railway Services (Pension) Rules, 1993.

(v) As per your Leave Record, you have been sanctioned total 2452 days LWP for various spell or period from 1992 to 2003. This period cannot be sanctioned as LAHP at this belated stage as LAHP are sanctioned by the Competent Authority only in case of medical ground duly supported by medical certificate.

From the above it is clear that your contention that your service should be deemed permanent from 25.12.1975 i.e. from the date of appointment as Casual Labour till date of regularization i.e. 16.08.1990 is not based on rules in this regard. As per ADEN (HQ)/CNB letter No. E/4/Regularization/96 dated Nil; your service has been regularized from 17.08.1990 and hence, benefit of counting only half the period of service rendered by you after attaining temporary status and regularization of service from 17.08.1990 has been taken as qualifying service for the purpose of pensionary benefits.

In view of above, your representation dated 30.01.2018 is disposed of."

17. On simple perusal of this order I find that it was a speaking order; and clearly giving all reasons, how his unauthorized leave period cannot be counted for the purpose of pensionary benefits, and how his casual employment could not be counted for pensionary benefits, and how 50% of his period from his dated declaration of temporary status to regularization is counted, and how his period after regularization has been counted. I also find that as per rules only, the respondents have calculated applicant's pensionary benefits, which appears to be after due process of law as well after affording ample opportunity to the applicant of being heard. And the said order is reasonable and correct. The impugned order is a speaking order, providing cogent reasons for rejection of the claim of the applicant.

18. Considering this I do not find any ground to interfere with the impugned order and grant any relief to the applicant. Also, as the applicant by suppressing facts in the OA and trying to mislead the Tribunal by putting too many facts in an

incoherent way and repeating same facts again and again and bringing same issues multiple times, the conduct of the applicant does not appear to be clean. The litigation on the subject should get finality. Hence, I pass following orders:-

"The OA is dismissed. Associated MAs, if any, shall stand disposed off. No costs".