(2018) 09 CAT CK 0155

In the Central Administrative Tribunal

Case No : Original Application No. 146 Of 2017

Shiv Bhadur Yadav APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 07-09-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Railway Services (Pension) Rules, 1993 — Rule 20, 31, 107

Citation : (2018) 09 CAT CK 0155

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Yogesh Sharma, Rahul Pandey

Final Decision : Disposed Of

Judgement

1. By filing the present OA under Section 19 of the Administrative Tribunals Act, 1985, the applicant is seeking the following reliefs:-

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned PPO order declaring to the effect that reducing the pay of the applicant from Rs.19340/- to Rs.17860/- is illegal, arbitrary and against the principle of natural justice and consequently, pass an order directing the respondents to calculate all the retirement benefits of the applicant including leave encashment and pension on the basis of pay of Rs.19340/- with all the consequential benefits including difference of amount and refund of any recovery if made with interest.

(ii) That the Hon'ble Tribunal may graciously be pleased pass an order directing the respondents to release the entire amount of gratuity with interest @ 18% from the date of retirement of the date of payment.

(iii) That the Hon'ble Tribunal may graciously be pleased pass an order directing the department to 50% casual service i.e. w.e.f. 14.11.1987 and entire temporary status service for granting retirement benefits and consequently, pass an order directing the department to re-calculate all the retirement benefits of the applicant and grant the difference of amount to the applicant immediately with interest at the rate of 18% P.A.

(iv) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation.

2. Brief facts of the case as narrated by the applicant are that he was initially appointed in the Railway department on casual basis on 19.9.1975 and subsequently, he was granted temporary status w.e.f. 15.11.1987 and thereafter was regularized w.e.f. 29.4.1989. The applicant while working as Loco Pilot (Goods) at Northern Railway Station, Tugalakabad, New Delhi, has retired from his service on 31.7.2015.

2.1 The applicant further submitted that at the time of retirement, his basic pay was Rs.19340/- but while calculating his retiral benefits, the respondents without passing any order, without issuing any show cause notice and even without intimating the applicant, his pay has been reduced to Rs.17860/- and the applicant came to know regarding this reduction only from the PPO.

2.2 Applicant further stated that applicant approached in the office of the respondent No.3 regarding reduction of his pay, but no reason has been given to him.

2.3 Applicant also stated that from the PPO it came to his knowledge that the respondents have wrongly calculated his qualifying service as 27 years, whereas his qualifying service is more than 33 years. All other retirement benefits of the applicant have been reduced but till date the gratuity of the applicant has not been released even on the basis of reduced pay and the same is withheld without any reason and justification as at the time of retirement neither any departmental charge was pending against the applicant nor any criminal case was pending against the applicant. Therefore, withholding of gratuity is without any basis.

2.4 Applicant further stated that as per rule 31 of the Railway Services (Pension) Rules, 1993, half of the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment, but the Hon'ble Andhra Pradesh High Court in the case of General Manager, South Central Railway, Rail Nalayam, Secunderabad, AP & another vs. Shalik Abdul Khader (WP No.10837 of 2001) decided on 23.6.2003 and also the decisions of this Tribunal in Shri Chander Pal & another vs. Union of India & another (OA 1502/2005) decided on 16.2.2006 and Chotan Parshad & others vs. Union of India and others (OA No.2006/2006) decided on 18.3.2008 held that the entire temporary status casual service should be counted for the pensionary benefits and 50% period working before acquisition of temporary status should be counted for pensionary benefits.

2.5 Applicant further stated that as per his knowledge the judgment of Hon'ble

Tribunal in Chander Pal case had already been upheld by the Hon'ble High Court of Delhi and recently this Tribunal in OA No.3041/2011 (Sita Ram vs. Union of India and others) decided on 27.2.2012 directed the department to count entire casual period for the purposes of pensionary benefits.

2.6 Applicant also stated that the department while calculating the qualifying services for the purposes of retirement benefits, counted the service of the applicant only w.e.f. 29.4.1989, i.e., the date of regularization and only counted 50% of casual service with temporary status and granted the retirement benefits to the applicant accordingly by calculating 27 years service whereas after counting entire temporary status service and half casual service, the applicant completed more than 33 years of service, which is totally illegal, arbitrary and discriminatory in the eyes of law.

2.7 Applicant further stated that when the aforesaid came to the knowledge of the applicant, the applicant sent a legal notice dated 5.10.2016 but till date no reply has been received and therefore, he left with no option except to approach this Tribunal for redressal of his grievances.

3. Pursuant to notices issued to the respondents, they have filed their counter affidavit in which they have stated that the applicant was appointed as casual labour on 19.9.1975 and subsequently he was granted temporary status on 15.11.1987 and thereafter he was regularized on 29.9.1989. The applicant on attaining the age of superannuation retired from the post of Loco Pilot (Goods) under Sr. CC/Loco TKD, New Delhi on 31.07.2015.

3.1 Respondents further stated that last pay of the applicant was Rs.17860 and not Rs.19340/- as claimed by the applicant and to support their claim they stated to have annexed history sheet as Annexure R-I with the Counter Affidavit but no such history sheet is annexed with the counter affidavit. Accordingly, on the basis of applicant's last pay @ Rs.17860/- his settlement dues were released after verification from associate finance.

3.2 They further stated that DCRG of the applicant could not release as the same has been withheld for want of recovery of over payment of pay which is still awaited from his last working office, being worked in running cadre and the same will be released shortly on receipts of the same subject to verification from associated finance.

3.3 They also stated that no such regard is available regarding counting of casual service as claimed. However, it is stated that as per Annexure R-II (not available with counter affidavit filed by the respondents), the matter pertaining to the period of more than 30 years regarding counting of casual labour period without having of authentic record are not to be considered. Since in this particular case, the relevant record as claimed by the applicant is not provided/available as such question for counting of said period towards QFS is not considerable at this stage.

3.4 They further submitted that his qualifying service has been taken from his date of appointment on 27.11.1987 followed by rgularisation and has been paid correct due pensionary benfits for the period of 27 years.

3.5 Lastly they stated that the instant OA is liable to be dismissed by this Tribunal.

4. We have heard learned counsel for the parties and have perused the material placed on record.

5. Counsel for the applicant has submitted that qualifying service of the applicant has not been correctly calculated by the respondents as the applicant was initially appointed as casual labour on 19.9.1975, subsequently granted temporary status on 15.11.1987, regularized on 29.9.1989 and finally retired on 31.07.2015. If the applicant's entire service from the date of grant of temporary status, i.e., 15.11.1987 till his retirement, i.e., 31.7.2015 and also his 50% service rendered as a casual labour (19.9.1975 to 14.11.1987) was taken into consideration, his qualifying service for the retiral benefits would have come to more than 33 years but the respondents have wrongly calculated his qualifying service as 27 years which is illegal, arbitrary and discriminatory.

5.1 Counsel for the applicant has submitted that applicant's last pay was at Rs.19340/- but the respondents have taken his last pay as Rs.17860/-, as mentioned in the PPO order annexed as Annexure A/1 with the OA, as such the same has been done without passing any order, without issuing any show cause notice and even without intimating the applicant, which amounts to violation of principle of natural justice.

5.2 Counsel also submitted that the amount of DCRG has not yet been released by the respondents even on the basis of reduced pay as taken by them in the PPO order, despite the fact that neither any disciplinary proceedings nor criminal case is pending against the applicant.

6. Counsel for the respondents has submitted that respondents have rightly calculated the qualifying service of the applicant as mentioned in the PPO. Counsel further submitted that DCRG has not been released for want of recovery of over payment of pay which is still awaited from his last working office and the same will be released shortly on receipt of the same subject to verification from associated finance. Counsel also submitted that qualifying service has been taken from his date of appointment, i.e., 27.11.1987 followed by regularization and has been paid correct due pensioner benefits for the period of 27 years.

7. After hearing counsel for the parties, the following issues are required to be adjudicated in this case:-

i. Whether qualifying service of the applicant as calculated by the respondents is correct or not?

ii. Whether the action of the respondents withholding the amount of DCRG in the garb of want of recovery of over payment which is awaited from his last working office is sustainable in the eyes of law?

iii) Whether the last pay as taken by the respondents at Rs.17860/-, instead of Rs.19340/- as claimed by the applicant, while calculating the applicant's retiral benefits, including the pension is correct or not?

8. So far as the first issue is concerned, the respondents have calculated the qualifying service of the applicant from the date of his appointment, i.e., 27.11.1987 followed by regularization, as stated by them in the counter affidavit, and have accordingly calculated the pensionary benefits for the period of 27 years, whereas the applicant contends that his 50% of casual labour service w.e.f. 19.9.1975 till the grant of temporary status and entire service from the date of grant of temporary status followed by regularization till his retirement, i.e., from 15.11.1987 to 31.7.2015 should have been counted as qualifying service for the grant of pensionary benefits, including pension.

8.1 This issue of counting of casual labour service and temporary service as qualifying service for the grant of pensinoary benefits have been raised in plethora of cases before this Tribunal, High Courts and the Supreme Court and finally the Hon'ble Supreme Court in the case of Union of India and others vs. Rakesh Kumar and others (Civil Appeal No.3938 of 2017 decided on 24.3.2017 after elaborate discussion on the rule position as well as of the previous judgments on this issue, including the judgment of Andhra Pradesh High Court in General Manager, South Central Railway, Secunderabad & Anr. Vs. Shaikh Abdul Khader (supra) held as follows:-

"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.

56. In result, all the appeals are allowed. The impugned judgments of Delhi High

Court are set aside. The writ petitions filed by the appellants are allowed, the judgments of Central Administrative Tribunal are set aside and the Original Applications filed by the respondents are disposed of in terms of what we have held in para 55 as above."

From the above, it is clear that qualifying service of the casual labour who granted temporary status and subsequently regularized, has to be calculated as devised by the Hon'ble Apex Court supra. From the counter affidavit, it is clear that respondents have not taken into consideration 50% of casual labour service rendered by the applicant towards qualifying service and further the date of grant of temporary status is also different as according to the applicant, he was granted temporary status on 15.11.1987 whereas respondents have considered the date of grant of temporary status as 27.11.1987. The respondents have also taken a plea that since the relevant records as claimed by the applicant are not provided/available as such question for counting of said period towards qualifying service in not to be considered at this stage. This plea is not sustainable in the eyes of law as it is the duty of the respondents to keep and maintain records of each and every employees. So the respondents are duty bound to consider the casual labour service period rendered by the applicant, as claimed by him and if the position is otherwise, the same may also be brought to the notice of the applicant after verification of records pertaining to the services rendered by the applicant. Accordingly, the first issue is answered in above terms.

9. So far as second issue relating to action of the respondents withholding the amount of DCRG in the garb of want of recovery of over payment which is awaited from his last working office is concerned, it is a cardinal principle of law that the Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re- employment after retirement.

But in the case in hand, the respondents although have stated that DCRG has not been released for want of recovery of over payment, which is awaited from his last working office. The applicant was retired from the service on 31.7.2015 and the counter affidavit was filed by the respondents on 11.4.2018, but they have still not stated what amount of over payment is required to be recovered from the applicant and even during the course of hearing, counsel for the respondents was unable to state the same. As such this kind of evasive answer is not sufficient reason for withholding the amount of DCRG indefinitely. This issue is answered accordingly.

10. So far as third issue is concerned, having regard to the submissions of learned counsel for the parties on the same as noted above, this Court is of the view that although the respondents have stated in the counter affidavit that as

per Rules the applicant's last pay was @ Rs.17860/- and they have also stated that history sheet is annexed with the counter affidavit as Annexure R-I, but the same has not been available with the counter affidavit filed by the respondents, the respondents are duty bound to inform the applicant the reasons for taking last pay of the applicant as Rs.17860/- instead of Rs.19340/- as claimed by the applicant. This issue is accordingly answered.

11. In view of the above, for the foregoing reasons, the instant OA is disposed of with the following directions to the respondents:-

(i) to calculate the qualifying service of the applicant in terms of the judgment of the Apex Court in the case of Rakesh Kumar (supra) and ensure that records pertaining to casual labour service rendered by the applicant should be fetched from the concerned department/places of work, as also see the actual date of grant of temporary status to the applicant;

(ii) to inform the reasons to the applicant for calculating the last pay of the applicant as Rs.17860/-;

(iii) to provide the details of exact amount of recovery of over payment, as alleged by the respondents for not releasing the DCRG. If no reason has been informed to the applicant for the alleged recovery, the applicant is entitled to payment of gratuity with interest at the rate applicable to the GPF account from the date the amount of gratuity is due till the date of actual payment.

(iv) The above exercises shall be completed within a period of 90 days from the date of receipt of certified copy of this Order. There shall be no order as to costs.

