
(2008) 07 CAL CK 0068
In the Calcutta High Court
Case No : W.P.C.T. No. 844 of 2005

Union of India (UOI) and Others

APPELLANT

Vs

Ujigar Shaw alias Ujagir Shaw

RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Railway Services (Pension) Rules, 1993 — Rule 26, 32

Citation : (2008) 4 CALLT 324

Hon'ble Judges : Prasenjit Mandal, J;Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Prodosh Kumar Mallick and Soma Roy Chowdhury, for the Appellant;Amal Baran Chatterjee, P.K. Sinha and Chinmoy Kumar Ghosh, for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.—The applicant union of India represented through General Manager South Eastern Railway, and its officials have challenged the judgment and order dated 27th July, 2005 passed by the learned Central Administrative Tribunal (hereinafter in short referred to as Tribunal). The learned Tribunal by its impugned judgment and order has directed the applicants herein to grant pension and other retiral benefits to the applicants for the services alleged to have been rendered by him for the period of 17th June 1969 to 24th of April 1982 treating him regularly absorbed in Group C post as Motor Lory Driver {hereinafter in short ML Driver) as per rules. The fact of the case leading to filing of the above application before the Tribunal is as follows:

Ujigar the respondent herein was engaged as a Substitute Peon in the office of Chief Electrical Engineer on and from 17th June 1969 and then was engaged as ML Driver with effect from 1st May, 1971 in the Container Service Organization of the applicant at a pay scale of Rs. 110 - 180/- as under DTS, Shalimar the said post of ML Driver was and is a Group C post. He worked in that capacity till 23rd April 1982 when he was declared surplus in that organization. Thereafter he was sought to be engaged as substitute Shed Khalasi which is Group D Post.

Obviously being aggrieved by the said reversion, he unsuccessfully filed a writ petition in this Hon"ble Court and ultimately he was asked to join the post of Shed Khalasi at Santragachi in terms of the aforesaid order dated 23rd April, 1982. It appears he never joined that post, nor worked as such. Though once he wanted to join after 16 years after obtaining fit certificate, but he was not allowed to do so. He thereafter made several representations fruitlessly for redressal of his grievance namely for reinstatement in the services. Ultimately he filed an application being OA No. 1226 of 1996 to the learned Tribunal. The said application was, however, allowed to be withdrawn by an order dated 23rd April, 2003 granting liberty to file representation regarding grant of pensionary benefits for his regular service in the department from 1969 to 1982 i.e. about 13 years along with necessary and supporting documents and the respondent authority by this order was asked to consider the same in accordance with law. Thereafter he made written representation stating all the facts of his engagement and claimed retiral benefit. The same was disposed by an order dated 25th August 2003 by the Senior Divisional Personnel Officer South Eastern Railway Kharagpur. By this order the said Officer found that the respondent Ujigar, was not entitled to pension because he was never absorbed in the regular Railway service.

2. Ujigar thereafter challenging the aforesaid reasoned order and praying almost similar relief which was asked in the earlier application filed second application being OA No. 1163 of 2003 on which the impugned order was passed.

3. The learned Tribunal by its judgment and order concluded upon considering records and other things that the applicant had rendered 11 years of service in the capacity of ML Driver and before that he worked as Substitute Peon from 1969 till 1st May, 1971. So his total length of service was from 17th June 1969 to 22nd April 1989 for about 13 years. The learned Tribunal therefore by necessary implication gave a declaratory relief that he should be treated to have been regularly absorbed in Group C Post as ML Driver taking into his service rendered from 17th June, 1969.

4. Mr. P.K. Mallick, Senior Advocate, appearing for the aforesaid applicants, contends that the direction for granting pension to Ujigar Shaw, the respondent herein is patently bad not only on fact but under the law as well. Factually and admittedly the respondent was not absorbed in the post of Substitute Peon but he was appointed ML Driver on 1st May 1971 and this engagement was also as a substitute. He was never absorbed in the post of ML Driver. Subsequently, he was declared surplus as such he was subsequently sought to be adjusted in the post of Shed Khalasi where he did not join. The learned Tribunal has totally overlooked the aforesaid fact. He has drawn our attention to the provision of relevant rules entitling pension to the substitute staff. Namely Rule 32 of Railway Service (Pension) Rules. The said rule is set out hereunder.

Counting of Service of a Substitute: Service rendered as substitute shall be counted for pensionary benefits from the date of completion of three months in the case of Teachers and four months in other cases of continuous services as

substitute followed by absorption in Regular Group C or Group D Posts.

5. Admittedly he was never absorbed. He has also drawn our attention to the relevant rules namely Rule 26 of Railway Service (Pension) Rules 1993 which defines substitute and the same is set out hereunder:

Substitute means a person engaged against regular/permanent or temporary post by reason of absence on leave or otherwise of a permanent or temporary railway servant and such substitute shall not be deemed to be a railway servant unless he is absorbed in the regular railway service.

6. This Rule 32 of the said rules makes it clear the length of the service rendered by a particular staff as a substitute will be taken into consideration for the purpose of obtaining pensionary benefits provided he qualifies himself on being absorbed for getting pensionary benefit. Factually and admittedly he was not absorbed.

7. He further submits that the learned Tribunal had no jurisdiction to give declaration that he was deemed to have been absorbed in ML Driver and it is patently wrong to count his service as a Substitute Peon for computation of pensionary benefit.

8. Mr. Amal Baran Chatterjee, learned Advocate, appearing on behalf of the respondent applicant, contends that the said Senior Divisional Personnel Officer did not consider the representation properly in terms of the direction of the learned Tribunal. The said official has ignored engagement of the applicant in ML Driver. He was engaged as a regular staff neither as an ad hoc nor as a substitute. If the letter of appointment is read carefully it will appear it was an appointment on selection and as such he had to undergo medical test and to comply with all the directions as it is done in case of a regular employment.

9. It will appear from the said letter of appointment that he was given pay-scale of Group C post. He was not removed nor discharged from the services but he was declared surplus though no fault of his own. Therefore, he should not have been denied his service nor could have been reverted to the post lower in rank. However, grievance was once brought before the Tribunal and then withdrew the same with hope that he would get pensionary benefit. The learned Tribunal has rightly held that engagement of the applicant was not ad hoc and the length of service is rightly been taken into consideration by the learned Tribunal as he rendered services as substitute peon from 1969 to 1971 for two years and then in the capacity of ML Driver from 1971-82. The aforesaid fact was not taken into consideration by the said Officer while deciding the representation in which the aforesaid case was specifically made out.

10. He further contends referring to relevant Rule of the Railway Service (Pension) Rules 1993 he is entitled to get pension for his rendering service in the post of ML Driver which was a regular appointment.

11. Having heard respective counsels and having examined the material placed

before us we are to examine whether the learned Tribunal has reached correct conclusion while granting relief to the applicant or not. From the narration of the aforesaid fact following admitted position emerges:

i) The respondent was a substitute peon from 13th June, 1969 till 30th April, 1971. He rendered services for two years in that capacity and he was not absorbed in that post.

ii) Thereafter he was engaged as ML Driver in Group C category in Container Service Organization with effect from 1st May, 1971 till 23rd April, 1982. After having declared surplus he was adjusted as a substitute Shed Khalasi which is a post lower in rank at Santragachi.

iii) He did not join in the post of Shed Khalasi. Therefore, he did not render any service in that post.

12. Mr. Mallick is right in saying that in order to get pensionary benefit in this case as a substitute more than 4 months continuous service followed by absorption is a must. According to us upon careful reading of Rule 32 length of service as a substitute will be counted for granting pensionary benefit after he is absorbed. However this period has to be counted from the date after one completes three months continuous service in case of teacher and four months in other cases. To clarify this position in this case four months continuous service from the date of appointment as substitute has to be excluded, and remaining length of service as substitute, is to be taken into account.

13. For example a particular employee was engaged as substitute on 1st January in any particular year in a non-teaching post and he remained substitute till 31st of December of the same year and then he is absorbed on 1st January of the following years in the regular post in which he was engaged. If he has rendered continuous service without any break for whole of the year this length of service he rendered upto 30th April of that year would not be counted but remaining period from 1st May till 31st December will be counted for pensionary benefit in terms of the aforesaid Rule. For the sake of repetition we hold that Mr. Mallick's contention is correct that absorption is a sine qua non. In this case as a Substitute Peon respondent was not absorbed.

14. Therefore, the learned Tribunal has completely misread the aforesaid provision. We think Mr. Mallick is also correct in his submission, that the learned Tribunal had no jurisdiction to give a declaration that he is deemed to have been absorbed for the purpose of pensionary benefit from 17th June 1969.

15. Therefore, the question of granting pensionary benefit taking into consideration of his service as Substitute Peon for less than two years cannot be taken into consideration for granting pension simply he was not absorbed. Next question comes what was the status of the respondent in the post of ML Driver. The letter of appointment dated 26th April 2007 has been quoted by the learned Tribunal and we also reproduce the same.

South Eastern Railway No. P/L/13/Elect/CLIV/MISC. CPO'S OFFICE/GRC Dated 26.4.1971. SEE(HQ)/GRC

Sub. Sri. Ujigar Shaw, substitute peon CEE's Office. Ref. This office letter of even number dated 08.4.1971.

This above named has been selected for appointment as ML Driver, scale Rs. 110- 180(AS) under DTS/SHM. Before he is released for appointment, he is required.

(1) To deposit a sum of Rs. 100/- towards security money and

(2) To pass the prescribed medical examination before being posted as ML Driver. It is therefore requested that Sri. Shaw may be asked to deposit the security money with the Chief Cashier/GRC and submits the requisite money receipt to this office. He should also be sent for medical examination and the result intimated immediately along with the Medical Certificate of fitness to this office so that orders for his release may be issued.

This has reference to DTS-SHM's office order No. E4/1097/CS/WB dated 13.4.71/16.4.71 (Docket No. E4/1097/CS/WB dated 13.4.71.

End. Nil Sd/-M.A. Anderson For Chief Personnel Officer

16. Upon plain reading of the aforesaid order it does not appear that he was engaged as a substitute ML Driver, but Mr. Mallick contends that in true sense it will appear from the records that it is nothing but an engagement as substitute.

17. The learned Tribunal has observed that and rightly so the aforesaid appointment was not ad hoc in fact, it is nobody's case that respondent Ujigar at any point of time was ad hoc recruit. It is because of the respondent Railway that Ujigar was always engaged as substitute firstly in the post of Peon, and thereafter in the post of ML Driver apparently on selection and again on surplus being declared he was engaged in the capacity of Loco Shed Khalasi.

18. According to us the learned Tribunal has gone wrong while taking into consideration of the service in the capacity of substitute peon and with the service in the capacity of ML Driver. These are the separate cadre altogether. Two cadres viz. Groups C & D cannot be clubbed together to compute length of service for pensionary benefit.

19. In our view the representation made by the applicant in terms of the order of the learned Tribunal was not dealt with in accordance with the terms of the order passed in OA No. 1226 of 1998. The direction and the order of the learned Tribunal was that respondent authority is to consider his representation along with necessary and supporting documents. We have gone through the representation and it has been specifically stated that he was appointed as Substitute Peon with effect from 17th June 1969 and thereafter he was appointed on being selected as ML Driver in pay scale of Rs. 260-400/- under DTS/Salimar with effect from 1st May, 1971 not as substitute. In support thereof

the aforesaid letter of appointment dated 26th April, 1971 was mentioned.

20. The Senior Divisional Personnel Officer by its speaking order dated 25th August, 2003 does not appear to have considered the said letter of appointment. While looking into the documents we could not find that his appointment in the post of ML Driver is an ad hoc one or as substitute. The speaking order, in our considered opinion, has not been passed considering the relevant documents mentioned above in terms of earlier order of Tribunal. Hence the speaking order is not sustainable in the eye of law as it was not passed in accordance with the judgment and order passed under OA 1226 of 1998. Therefore, the learned Tribunal has rightly set aside the said impugned order. The learned Tribunal has gone wrong making observation that he is deemed to have been absorbed after having rendered as a Substitute Peon and subsequently as ML Driver.

Therefore, we also set aside the direction of the learned Tribunal.

21. We now send the matter back to the Senior Divisional Personnel Manager South Eastern Railway to consider the representation of the applicant afresh without being swayed or influenced by earlier decision of his predecessor or the observation of findings of the learned Tribunal. He must take note of letter of appointment after having seen the records, dated 26th April 1971 in the post of ML Driver. If it is found considering record if available, that his appointment to the post of ML Driver is regular and fresh then he will consider whether he is entitled to pensionary benefit for rendering nearly 11 years of service in the said post till he was declared surplus.

22. If no record is traceable the said letter of appointment ought to be given literal meaning. This shall be done upon hearing the applicants and/or his authorized representatives within a period of 10 weeks from the date of communication of this order. The order must be speaking one and be communicated to the respondent within a period of fortnight from the date of taking decision.

Prasenjit Mandal, J.

23. I agree.