(2025) 04 CAT CK 0370

In the Central Administrative Tribunal, Allahabad Bench, Allahabad

Case No : Original Application No. 770 Of 2022

Yaduvansh Misra — APPELLANT

Vs

Union Of India Through General Manager (Eastern Railway) Hajipur, Bihar & Ors. — RESPONDENT

Date of Decision : 11-04-2025

Acts Referred:
Administrative Tribunals Act, 1985 — Section 19
Railway Service (Pension) Rule, 1993 — Rule 31

Citation : (2025) 04 CAT CK 0370

Hon'ble Judges : Mohan Pyare, Member (A)

Bench : Single Bench

Advocate : Sunil, Ajay Kumar Rai

Final Decision : Disposed Of

Judgement

Mohan Pyare, Member (A)

1. Present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

"i. The respondent no.3 may be directed to fix correct pay and allowances of the applicant in the wake of the judgment dated 11.5.2001. (NOT PRESSED)

ii. The respondent no.3 may be directed to make the payments of the difference of the pay scale of Rs.1800 and Rs.1300 which was illegally reduced. (NOT PRESSED).

iii. The respondent no.3 may be directed to make the payments of interest and compound interest of the amount of Rs. 63092 which was paid to the applicant by transferring the said amount in the bank account of the applicant. (NOT PRESSED)

iv. The respondent no.3 may be directed to grant the full pension and correctly fixing the same, grant the subsistence allowances, correctly calculating the gratuity, commutation of pension, encashment leave, medical LHP, family pass, medical facility after calculating correctly total length of service in pursuant to the judgment dated 11.05.2001, which comes to more than 25 years.

v. The respondent no.3 may be directed to make the payment of Rs. 32000/- which was recovered on the ground of alleged overpayment alongwith interest and compound interest.(NOT PRESSED)

vi. The respondent no.3 may be directed to make the above payments to the applicant along with interest and compound interest which have been illegally with held by the respondent and earned the interest there on from the bank. (NOT PRESSED)"

2. To state the facts briefly with respect to the relief (No.iv) pressed in the matter, a judgement dated 11.05.2001 was passed in O.A./584/1993 (Yadubansh Mishra vs UOI & ors) along with O.A./1695/1993 (Deep Narain and Ors. vs. UOI & Ors) by this Tribunal with the following direction:

"4.... Our findings is that the applicants have already acquired temporary status on completion of 180 days work. As they had acquired temporary status, they were entitled for all the facilities and protection available to Group 'D' employees. They could be terminated from service only in accordance with law which in the present case has not been done. Under the circumstances the applicants are entitled for the relief claimed.

5. Both the OAs are accordingly allowed. The respondents are directed to give engagement to the applicants, they will retain the status which they had on 15.10.1992. However, as the applicants have not worked they will not be entitled for any back wages. However, it will not amount to break for the purpose of their seniority and they will be considered for regularisation also in accordance with law."

The applicant, who was initially engaged as casual labour in the year 1985 and was later not allowed to work from 15.10.1992, was reinstated on 29.10.2001 following this Tribunal's order. He was granted the temporary status from 15.10.1992 and was regularised vide order dated 20.07.2010. The applicant retired from service on 30.11.2017.

3. I have heard learned counsel for the parties.

4. Submission of learned counsel for the applicant is that the total qualifying service for the purpose of retiral benefits has been wrongly shown as 15 years and 5 months in the PPO. The respondents have wrongly calculated the service period of the deponent on the formula of 50% of temporary status and 100% of regularisation period. The service period of the applicant from 16.10.1992 to 29.10.2001 has not been counted for the purpose of pensionary benefits/ pension while it was clearly directed in the judgement dated 11.05.2001 passed in O.A./584/1993 (Yadubansh Mishra vs UOI & ors) along with O.A./1695/1993 (Deep Narain and Ors. vs. UOI & Ors) by this Tribunal that the period during

which the applicant was not allowed to work will not be counted as break for the purpose of seniority and regularization of service. Learned counsel for the applicant further states that the applicant has submitted a composite representation dated 18.11.2021 to the respondent with respect to these grievances but the respondents have not given any reply to the same.

5. Submission of learned counsel for the respondents is that the benefit of 50% service of Temporary Status period and 100% service from regularization to retirement has been counted for qualifying service in the light of Rule 31 of Railway Service (Pension) Rule, 1993. The total qualifying service of the applicant is 15 years, 04 months and 02 days i.e. 15 years and 5 months. It is further submitted that during the service period, the applicant was on leave without pay for a long time. His qualifying service has been counted as per extent rule.

6. I have considered the rival contentions of learned counsel for the parties and perused the entire documents on record.

7. From the documents placed on record and the arguments put forth by learned counsel for the parties, no clarity could be arrived at with respect to the calculation of total qualifying service of the applicant. Even the date of grant of temporary status has been variously stated as 15.10.1992 and 15.05.1992 by the applicant and in the counter affidavit filed on/dated 17.02.2023, it has been stated in para 7 that "the case of the applicant was considered, Temporary Status was granted to him Since 16/05/1990 after completion of 120 days regular working days, and application was engaged in the status of Casual Labour which he had on 15/10/1992." In the Pension Payment Order (Annexure A-6 of the OA), the appointment date of the applicant has been mentioned as 16.05.1990. The respondents have vaguely argued that the applicant was on leave for a very long time. It has not been informed as to how that period was treated and whether there was any written order as to how the alleged period of leave has to be considered while calculating the service period of the applicant. What is not to be disputed is the fact that this Tribunal vide its order dated 11.05.2001 passed in O.A./584/1993 along with O.A./1695/1993 has clearly held that the period from 15.10.1992 to the date the applicant is reinstated should not amount to break for the purpose of seniority and he will be considered for regularisation also in accordance with law. By extension this also applies for the purpose of counting the qualifying service period for the calculation of pensionary benefits as this period does not have to be treated as break in service. Thus, the period between 15.10.1992 and the subsequent reinstatement of the applicant on 29.10.2001 has to be counted for the service benefits related to pension also. The respondents have not clarified whether this period has been counted or not as per the rules. The rule mentioned by respondents regarding calculation of service period for employees paid through contingency fund i.e. Rule 31 of the Railway Services (Pension) Rules, 1993 is reproduced below:

"31. Counting of service paid from Contingencies- In respect of a railway servant, in service on or after the 22nd day of August, 1968, half the service paid from contingencies benefits on absorption in regular employment, subject to the following condition namely -

(a) the service paid from contingencies has been in a job involving whole-time employment;

(b) the service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned such as posts of malis, chowkidars and khalasis;

(c) the service should have been such for which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly basis and which, dough no analogous to the regular scales of pay, borne some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period by staff in regular establishments;

(d) the service paid from contingencies has been continuous and followed by absorption in regular employment without a break:

Provide that the weightage for past service paid from contingencies shall be limited to the period after 1 January 1961 subject to the condition that authentic records of service such as pay bill, leave record or service-book is available."

I am at loss so far as the calculation of total qualifying service of the applicant for pension and other retiral benefits is concerned. The respondents have not clearly mentioned the period which they have taken into account for counting total services of the applicant and the period which they have discarded. Neither have they mentioned/ enclosed the authority for their action. The applicant was initially engaged as casual labour in the year 1985 itself and as per the judgement of this Tribunal dated 11.05.2001 passed in O.A./584/1993 along with the connected O.A. the applicants had already acquired temporary status on completion of 180 days work. Thus, it is found that the date of grant of temporary status itself is not only vague but also faulty and not in accordance with the order dated 11.05.2001 passed by this Tribunal in the aforesaid O.A. As per DoPT OM No.51016/2/90 Estt. (C) dated 10.09.1993, casual workers, after rendering three years of continuous service from getting temporary status, would be treated at par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund. In the present case, it has taken a very long time to regularise the applicant after conferment of temporary status but the reason for such a delay has not been explained.

8. In view of the above, the O.A. is disposed of with the direction to the competent authority amongst respondents to decide the pending representation of the applicant dated 10.11.2018 (Annexure A-11 of the OA) by passing a reasoned and speaking order specifically clarifying the calculation of qualifying service period for the purpose of retiral benefits in light of the doubts raised and observations made hereinabove in para 7 of this order and if any difference is

found, the respondents shall issue a fresh Pension Payment Order and grant the applicant all the consequential benefits arising therefrom including the arrear of payments. This exercise should be completed within a period of three months from the date of receipt of a certified copy of this order.

9. The O.A. stands disposed of with above directions. All associated M.A.s also stand disposed of. No costs.