

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.P.No.13136 of 2014

T.P.Diwan Mohideen

... Petitioner

Vs.

1. Union of India
Represented by
Divisional Railway Manager,
Personnel Branch,
Chennai Division,
Chennai - 600 003.
2. The Senior Divisional Personnel Officer
Chennai Division,
Southern Railway,
Chennai - 600 003.
3. The Registrar
Central Administrative Tribunal
Madras Bench,
Chennai - 600 104.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking an order to issue a writ of certiorarified mandamus, calling for the records pertaining to the order, dated 30.10.2009 made in O.A.No.231 of 2007 passed by the Central Administrative Tribunal, Madras bench and quash the same and consequently direct the first and second respondents herein to grant pension to the petitioner taking into account by including the period of Casual Labour Service rendered by the petitioner herein from 01.10.1965 to 17.04.1976 with arrears and other consequential benefits.

For Petitioner : Mr.Perumbulavil Radhakrishnan
for Mr.A.Zakir Hussain

For Respondents : No Appearance for R1 and R2
R3 - Tribunal

ORDER

(Order of the Court was made by P.KALAIYARASAN, J)

This writ petition is directed to quash the order, dated 30.10.2009 passed by the Central Administrative Tribunal (Madras Bench) in O.A.No.231 of 2007.

2. The facts which lead to file this writ petition in nutshell are as follows :

(i) The writ petitioner joined the Railway service as Casual Labour on 01.10.1965 and was in continuous service as a daily rated Casual Labour till 09.05.1974. As he participated in an en mass agitation on 12.03.1974, he was stopped by the Railway Administration from attending to daily duty. He also faced criminal case, which ended in acquittal on 17.04.1976. He was engaged by the respondents 1 and 2 as Casual Labour in the same Department only on 19.06.1992. He was granted temporary status from 17.10.1992 and later empanelled as Track Man with effect from 21.03.1997. He attained superannuation on 31.01.2002.

(ii) The petitioner made a representation to respondents 1 and 2 on 17.11.2001 for inclusion of the period of Casual Labour service rendered from 01.10.1965 to 17.04.1976 for availing pensionary benefits as per Rules. But the second respondent, by order, dated 18.01.2002, rejected his representation. He gave another representation on 22.02.2007, but the same was not considered. Therefore, the petitioner approached the Central Administrative Tribunal, by filing O.A.No.231 of 2007.

3. The Tribunal has dismissed the Original Application as not maintainable. Aggrieved over the said order, this writ petition has been filed.

4. Learned counsel appearing for the petitioner submits that though the Ministry of Railways had decided to reinstate the employees dismissed / removed / suspended in the context of May 1974 strike, the Railway Authorities without extending the benefits and reinstated the petitioner in service in 1976 itself, failed to take the Casual Labour service into account for the pensionary benefits, as per Rules.

5. It is further contended that as per Rules, half of the service rendered by the Casual Labour after attaining temporary status and on completion of 120 days continuous service should be allowed to count towards pension. But the service rendered by the petitioner from 01.10.1965 to 09.05.1974 was not taken into account and the Central Administrative Tribunal has also erroneously dismissed the application.

6. Though the respondents 1 and 2 filed counter, there was no representation on their behalf. In the counter, it has been urged that the petitioner was stopped from working since 12.03.1994 and he was again engaged as Casual Labour in the year 1992, after a gap of 18 years and this itself makes the earlier spell of service as not a continuous one and the petitioner has no right over the earlier daily rated service due to break in service. The petitioner never submitted any representation for engaging him as Casual labour, as soon as the criminal court acquitted him and he chose to remain silent till 2001. There is no provision in the Railway Service (Pension) Rules, 1993 to condone the interruption caused between two spells of Government service. Therefore, the writ petition is liable to be dismissed.

7. The fact remains that the petitioner joined the Railway service as Casual Labour on 01.10.1965 and he was in continuous service as daily rated casual labour till 09.05.1974 because of participation in an en mass agitation on 12.03.1974. He was stopped by the Railway Administration from attending daily duty. He has also faced criminal case and it ended in acquittal on 17.04.1976. Only on 19.06.1992, he was engaged by the respondents 1 and 2 to work as Casual Labour in the same Department. He attains superannuation on 31.01.2002.

8. On the representation made by the petitioner, the Railway authorities issued orders on 18.01.2002, wherein it is stated as follows :

"Accordingly, it is verified and concluded that you were appointed as CPC with temporary status on 17.10.1992 and empanelled as Tackman with effect from 21.03.1997. Even after adding the 50% CPC service with your regular service (after excluding the non qualifying service) you have completed only 7 years of service only which is not a minimum prescribed qualifying service eligible for pensionary benefits as per rules. Hence, your request cannot be considered as it is not in accordance with the rules."

9. The Railway Authorities calculated the period of qualifying service as per Rules from the date, when he was granted temporary status from 17.10.1992, though he joined as Casual Labour on 19.06.1992. The authorities left out only 4 months from the continuous service, i.e., from 19.06.1992 to 17.10.1992. Even half of that period be taken as he continued to be in service from 19.06.1992, there cannot be minimum prescribed qualifying service eligible for the pensionary benefits.

10. The only contention of the petitioner is that his earlier service from 01.10.1965 to 17.06.1976 is to be taken into account to calculate the qualifying service. After the acquittal in the criminal case, due to participation in the strike, he has not approached the Railway authorities to permit him to continue his service as a daily rated Casual Labour. He was engaged by the respondents 1 and 2 on 19.06.1992 as Casual Labour in the same Department. Therefore, there was break of service after 12.03.1974 and he was engaged as Casual Labour only on 19.06.1992. When there is break of service that cannot be taken into account for the pensionary qualifying service.

11. 50% of the service rendered before regular service in terms of Railway Service (Pension) Rules 1993 can be taken into account for calculating pensionary service, if the service is continuous one. Here, there is break in service and there is absolutely no explanation why the petitioner was silent even after the acquittal in the criminal case due to participation in the agitation till 2001. Since there is break in service, his earlier service from 1965 to 1974 cannot be considered to calculate the qualifying service for pension. Therefore, the Central Administrative Tribunal has rightly dismissed the Original Application and this Court does not find any reason to interfere with the orders of the Tribunal and therefore, the writ petition is liable to be dismissed.

In fine, this writ petition is dismissed, confirming the order, dated 30.10.2009 made in O.A.No.231 of 2007 passed by the Central Administrative Tribunal, Madras bench. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

tsvn

To

The Registrar
Central Administrative Tribunal
Madras Bench,
Chennai - 600 104.

+1cc to Mr.A.Zakir Hussain, Advocate, S.R.No.43405

+1cc to Mr.S.M.Deenadayalan, Railway Advocate, S.R.No.43455

W.P.No.13136 of 2014

CTR(CO)

CA/16/08/2016

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