

Gurbax Singh
2016.09.14 17:07

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.21070 of 2015
Date of decision: 02.08.2016**

Rail Coach Factory, Kapurthala through its General Manager

vs.

.....Petitioner

Parminder Singh and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Puneet Jindal, Sr. Advocate with Ms. Sakshi, Advocate for
for the petitioner- Railway Coach Factory, Kapurthala.

Mr. Inderjit Kaushal, Advocate for respondent No.1 – Parminder
Singh.

Ajay Kumar Mittal,J.

1. This order shall dispose of CWP Nos. 21070 and 13836 of 2015
as both the petitions are against common order dated 7.4.2015 passed by the
Central Administrative Tribunal, Chandigarh Bench (CAT). However, the
facts are being taken from CWP No.21070 of 2015.

2. In CWP No.21070 of 2015, the petitioner – Rail Coach Factory
(in short, RCF), Kapurthala prays for quashing the impugned order dated
7.4.2015, Annexure P.4 to the extent of counting ad hoc service rendered by
Smt.Neena Sharma, deceased wife of respondent No.1 w.e.f 21.1.1987 to

10.8.1991 for the purpose of pension/pensionary benefits. In CWP No.13836 of 2015, the petitioner Parminder Singh, husband of late Smt.Neena Sharma prays for quashing the impugned order dated 7.4.2015 to the extent denying interest on the delayed release of retrial benefits in respect of her deceased wife. Further grievance has been made for not allowing the refund of ₹ 1,40,073/- alongwith interest which was wrongly deducted from death-cum-retirement gratuity (DCRG) of the deceased.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.21070 of 2015 may be noticed. The wife of respondent No.1 namely Smt.Neena Sharma was working as Office Superintendent in the RCF, Kapurthala. She met with an accident on 3.6.2009 and ultimately died on 24.12.2011. Respondent No.1 – Parminder Singh being the legal nominee of late Smt.Neena Sharma submitted all the documents for release of DCRG, leave encashment and family pension to him. An amount of ₹ 5,82,057/- as DCRG was released in favour of respondent No.1. Respondent No.1 claimed ₹ 7,09,825/- pleading that the RCF had not counted the ad hoc service period from 21.1.1987 to 10.8.1991 rendered by his wife for the purpose of pension and other pensionary benefits. Respondent No.1 filed an application before the CAT. In the written statement filed before the Tribunal, it was inter alia stated by the RCF that the appointment of Smt. Neena Sharma was purely on ad hoc basis and she was not entitled for counting ad hoc service for pensionary benefits under the relevant rules. Late Smt.Neena Sharma continued to serve the department till 30.6.1998 when her services were dispensed with alongwith other similarly situated employees. For getting the services regularized, all the ad hoc employees had to clear selection from the Railway Recruitment Board. Taking a sympathetic view, the petitioner department re-engaged the

services of Smt. Neena Sharma w.e.f 6.7.1988 alongwith other ad hoc employees. Vide letter dated 15.2.1991, as a special case, the Railway Board decided to regularize the services of ad hoc employees including Smt. Neena Sharma with a condition that regularization will have prospective effect only, meaning thereby, the ad hoc service period prior to their regularization will not be counted for any purpose. As a measure of regularization, a type test was held on 31.7.1991 followed by viva voce. Smt. Neena Sharma was found suitable and got regularized as Typist-cum-clerk. Thus, ad hoc arrangement came to an end only w.e.f 10.8.1991 when she was posted against existing vacancies vide order dated 25.9.1991. Later on, she was promoted as Senior Clerk and then Head Clerk. On 8.4.2009, a representation was made by Smt. Neena Sharma to the petitioner department for consideration of her ad hoc service for pensionary benefits. Vide letter dated 28.4.2009, the department replied that her ad hoc service could not be counted towards qualifying service for pensionary benefits as her initial appointment was purely on ad hoc basis and the said period could not be counted. It was further clarified that the letter dated 20.12.1985 was not applicable in her case as the same belonged to casual labourers whereas she was appointed on ad hoc basis. Respondent No.1 filed replication against the above written statement. The Tribunal vide impugned order dated 7.4.2015 partially allowed the application filed by respondent No.1 and directed the petitioner department to consider the period of ad hoc service for the purpose of pensionary benefits whereas the claim of interest on delayed release of pensionary benefits had been declined. Hence CWP No.21070 of 2015 by the petitioner-RCF and CWP No.13836 of 2015 by respondent No.1 – Parminder Singh with the prayers mentioned above.

4. We have heard learned counsel for the parties and perused the

record.

5. The Tribunal while deciding the original application filed by respondent No.1 noticed that keeping in view the totality of peculiar facts and circumstances of the case, the services of wife of respondent No.1 were regularized. Further, the ad hoc service rendered by her was before her regularization in 1991. It was observed on the basis of settled law that ad hoc service rendered by the wife of respondent No.1 prior to her appointment on regular basis was to be counted as qualifying service for pensionary benefits. With regard to the refund of the amount alongwith interest as also payment of interest on delayed payment of DCRG, family pension, leave encashment, provident fund etc., it was recorded that the delay had not been deliberate or callous and had occurred on account of administrative processes and the applicant's request to keep the payments pending while the representation of some of the deceased's colleagues on similar issues was under consideration. Consequently, pensionary entitlements were held to be calculated afresh in the light of the inclusion of the deceased's ad hoc service for the purposes of pension and admissible pensionary benefits. The relevant findings recorded by the Tribunal read thus:-

“7. The crucial question that needs to be answered is whether the ad hoc service put in by the deceased i.e. the wife of the applicant should be considered for the purposes of pensionary benefits? Notwithstanding the circumstances in which the applicant's wife was regularized namely as a special case because of her failure to pass the test, the fact remains that she had put in ad hoc service before she was regularized in 1991. The applicant has relied on the judgment of the jurisdictional High court in *Harbhajan Kaur vs.State of Punjab* to support his contention. This judgment in turn has relied on the judgment

passed in *Hazur Singh vs. State of Punjab and others*. The relevant portion of the judgment is reproduced below:-

‘A perusal of the aforesaid rule shows that an interruption between two spells of service rendered under the State Government is to be treated as automatically condoned except where the interruption has been caused by resignation, dismissal or removal from service or due to participation in a strike. The interruption in the case of the petitioner is neither on account of resignation, dismissal or removal from service or due to participation in a strike.

8. In view of the above provisions as explained by a Division Bench of this Court in the judgment rendered on January 14, 2003 in *Hazura Singh’s* case (supra) ad hoc service rendered by the petitioner prior to her appointment on regular basis is to be counted as qualifying service for pensionary benefits. There was no willful absence from duty by the petitioner prior to her appointment on regular basis. The breaks in service were unilateral act of the State government.

9. Consequently, impugned order dated November 18, 2002 is set aside. The State Government is directed to count the days of actual ad hoc service of the petitioner towards her qualifying service for the purposes of pensionary benefits.

In view of this ratio of law laid down in the above judgments, we find merit in the applicant’s prayer for considering the period of ad hoc service to be taken into account for the purposes of pensionary benefits. We have taken note of the fact that the representation of the deceased employee to include her period of ad hoc service for pension etc. was rejected by the respondents way back in 2009 and then she did not choose to approach the court. The respondents therefore have argued that the prayer is hit by limitation. We have carefully considered this plea of the respondents and are of the view that in the larger

interest of justice, we will rather disregard this deficiency. A number of Apex court's rulings justify taking such a view in particular circumstances.

8. As regards the applicant's other claims about the quashing the recovery of an amount of ₹ 1,40,073/- as excess payment against the admissible entitlement under DCRG, refund of this amount alongwith interest as also payment of interest on delayed payment of DCRG, Family Pension, leave encashment, provident fund etc., we have gone through carefully the explanation given by the respondents in their written statement. We are of this considered view that this delay has not been deliberate or callous and has occurred on account of administrative processes as also the applicant's own request to keep the payments pending while the representation of some of the deceased's colleagues on similar issues was under consideration and therefore, we disallow the applicant's prayer for grant of interest on these payments.

9. Resultantly, the OA partially succeeds. Let the pensionary entitlements be calculated afresh in the light of inclusion of the deceased's as ad hoc service for the purpose of pension and admissible pensionary benefits based on this inclusion. The additional amount that works out based on this calculation be paid to the applicant as per law. The exercise of recalculation and actual payment be completed within three months of the respondents getting a certified copy of this order."

6. The Tribunal had decided the original application keeping in view the totality of peculiar facts and circumstances of the case. Learned counsel for the petitioner department has not been able to show that in such circumstances, there arises any occasion for interference by this Court. Equally, learned counsel for respondent No.1 has also not been able to produce any material on record to substantiate the claim of respondent No.1 with regard to the grant of interest by the department on the delayed

payment. Hence we do not find any ground to interfere with the impugned order dated 7.4.2015, Annexure P.4. Consequently, finding no merit in both the petitions, the same are hereby dismissed.

(Ajay Kumar Mittal)
Judge

August 02, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes