

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5529 OF 2021

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| 1 Union of India and others, through
General Manager, Central Railway,
Mumbai-CSMT 400001. | |
| 2 Divisional Railway Manager, Central
Railway, Nagpur-440001. | Petitioners |

-Vs.-

Dheplya Kisan Bobde, Age 76 years, Occup. Ex-Gangman, Under Sr.S.E. (Track) Pulgaon, Central Railway, Nagpur. R/o At Post Barai Tah.Mulati, Dist.Betul (M.P)-460661.	Respondent
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Ms.Meghna Munshi, counsel for the petitioners.
Ms.Rashi A.Deshpande, counsel for respondent.

**CORAM: A.S.CHANDURKAR AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 5rd July, 2023

ORAL JUDGMENT (Per : Vrushali V. Joshi, J.)

Heard Ms.Meghna Munshi, learned counsel
appearing for the petitioners and Ms.Rashi A Deshpande
learned counsel appearing for respondent.

2. Rule. Rule made returnable forthwith. Heard finally
by consent of the learned counsel appearing for the parties.

3. A short question involved in this writ petition is whether the respondent at the time of his retirement on 31.05.2000 had 10 years qualifying service to his credit to be entitled to the pension and pensionary benefits?

4. The petitioners have challenged the order dated 20.02.2020 passed by Central Administrative Tribunal, Mumbai Camp at Nagpur in Original Application No.2272 of 2016 directing the petitioners to fix the pension of the respondent from the date of superannuation i.e. from 31.05.2000 and pay the arrears within a period of 12 weeks.

5. The respondent is a railway employee. He joined the services as Casual Labour on 20.09.1977 in Engineering Department in Nagpur Division of Central Railway. He was granted monthly rated status that is temporary status with effect from 13.08.1984 and was regularised as permanent employee on 05.09.1997. The respondent superannuated on 31.05.2000. However, he was not sanctioned monthly pension by the petitioners. It is the claim of the respondent

that he had 10 years qualifying service to his credit, but despite that, he was not granted pension to this effect.

6. In the year 2012, he asked to fix the matter before the pension Adalat for grant of pension and his application was rejected and he was informed that qualifying service of 10 years was required for grant of pension but in his case, it was less than 10 years. Hence, he was not found eligible for grant of pension.

7. The petitioner has also challenged the order passed by the learned Tribunal condoning the delay in approaching the Administrative Tribunal. The petitioners have approached the Tribunal in the year 2016, though he was retired in the year 2000. There is delay of 16 years. If it is considered that the cause of action arose in the year 2012 when his application was rejected before pension Adalat then also there is delay of four years. It is the contention of the petitioner that the respondent approached the Tribunal after 16 years and without giving any reason, the Central

Administrative Tribunal has condoned the delay which is inordinate.

8. The petitioners have stated that as the respondent was appointed as a Casual Labour on 20.06.1982 and was granted temporary (MRCL) status on 19.08.1984. His services were regularised on 05.09.1997 and he retired on superannuation on 31.05.2000. As MRCL, he has put in 13 years 16 days of service. Half of the said period works out to 6 years, 6 months and 8 days, which period as per Rule 31 Note 1 to be taken into consideration for working out the qualifying service. The period after regularisation till retirement works out to 2 years, 8 months and 26 days. That sum total of 50% of the MRCL service to regular service works out to 9 years 3 months and 4 days. Thus, the calculation as worked out by the Tribunal and as observed by the Tribunal in para 10 of the order is improper and incorrect. Hence, prayed to set aside the order.

9. The learned counsel for the respondent opposed the application stating that the respondent superannuated on

31.05.2000 and calculating the period of his service without break from 1982 is correct. The Tribunal has excluded the period of service from the year 1977 and taken into account the services rendered by the respondent as Casual Labour from 20.06.1982. As the cause of action for grant of pension is continued, there is no delay. Hence, prayed to dismiss the writ petition.

10. It is the case of the respondent that he was firstly appointed as Casual Labour on 20.09.1977 for a period for one and half year. Thereafter, after a gap of about three years, he again joined his Casual Labour with effect from 20.06.1982 and got status of MRCL on 19.08.1984. His service was regularised on 05.09.1997 and on 31.05.2000 he retired. These details were also furnished by the petitioner. According to the respondent, he has worked for more than 10 years and therefore 50% of service rendered by him as Casual Labour during the aforesaid period is also to be counted from 20.06.1982 to 19.08.1984. More than two years he worked continuously and therefore, the period is also to be counted in addition to the 50% of his service with MRCL status with

effect from 1982. As per item 20 of Master Circular No.54 and para 2005 of IREM and note 1 below Rule 31 of the Railway Services (Pension) Rules, 1993 only half of the period of service as Casual Labour that too after attaining the temporary status followed by absorption in service as regular railway employee is to be calculated for the purposes of pension and pensionary benefits. The respondent has relied on the judgment of the Hon'ble Apex Court in the case of ***Union of India and ors. Vs.Rakesh Kumar and ors.*** reported in ***2017(3)SLR 589(S.C.)***. The observations made in paragraph Nos. 25 and 48 are as under:-

“25. Para 20 of the Master Circular No. 54 is quoted as below:-

“20. Counting of the period of service of Casual Labour for pensionary benefits: - Half of the period of service of casual labour (other than casual labour employed on Projects) after attainment of temporary status on completion of 120 days continuous service if it is followed by absorption in service as regular railway employee, counts for pensionary benefits. With effect from 1-1-1981, the benefit has also been extended to Project Casual Labour.”

“48. We, however, are of the view that the period of casual labour prior to grant of temporary status by virtue of Note-1 Rule 31 has to be counted to the extent of 50% for pensionary benefits”.

11. The applicant had initially worked continuously for a period of one and half year from 1977 and thereafter there was break for a period around three years before he again joined as Casual Labour with effect from 20.06.1982. The learned Tribunal has rightly calculated the 50% of service by deducting the break in service and calculated it from 20.06.1982. Therefore, the calculation of 50% of the service from 20.06.1984 till 18.08.1997 and thereafter, from 1982 to 1984. The total qualifying service to the credit of the applicant comes to 10 years 4 months and 3 days. Since, the respondent has qualifying service of more than 10 years to his credit, the learned Tribunal has rightly come to the conclusion that the respondent is entitled to the pension and pensionary benefits. As the qualifying service is rightly calculated by the learned Tribunal, there is no need of any interference.

12. As regards the aspect of delay, the Tribunal has held that the right to receive pension is a continuous cause. The records were available with the petitioners and they ought to have paid pension to the respondent. On that basis

the claim has been entertained on merits. In these facts, we are not inclined to non-suit the respondent on the ground of delay.

13. Hence, the Writ petition stands dismissed. Rule is discharged. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J)

(A.S.CHANDURKAR,J)