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Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Jun-24-2011

Judge : The Honourable Mrs. K. Noorjehan, Administrative Member

Appeal No. : O.A.No.699 of 2010

Appellant : C. Chacko

Respondent : Union of India Represented by the General Manager, Chennai and Another

Advocate for Pet/Ap. : For the Applicant: M.P. Varkey, Advocate. For the Respondents: P. Haridasl, Advocate.

Judgement :

HON'BLE Mrs.K. NOORJEHAN, ADMINISTRATIVE MEMBER

1. The relief sought by the applicant in this O.A is to grant him gratuity with interest for the period from 27.10.1972 to 9.7.1981 under Payment of Gratuity Act, 1972 in terms of Annexure A-6 Railway Board Establishment Circular No.130/2000 No.E(LL)86/AT/GRA/1-2 dated 30.6.2000.

2 The applicant retired from the Railway service as Gatekeeper on superannuation on 30.6.2009. According to the applicant, he had rendered casual service for the

period from 27.10.1972 to 9.7.1981 under the Executive Engineer(Construction) Nagercoil. Thereafter, his services was regularised with effect from 10.7.1981. In support of his claim he has produced Annexure A-4 office order dated 25.12.1980 issued by the Divisional Office, Personnel Branch, Trivandrum showing "the empanelment of casual labourers of Construction organisation for absorption as Gangman". By the said letter 216 casual labourers/substitutes working under the territorial jurisdiction including Construction Organisation under TVC Division were screened and empanelled by a duly constituted Screening Committee for appointment as Temporary Gangman/Khalasis (Group D) in the pay scale Rs.200-250/196-232. The applicant's name appears at Sl.No.48 of the said panel which shows that he was initially appointed on 27.10.1972 and he has 2428.5 days of total aggregate service at his credit. The only condition for such empanelment was that the applicant had to produce his date of birth certificate. The applicant however, submitted that the respondents had already taken over all his service records relating to the casual labour service rendered by him before his name was included in the aforesaid Annexure A-4 panel and, therefore, he could not produce it again.

3 Respondents in their reply statement submitted that the applicant has not impleaded Executive Engineer (Construction) Nagercoil as respondent. It is also stated that he has neither produced his casual labour card nor annexed any proof for his claim that he has worked as a casual labourer from 27.10.1972 to 9.7.1981 the period for which he has claimed gratuity under the Payment of Gratuity Act, 1972 and he has also not produced his Date of Birth certificate from the civil authorities. :Hence the applicant having failed to produce the necessary documents, is not entitled to service gratuity.

4 The applicant filed rejoinder to the reply statement averred that vide paras 2-6 of Annx.A6 order the respondents should have initiated suo moto action to call for his option to process the case for payment of service gratuity. He argued that authors of documents produced in OA need not be in the party array. During the course of final hearing he produced a copy of the order of this Tribunal dated 27.3.2009 in OA 202/08 and in OA 358/08.

5 I have heard counsel for the parties. Counsel for the respondents has not disputed the authenticity of Annexure A-4 letter. They pointed out that the entries against the applicant in Annx.A4 are not legible. Therefore, as per the direction of this Tribunal the applicant produced one more legible copy of Annx.A4 through MA 251/2011. I cross checked it with the original document to verify the date of continuous casual labour service of the applicant as 27.10.1972. He was permitted to superannuate on 30.6.2009 the logical conclusion is that his date of birth would have been since verified. There is also no dispute that he was granted temporary status with effect from 10.7.1981.

6 Regarding the date of entry of the applicant as casual labour based on Annx.A4, this issue is settled in view of the order passed by the Tribunal in OA 202/08. The relevant paras 4,5 and 6 are extracted below:

"4 Respondents in their reply statement submitted that the applicant has not produced or annexed any proof for his claim that he has worked as a casual labourer from 10.4.1972 to 22.10.1978 the period for which he has claimed gratuity under the Payment of Gratuity Act, 1972 and he has also not produced his Date of Birth certificate from the civil authorities.

5 I have heard counsel for the parties. Counsel for the respondents has not disputed the authenticity of Annexure A-1 letter. There is also no dispute that he was granted temporary status with effect from 23.10.1978. Therefore, there is no merit in the submissions of the respondents at this belated stage that the applicant has not produced any documentary proof regarding his casual labour service from 10.4.1972 to 22.10.1978. Further, the respondents thereby have produced a copy of Office Order No.107/79/WP dated 11.6.1979 (Annexure R-1) showing that the applicant who was a project casual labourer of TVC-ERS conversion project was granted temporary status and revised scale of pay at Rs.196/- p.m in scale of Rs.196-232 with effect from 23.10.1978. 6 In the above facts and circumstances of the case, I declare that the applicant is entitled for payment of Gratuity with interest for the period from 10.4.1972 to 22.10.1978 in terms of Annexure A-5 circular of the Railway Board."

7 In Accordance with the Railway Board's circular (Annx.A6) it is clear that where a retired employee is eligible to draw gratuity under the provisions of the Payment of Gratuity Act, 1972 for the period of casual labour service prior to regularisation, the same shall be worked out on the basis of wages admissible on the laast date of temporary status service when option is exercised. The amount of gratuity thus worked out shall be paid along with the interest at the rate specified above for the period of delay i.e., for the period from the date of absorption upto the end of the month preceding the date on which the payment is made. The Railway Administration is to take steps suo moto to examine all the past cases on the basis of records available and to settle the claims accordingly. All the claimants were also to be suitably addressed on the basis of particulars available with the Railways, so that they or their legal heirs can claim the payment without delay. The Railway Administration is also required to extend all assistance to the retired as well as the serving Railway servants to exercise their option judiciously in order that the option exercised is advantageous to them. In this regard para 4 of the order in OA 358/08 (supra) is extracted below:

"4. Heard Shri.T.N.Sukumaran for the applicant and Shri.K.M.Anthru for the respondents. Admittedly, the aforesaid directions of the Railway Board has not been followed by the respondents' Railway in the case of the applicant. I, therefore, direct that the respondents shall comply with the directions of the Railway Board contained in the aforesaid Circular No. No.130/2000 dated 30.6.2000 (Annexure A-1) in the case of the applicant without any further delay. Since the applicant has already retired from service and he was a low paid employee, an official from the Welfare Department of the Railways shall be deputed to assist the Government servant to exercise his option judiciously as ordered by the Railway Board in their Circular. The benefits arising out of the said circular shall be made available to the applicant within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs."

8 In the above facts and circumstances of the case, I follow the above dicisions of this Tribunal in O.A.358/08 - T.Chellappan Vs. Union of India and Others decided on 3.2.2009. O.A202/08 V. Augustin Vs. Union of India and Anr and declare that

the applicant is entitled for payment of Gratuity with interest for the period from 27.10.1972 to 9.7.1981 in terms of Annexure A-6 circular of the Railway Board. The respondents shall comply with the directions of the Railway Board contained in the aforesaid circular without any further delay. Since the applicant has already retired from service and he was a low paid employee, an official from the Welfare Department of the Railways shall be deputed to assist the Government servant to exercise his option judiciously as ordered by the Railway Board in their circular. The benefits arising out of the said circular shall be made available to the applicant within a period of three months from the date of receipt of a copy of this order with interest @ 9% per annum from 1.1.2001 i.e after six month of the order of the Railway Board . There shall be no order as to costs.

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