

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00542/2018

DATED THIS THE 23RD DAY OF JANUARY, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Sri Rajendra,
Aged: 49 years,
S/o Govindaraj,
Working as Regular Mazdoor,
At O/o Central Telegraph office,
BSNL, Pandeshwar,
Mangalore – 575 001
Residing at:
Mennebettu village,
Near Government School,
Ullange P.O.
Kinnikoti – 574 150

.....Applicant

(By Advocate Shri P. Kamalesan)

Vs.

1. Bharath Sanchar Nigam,
Reptd by Director General,
Department of Telecommunication,
No. 20, Sanchar Bhavan,
Ashoka Road,
New Delhi – 110 001

2. Chief General Manager (Telecom)
Karnataka Circle,
Doorsamparka Bhavan,
Ulsoor,
Bangalore – 560 008

3. The Principal General Manager,
Bharath Sanchar Nigam,
Telecom House,
Old Kent Road,
Mangalore – 575 001

....Respondents

(By Shri V.N. Holla, Counsel for the Respondents)

O R D E R (ORAL)
(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The matter is covered by some of our judgments especially
O.A. No. 09/1999 which was disposed off on 10.08.1999 which we quote:

“JUSTICE S. VENKATARAMAN, VICE CHAIRMAN:

Though this matter has come up for admission, as both sides are represented by counsel, the matter is heard for final disposal.

The applicant was a part-time Casual Labourer and this Bench in O.A. No. 524/93 relying on the Full Bench decision in Sakkubai's case had directed the respondents to confer temporary status on the applicant. Though the respondents had failed a SLP before the Supreme Court challenging the judgment in Sakkubai's case as well as the order passed in favour of the applicant as no stay order had been issued and as the applicant had initiated contempt proceedings against the respondents, the respondents issued an order conferring temporary status on the applicant. After conferring temporary status in compliance with the directions given by the Tribunal, the respondents also issued a direction as per Annexure A-8 dated 1.1.96 requiring the applicant to work for eight hours a day w.e.f. 1.1.96. The apex court, after hearing the SLP on merits, reversed the decision of the Full Bench in Sakkubai's case and held that under the scheme for conferment of temporary status, a part time casual labourer was not entitled to the conferment of temporary status. The appeal filed against the order passed in applicant's case was clubbed with the appeal against the decision in Sakkubai's case and a common order was passed. Consequent to the Supreme Court's decision, the impugned order at Annexure A-10 dated 19.11.98 has been passed directing action to be taken to withdraw temporary status conferred on the applicant and to recover all the consequential benefits given. However, the applicant has been allowed to continue as a part time Mazdoor. The applicant has challenged this order in this application.

3. The learned counsel for the applicant has contended that though by virtue of the Supreme Court's decision the applicant cannot claim conferment of temporary status under the scheme, there is no bar for the applicant seeking the benefit under the subsequent clarifications issued by the department in Annexure A-6 the letter dated 17.12.90. He has relied specifically on clarification which is as hereunder:

"8. Can temporary status be conferred on a part time employee?

No. They may, however, be brought on the strength of full time casual labourers, subject to availability of work and suitability. For this purpose work requirements of different types and at neighbouring units can be pooled. Subject to their completing 240 days or 206 days of work on full time basis as the case may be in the preceding twelve months they may be considered for grant of temporary status. However, part time casual labourers will be merged with full time casual labourers/temporary mazdoor in a common single panel in accordance with the existing instructions for the purpose of regularisation of service."

4. Shri.P.A.Kulkarni for the applicant contended that though the applicant was a part time casual labourer, from 1.1.96 he has worked full time, that though the direction to work for eight hours might have been given in pursuance of the judgement of the Tribunal, the fact that the applicant worked for eight hours would show that there was work for eight hours and that in view of the clarification referred to above, after completion of 240 days of work on full time basis, the applicant is entitled to the conferment of temporary status. He also contended that the direction in the impugned order for recovering even the wages which have been paid to the applicant for the full time work done by him is wholly unsustainable.

5. We may at the outset state that the direction in Annexure A10 by which even the full time wages paid to the applicant from 1.1.96 onwards can be recovered from the applicant cannot be sustained. Though it was in pursuance of the direction given by this Bench the applicant was conferred temporary status and he was also asked to work for eight hours and the order of this Bench has been set aside by the Supreme Court, it does not mean that the applicant can be

deprived of the wages for the period during which he worked full time or made himself available for work for eight hours. It is not the respondents case that the applicant did not work full time as per the directions given by them in Annexure A-8. As such, there is absolutely no justification for that part of the direction in Annexure A-10 which contemplates recovery of the full time wages paid to the applicant from 1.1.96 onwards. It is seen that the operation of Annexure A-10 has been stayed by this Bench and, as such, the applicant must have continued to perform full time work. We make it clear that the wages paid to the applicant during the period during which he either worked or made himself available for work for eight hours in pursuance of either the earlier direction given by this Tribunal in O.A.No.524/93 or the stay order given in this application shall not be recovered. However, the applicant will not be entitled to any other benefit under the order Annexure A-4 by which temporary status was conferred on the applicant in compliance with the directions given by the Tribunal.

6. The next point to be considered is whether the applicant can claim temporary status on the basis of the clarification issued at Annexure A-6 and referred to above. The contention of the learned counsel that because the applicant worked for eight hours from 1.1.96 it must be concluded that there was eight hours work available and that the work done by him should therefore be taken into account for purposes of conferment of temporary status afresh on the basis of clarification, cannot be accepted straight away. Because the respondents were obliged to confer the temporary status on the applicant by virtue of the order passed by this Bench, the consequence of which was to take the applicant for full time work, the department has issued the direction as per Annexure A-8. By this, we do not mean to state that the department did not have full time work at that time and it is only because of the order of the Tribunal the applicant was asked to work for eight hours. This is a matter which the department has to independently investigate and arrive at a decision whether there was availability of work for eight hours when Annexure A-8 order was issued. Apart from that the clarification given by the department referred to above indicates that even in the case of part-time labourers they can be brought on the strength of full time casual labourers subject to availability of work and suitability. To find out whether work was available, the requirements of different types and even at neighbouring units will have to be pooled. This has not been done in the case of the applicant because the applicant had already been given the benefit of temporary status by virtue of the order of this Tribunal and now that order is withdrawn because of the ruling by the

Supreme Court, the department will have to consider the question of taking the applicant on the strength of full time casual labourer on the basis of the clarification referred to above after making an independent examination of the relevant facts.

7. For the above reasons, this application is allowed in part. That part of Annexure A-10 by which the wages paid to the applicant for the full time work done by him is sought to be recovered is set aside and it is made clear that no wages paid to the applicant for full time work done by him till the date of this order shall be recovered from him. The order at Annexure A-10 by which the temporary status already conferred on the applicant is withdrawn is upheld. However, notwithstanding that order at Annexure A-10, the respondents are directed to consider independently whether there was availability of full time work from 1.1.96 onwards and whether the applicant could be taken to have done the full time work which was available or whether he was given full time work even though there was no work available because of the order of the Tribunal. If the applicant can be said to have worked for 240 days on full time basis in respect of the work which was available, then the respondents may consider conferring temporary status on the strength of the clarification given in letter dated 17.12.90 (Annexure A-6). If the respondents come to the conclusion that the applicant cannot be conferred temporary status on the basis of the full time work done by him from 1.1.96 onwards for the reason that there was no availability of work at that time, then the respondents shall consider bringing the applicant on the strength of the full time casual labourer subject to availability of work and suitability as clarified in Annexure A-6, from such time there is availability of work for which purpose they shall also pool the requirements, if any, of different types under neighbouring units. This shall be done within a period of four months from the date of receipt of a copy of this order. Parties to bear their own costs."

2. Thereafter apparently vide Annexure-A5, which we quote herewith, his temporary status was withdrawn and there was concerned proceedings thereafter.

"DEPARTMENT OF TELECOMMUNICATIONS

Office of the G.M. Telecom, D. K. District, Mangalore 575 001

CAT/Case/Rajendra/CTO MR/99-2000/22 dtd @ MR-1 the 15-9-99

Sub: Withdrawal of Temporary Status conferred on Shri Rajendra, S/o Govindraj, P/T Gardner, CTO MR

Ref: This office Memo No. Staff/76-2/CAT Case/98-99/II/77 dtd 22-12-98

Whereas as per the judgement of Hon'ble Supreme Court in SLP No. 8809 and instructions thereon by CGMT BG in letter No. R&E/2-48/18 dtd 19-11-98, the temporary status conferred on Shri Rajendra, P/T Gardner, CTO MR was ordered to be withdrawn vide GM TD Mangalore No. Staff/76-2/CAT CASE/98-99/II/77 dtd 22-12-98 with further direction to recover the consequential financial benefits granted to him under temporary status and to allow him to continue as Part time Gardner as working earlier to the temporary status.

Whereas this order withdrawing the temporary status was stayed by Hon'ble CAT Bangalore vide its order GRR/MJ/SKG(MA) dtd 7-1-99 in O.A. No. 09/99. Now in pursuance of CAT Bangalore Judgment dtd 10-8-99 in O.A. No. 09/99 and as per instructions contained in CGMT BG No. R&E/2- 48/18/II dtd 6-9-99, the undersigned hereby withdraw the temporary status conferred on the said part-time official viz; Shri Rajendra with immediate effect with the direction not to recover the consequential Financial Benefits paid as temporary status mazdoor. It is further ordered that the above said Shri Rajendra will work as part-time gardner as he was working earlier to issue of temporary status.

Sd/-

*(VISHNUMURTHY M.)
Asst. General Manager (Staff)
D.K. Telecom District
Bangalore 575 001*

*Copy to: 1. Shri Rajendra, S/o Govindraj, P/T Gardner, CTO MR thro' Supdt CTO MR.
2. STT MR/Supdt, CTO MR
4. Pay/L&A/Establishment Section, O/o GMT MR
7. The SB of the Mazdoor at CTO MR
8. The Chief G.M. Telecom (R&E), KNT Cle, Ulsoor, Bangalore 560 008
9. Office copy."*

3. In the meanwhile, Annexure-A8 seems to be issued indicating that anybody working for more than 4 hours would be considered as full time casual labourer with effect from 24.04.2000. We quote from it:

"DEPARTMENT OF TELECOM SERVICES"*From:**To:*

*The Chief General Manager
Telecom,
Karnataka Circle,
Doorasamparka Bhavan,
No. 1, Swamy Vivekananda
Road,
Ulsoor, Bangalore – 560 008*

- 1. Sr. GM, BGTD, Bangalore -1*
- 2. G.M.Mangalore/Hubli/Shimoga
Bijapur/Davangere, Tumkur
Mysore/Hassan*
- 3. TDM Madikeri/Raichur*

No. R&E/2.48/DLGS/XI Dated at Bangalore -560008, 24th April 2000

*Sub: Conversion of part time casual labourers working with 4
Hours or more per day into full time casual Mazdoors*

Ref: Sr.GM BG letter No. Rectt.BG/2-8/I/92 dated 03-11-99

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*Approval of Chief General Manager Telecom, Karnataka Circle,
Bangalore – 560 008, is hereby accorded for the under mentioned
part time mazdoors as shown in Annexure 'A' for conversion from 4
hours and above to full time mazdoors w.e.f. 06.09.1999 as per the
DTS ND instructions No. 269-13/99-STN-II dated 16-09-99 and the
same may be followed strictly.*

*Shri Rajendra, Part time gardener may be offered full time work
in (not legible) wing also in case full time work cannot be
afforded to him in Traffic side.*

*The payment of the above casual labourers may be made as
provided for under Rule 331 of P&T FBB Vol-1. Under no
circumstances should they be paid through (not legible).*

*No part time casual labourers will be engaged hereafter and
any violation will result in disciplinary action.*

Sd/-

*(K. GURURAJAN)
Asst. General Manager (R&E)
For Chief General Manager Telecom
Karnataka Circle, Bangalore – 560 008
PHONE: 5563852
FAX:5305141"*

4. Now, Shri Kamalesan, learned counsel for the applicant, submits that till 2000 he was a part time employee and thereafter in pursuance to Annexure-A8 he became a full time casual labourer and, therefore, he would say that Annexure-A17 order which we had passed must be held to be applicable to him. Annexure-A17 is our order in O.A. No. 1598/2015 dated 17.08.2016 which we quote:

“The applicant in the present OA seeks the following relief:

- i. *Set aside the impugned service certificate dated 28.02.2002(Annexure:A-05) as illegal and against Para-6 of Master Circular-20 and 54 and also against Pension Manual-1993 and also the order passed by the Hon’ble Tribunals.*
 - ii. *Direct the respondent-01 to re-determine the qualifying service of the applicant by counting of casual service and service from the date of Temporary status to absorption and revised the service certificate dated 28.2.2002 considering 34 ½ years qualifying service and also be paid the difference in pensionary and other terminal benefits with 09% interest per annum within the stipulated time.*
2. *According to the applicant, he was appointed in the Railways on 9.4.1962 as casual labour/substitute and was granted temporary status on 7.4.1973. He was regularised on 5.6.1978 and finally retired on 28.2.2002. The respondents issued attestation form on 19.8.1972(Annexure-A1) which mentions the service particulars of the applicant and indicate that the applicant was appointed on 9.4.1962. Thereafter, an office order was issued on 16.4.1974(Annexure-A2) which states that he was Khalasi Helper on 7.10.1972 and completed 6 months of continuous service on 6.4.1973 and was granted temporary status on 7.4.1973. The applicant was terminated on 28.3.1974 in the wake of All India strike and was reinstated on 16.8.1975. The office order dated 7.6.1977(Annexure-A3) states that service prior to the termination is to be counted for the purpose of empanelment. Thereafter, an office order dated 13.6.1978 (Annexure-A4) was issued stating that the applicant was empanelled from 5.6.1978. However, the respondent No,1 issued the service certificate dated 28.2.2002 stating that the applicant was initially appointed on 7.10.1972. The respondent No.1 did not take into account earlier engagement of the applicant from 1962 onwards. The service certificate at Annexure-A6 clearly mentioned that he was given total*

100% service benefit from 5.6.1978 to 28.2.2002 and 50% service from 7.10.1972 to 15.12.1975.

3. The applicant thereafter filed a representation dated 5.2.2015(Annexure-A8) requesting for counting 50% of his service rendered from 1962 to 1973 taking into consideration Railway Board's communication dated 25.11.2014. According to the applicant 50% service from 9.4.1962 till acquisition of temporary status till 1973 comes to 5 years and 6 months and should be counted. Moreover, he is also eligible to get full qualifying service from 7.2.1973 to 28.2.2002. As a result, his total qualifying service should be 34 years 6 months. Therefore, in terms of para-6 of the Master Circular-20(Annexure-A9) and Railway Board's letter dated 25.11.2014 (Annexure-A10), applicant is entitled to counting of service accordingly. He further referred to order passed by Lucknow Bench of this Tribunal in OA.No.145/2010 in Nadir Ali vs. Union of India (Annexure-A13) and order passed by the Principal Bench of this Tribunal in OA.No.4286/2013 in Ishwar Das vs. The General Manager, Northern Railway (Annexure-A14) wherein the Tribunal held that 50% of casual service should be counted for the purpose of pensionary benefit in terms of Master Circular-54 and Rules-20 and 31 of Pension Manual-1993. Therefore, he prayed for granting the relief as sought for.
4. The respondents have filed their reply statement in which they have submitted that in pursuance of the directive issued vide GM/Southern Railways letter dated 29.12.1971, the applicant being senior casual labourer was posted as Substitute against vacancy. His posting as substitute was purely on adhoc and it did not confer any claim for his continuance as Substitute or for his absorption in regular service unless he is empanelled by a duly constituted recruitment selection committee in accordance with extant instructions. The applicant reported at SI/II/SBC as substitute Khalasi in the pay scale of Rs.70-85 on 7.10.1972. Due to his participation in illegal strike from 9.5.1974 to 14.5.1974, he was terminated w.e.f. 28.5.1974 and was reengaged on 16.8.1975. After completion of 4 months of continuous service as on 15.12.1975, temporary status was granted w.e.f. 16.12.1975. He was empanelled and absorbed as Khalasi on 5.6.1978 and was further progressed in his service career.
5. The respondents submitted that the applicant had earlier filed OA.No.1535 & 1559-1607/2001 before this Tribunal seeking direction for grant of temporary status after expiry of 6 months from the date of initial engagement. The Tribunal vide judgment dated 17.2.2003 dismissed the OA and held that the claim of the applicant for grant of deemed temporary status from a date other than what has been shown by the respondents is not tenable. The Tribunal also held that the claim for counting 50% casual labour service for pensionary benefits, is also not tenable(Annexure-R1). The applicant had not challenged the said order before any forum.

6. *The respondents further submitted that the cause of action arose in 1975. Even if the date of retirement is considered as cause of action, then also it was in the year 2002. Therefore, this OA has been filed after long delay and hence should be dismissed on that ground only. According to the respondents, the qualifying service has been calculated taking into account casual service as per extant rules. The respondents further submitted that Annexure-A10 communication is only a correspondence between Ministry of Railways to the Ministry of Finance requesting to modify their OM dated 14.5.1968 to provide 100% of temporary status casual service rendered before absorption in regular employment being treated as qualifying service for the purpose of grant of pensionary benefits. The said letter is only a correspondence and no final decision has been taken on the subject. Therefore, the applicant cannot claim any benefit on the basis of said Annexure-A10. Para-06 of Master Circular No.20 relates to the date of appointment of a Substitute to be recorded in the Service Book. Against the column 'date of appointment' it should be date on which he/she attains temporary status after a continuous service of four months if the same is followed by his/her regular absorption. The applicant got temporary status on 16.12.1975 and empanelled on 5.6.1978 and hence the respondents have complied with provision of Master Circular-54. The applicant has not challenged his date of appointment during his service or after retirement before filing this OA before any Railway authority or before any Court of law. He cannot challenge the same after a lapse of so many years.*
7. *The applicant has filed a rejoinder in which he submitted that the Tribunal in earlier OA.No.1535/2001 considered two issues viz. (1) Grant of deemed temporary status on completion of 6 months from the initial appointment, and (2) counting 50% for casual service for pensionary benefits. The first issue was granted and the second issue considered the case of Union of India vs. K.G.Radhakrishna Panikar (AIR 1998 SC 2073). Further Master Circular-54 dated 21.9.2011 vide para-20 (amended) stated that 'half of the period of service of casual labour after attaining of time scale on completion of 120 days continuous service if it is followed by absorption in service as regular employee, counts towards pensionary benefits. With effect from 1.1.1981 the benefits shall also extended to project casual labour. Further in identical case of Nivas Verma vs. General Manager, Northern Railway, New Delhi dated 14.8.2015 in OA.No.3019/2015 held that '50% of casual service and the entire 100% temporary service rendered by the applicant should be considered as qualifying service for the purpose of granting him the benefits under MACP and under the pensionary rules. Therefore, the applicant is entitled to the relief as claimed by him.*
8. *Heard the Learned Counsel for the parties. The Learned Counsel for the applicant referred to Annexure-A1 attestation form dated*

19.8.1972 issued by the respondent authorities wherein the details of services rendered earlier has been specified under column-II. It clearly mentioned that the applicant was engaged as a casual worker from 9.4.1962 onwards. Therefore, the service of the applicant as casual labour till he was granted temporary status on 7.4.1973 cannot be denied. Therefore, the contention of the respondents that the applicant was engaged only from 7.10.1972 is totally incorrect. As per the records of the respondents themselves, the applicant had worked from 1962 as casual labour and hence he is entitled to service benefits for that period which should be counted for pensionary benefits. He also referred to various judgments of the Principal Bench of this Tribunal vide which counting of 50% of service rendered as casual worker till they acquire temporary status and full service benefits from there on was allowed. He also referred to a letter dated 21st September, 2011, which relate to qualifying service for pensionary purpose to substantiate his position. He mentioned that Annexure-A10 communication refers to further liberalisation of existing condition of counting 50% of temporary status for qualifying service and to make it 100% so that such staff are in a position to earn a reasonable amount of pension on their retirement say, 2/3rds of full pension, if not full pension. The applicant had made representation pursuant to this communication. More over pension being a recurring cause of action, the stand of the respondents regarding delay in filing the OA is not tenable.

9. The Ld.Counsel for the respondents, on the other hand, reiterated the submission made in the reply statement and stated that as per available record that the applicant was engaged w.e.f. 1972 and the qualifying service has been calculated and communicated to him. When a query was made regarding the service particulars stated in the attestation form and which mentions the engagement of the applicant from 9.4.1962 onwards till grant of temporary status, he mentioned this issue needs to be verified. As per available records, the applicant's engagement was from 1972 onwards only. He also submitted that the issue of counting of casual service has been agitated earlier before this Tribunal and the same was dismissed also. Therefore, the contention of the applicant does not merit any consideration.
10. We have carefully considered the facts of the case and submissions made by either side.
11. The issue pertains to counting of services rendered by the applicant as casual worker prior to his attainment of temporary status and services rendered after attaining temporary status. In addition there is a dispute regarding period of engagement of the applicant as casual worker. The respondents had counted the services of the applicant taking into account his date of engagement as substitute

Khalasi on 7.12.1972 and grant of temporary status on 7.4.1973 and his empanelment for absorption w.e.f. 5.6.1978. However, the applicant claims that he has been working with the respondents on casual basis right from 1962. He has submitted Annexure-A1 attestation form which has been authenticated by officials of the respondents in support of his contention. The attestation form mentioned his engagement as ELR Khalasi from 9.4.1962 to 14.10.1962, ELR Fitter Khalasi from 1.11.1962 to 25.3.1963, ELR Store Mate from 26.3.1963 to 18.6.1966, ELR Fitter Khalasi from 21.6.1966 to 10.12.1967, ELR BTM from 11.12.1967 to 9.4.1969 and ELR Store Mate from 10.4.1969 till date i.e. when the applicant's attestation form was signed on 19.8.1972. The respondents have not touched upon this aspect in the reply statement. The Counsel for the respondents during the hearing also could not throw any light regarding such an engagement of applicant prior to 1972. Since the attestation form has been prepared by the respondent authorities only, it cannot be ignored and merits due consideration. If no records are found to the contrary then it has to be taken as correct. In the event of the applicant working as casual labourer from 1962 onwards then this period of engagement has to be taken into consideration for the purpose of counting of service for pensionary benefits.

12. *The Learned Counsel for the respondents in the reply and during the arguments has referred to an earlier OA filed in 2001 by the applicant seeking the relief of grant of temporary status. Since the applicant has been subsequently granted temporary status and also regularised, this aspect would not be relevant at this juncture. The only point of consideration is the date from which the applicant was actually engaged as casual labourer and how to treat the services rendered by him as casual worker and after the grant of temporary status till regularisation.*
13. *The Ld.Counsel for the applicant referred to the order passed by the Lucknow Bench of this Tribunal in OA.No.145/2010(Annexure-A13) in Nadir Ali vs. UOI wherein vide order dated 4.10.2013, the Tribunal referred to Rule 20 and 31 of the Railway Services (Pension) Rules, 1993 and held that the applicant therein is entitled to get half of the services counted for the period rendered as casual worker prior to grant of temporary status. The Principal Bench of this Tribunal in OA.No.4286/2013 in Ishwar Dass vs. the General Manager, Northern Railways had also considered similar issue. Vide order dated 17.2.2015(Annexure-A14), the Principal Bench of this Tribunal in above OA held that the qualifying service of the applicant therein has to be determined by counting 50% of the casual service and 100% of the substitute service and then re-determine his pensionary benefits. Similar order was also passed by the Principal bench in OA.No.1022/2014 and 2639/2013(Annexure-RE16&17). In a recent order dated 14.8.2015 in OA.No.3019/2015(Annexure-RE18) in Sh.Niwas Verma vs. the UOI, Northern Railways, the Principal Bench*

held that 50% casual service rendered by the applicant and entire 100 % temporary status casual service should be considered as qualifying service for the purpose of granting of MACP as well as benefits under the pensionary rules. The respondents were directed therein to verify the factual position stated by the applicant and issue appropriate order accordingly.

14. *Taking into consideration various orders passed by different Benches of this Tribunal on the issue, we are also inclined to take a similar view and hold that the applicant is entitled for counting of 50% of casual service rendered by him and 100% of service rendered from the date of temporary status till his regularisation for the purpose of pension and other benefits. However, in this case, there is also the issue of the date of actual appointment of the applicant as casual labourer. Since the applicant has submitted an attestation form stating his engagement from 9.4.1962 onwards, this aspect has to be verified by the respondents on availability of records and in case the records are not available, then they have to consider the documents as submitted by the applicant and grant the service benefits accordingly.*
15. *The respondents had raised the issue of delay in filing the OA. However since the matter relates to grant of pensionary benefits and also the fact that there are several orders of the Tribunal after 2013 regarding counting of service as casual labourer, we hold that the issue of delay raised by the respondents is not very relevant and cannot be a ground to reject the contention of the applicant on that ground.*
16. *After detailed consideration of the facts and circumstances of the case, we hold that the applicant is entitled for counting of 50% of services rendered by him as casual worker till he was granted temporary status and 100% of service rendered after acquiring temporary status. Since there is a dispute regarding the initial engagement as casual worker, we dispose of this OA with a direction to the respondents to verify the factual position stated by the applicant with regard to the services rendered by him and to count 50% of casual service and entire 100% of service rendered as temporary status worker as qualifying service for the purpose of granting him benefits under the pensionary rules. The respondents shall pass necessary orders based on the aforesaid direction within a period of three(3) months from the date of receipt of a copy of this order. The applicant is also directed to submit a copy of this order to the respondents within two(2) weeks from receipt of copy of the same.*
17. *The OA is accordingly, allowed in terms of the above direction. No order as to costs."*

5. This also seems to be buttressed by order in Hon'ble Apex Court produced as Annexure-A18 in Union of India & Ors. Vs. Rakesh Kumar & Ors in Civil Appeal No. 3938 of 2017 arising out of SLP (C) No. 23723 of 2015 which we quote:

“ASHOK BHUSHAN, J.

1. These appeals have been filed by the Union of India, Divisional Railway Manager, Northern Railway alongwith few other Railway Authorities challenging judgments of Delhi High Court by which writ petitions filed by the appellants have been dismissed. All the appeals raise similar questions of law and are based on almost identical facts. It shall be sufficient to note the facts of C.A. No.3938 of 2017 arising out of SLP (C) No. 23723 of 2015 in detail for appreciating the issues raised in this batch of appeals. CA NO. 3938 2017(ARISING OUT OF SLP(C) NO.23723 OF 2015)

2. The respondents to the appeal were initially appointed as casual labour in the Northern Railway, after working for one or more years, they were granted temporary status and subsequently regularised against regular posts.

For example, the Respondent No. 1 was engaged on casual basis from 27.06.1984 and w.e.f. 22.06.1985 he was granted temporary status. Subsequently, w.e.f. 31.12.1996 he was regularised against a post and has been working in such capacity at New Delhi Railway Station. Respondent No. 1 raised a grievance regarding granting him full service benefit from 22.06.1985 to 31.12.1996 instead of 50 per cent service benefit.

Similarly, Respondent Nos.2 – 24 were engaged initially on casual basis and after one or two years were granted the temporary status and thereafter were regularised w.e.f. 31.12.1996. All the respondents raised the same grievance i.e. giving full service benefit for the period during which they were working, having temporary status. Respondent Nos.1 to 24 filed O.A.No.2389 of 2014 before the Central Administrative Tribunal Principal Bench, New Delhi.

3. Before the Tribunal the applicants claimed for following reliefs:-

"(a) To direct the respondents to count the services rendered by the applicants in the capacity of casual labour as 50% after counting 120 days and 100% from the date of temporary status till their regularisation for the purpose of pension and pensionary benefits and other benefits as a qualifying service.

(b) To direct the respondents to extend the benefits of judgment and order passed in Shyam Pyare & Ors. vs. UOI & Ors. which is on the basis of Shaikh Abdul Khadar's Judgment for the purpose of pension and pensionary benefits as well as other consequential benefits, accordingly the respondents be directed to examine the cases of the applicants in accordance with law.

(c) Any other relief which this Hon'ble Tribunal deem fit and proper may also be passed in the facts and circumstances of the case in favour of the applicants."

4. The Tribunal relying on its earlier order dated 29.05.2014 in a similar case being O.A.No.1921 of 2014, Shri Prem Pal vs Union of India and Ors. allowed the Original Application filed by the respondent. Tribunal in its order dated 18.07.2014 referred to various orders passed by it wherein Tribunal had held that a casual labour after having been granted temporary status is entitled to reckon 100 per cent period of service with temporary status for the pensionary benefit.

5. Tribunal disposed of the Original Application by issuing following directions:-

"In view of the above position, we dispose of this OA at the admission stage itself with the direction to the respondents to examine the cases of the applicants in the light of the aforesaid Orders of this Tribunal. If applicants' cases are also covered by the said Orders, they shall also be accorded the same benefits. In any case, the respondents shall pass appropriate order in this case within a period of two months from the date of receipt of a copy of this Order. There shall be no order as to cost."

6. The Union of India and Railway Authorities aggrieved by the aforesaid directions of the Tribunal filed writ petition before Delhi High Court being Writ Petition No. 7783 of 2014. The case of the appellants before the High Court was that only 50 per cent of the temporary status of service can be counted for the purpose of the pensionary benefit. It was pleaded in the writ petition that the judgment of Andhra Pradesh High Court in General Manager, South Central Railway, Secunderabad & Anr. vs. Shaik Abdul Khader reported in 2004 (1) SLR 2014 had been dissented by the Andhra Pradesh High Court itself in a subsequent judgment dated 01.05.2009 in Writ Petition(C) No. 10838 of 2001, General Manager, South Central Railway, Secunderabad vs. A. Ramanamma. It was further pleaded that Para 2005 of IREM permits only 50 per cent of temporary status service to be counted for purposes of pensionary benefit.

7. Delhi High Court vide its judgment and order dated 14.11.2014 dismissed the writ petition following its earlier judgment dated

10.11.2014 in W.P.(c) 7618 of 2014 in Union of India vs. Prem Pal Singh. It is useful to extract the entire judgment of the Delhi High Court dated 14.11.2014:

“The dispute in this case is as to the manner in which the respondents/applicants' period of service to be counted for the purpose of terminal and pensionary benefits.

The petitioner Union of India is aggrieved by an order of the Central Administrative Tribunal dated 18.07.2014. At the outset, it was pointed out that this Court in W.P.(C)7618/2014 and connected case (Union of India & Ors. vs. Prem Pal Singh), decided on 10.11.2014 had occasion to deal with an identical matter. The only difference was that the orders of the CAT in those cases was made on 06.02.2014 and 29.05.2014.

The Court had on that occasion taken into consideration the Railway Service (Pension) Rules, specifically Rule 20 as well as the Master Circular no.54 (paragraph 20) and paragraph 2005 IREM. In addition, the Court had considered various rulings including those of the Supreme Court and held that 50% of the period spent by casual employee subject to his being conferred temporary status and eventual regularisation was entitled to reckon for the purposes of pensionary and terminal benefits and likewise the entire period of temporary service - subject to regularisation – was eligible to be counted for the purposes of pension and terminal benefits.

Following the said decision in W.P. (C) 7618/2014 decided on 10.11.2014, this petition is accordingly dismissed.”

[C. A. NO. 3939 2017 (ARISING OUT OF SLP (C) 23725 OF 2015)]

8. This appeal has been filed against the judgment of the Delhi High Court dated 10.11.2014 in W.P. (C) No. 7627 of 2014 Union of India & ors. vs. Shyam Pyare Yadav & Ors. by which judgment dated 10.11.2014 two writ petitions being W.P. (C) No. 7618 of 2014, Union of India vs. Prem Pal Singh and W.P. (C) No. 7627 of 2014, Union of India & Ors. vs. Shyam Pyare Yadav & Ors. had been decided.

9. The respondents to the writ petition were also casual employees in a construction organisation, who were granted temporary status subsequently and were regularised against permanent posts. They also claimed benefit of 100 per cent service after grant of temporary status for the purpose of pension. They filed O.A.No.3745 of 2012, which was allowed by Central Administrative Tribunal by its judgment dated 06.02.2014 against which W. P. (C) No. 7627 of 2014 was filed by Union of India, which was dismissed by Delhi High Court on 10.11.2014

[C.A.NO. 3940 OF 2017(ARISING OUT OF SLP(C)NO.3382 OF 2016]

10. The appeal had been filed against the judgment of the Delhi High Court dated 18.11.2014 in W. P. (C) No. 7913 of 2014. The W. P.(C) No. 7913 of 2014, following the judgment dated 10.11.2014 in Union of India & Ors. vs. Prem Pal Singh (Supra), has been dismissed. The respondents were also appointed as casual labourers who were subsequently granted temporary status and were thereafter, regularised against permanent posts. They also claimed entire period of temporary status to be considered for pensionary benefit. An O.A.No.2221 of 2013 was filed which was allowed on 23.05.2014 against which W.P.(C) No. 7913 of 2014 was filed, which was dismissed on 18.11.2014.

[C. A. NO. 3941 OF 2017(ARISING OUT OF SLP(C)NO.28597 OF 2016]

11. The appeal has been filed against judgment of Delhi High Court dated 18.01.2016 in W.P. (C) No. 10202 of 2015 and other connected writ petitions. The High Court following its earlier judgment dated 10.11.2014 in Union of India & Ors. vs. Prem Pal Singh (Supra) had dismissed the writ petitions. The respondents were also casual employees, who were granted temporary status and thereafter, regularised.

They claimed reckoning of the 100 per cent service period performed by them after obtaining temporary status for the purpose of pensionary benefit. Original Application was filed before the tribunal which was allowed against which the writ petition was filed.

[C.A.NO. 4384 OF 2017(ARISING OUT OF SLP(C) NO.821 OF 2017]

12. The appeal had been filed against the judgment and order dated 18.01.2016 passed by Delhi High Court in W.P.(C) No.10706 of 2015. The High Court relying on its earlier judgment dated 10.11.2014 in Union of India & Ors. vs. Prem Pal Singh (Surpa) dismissed the writ petition. The respondents were also casual labourers, who were granted temporary status and thereafter, regularised against the permanent posts. Original Application was filed before the Tribunal which was allowed against which judgment, the writ petition was filed, which got dismissed.

[C.A. No.3943 OF 2017[ARISING OUT OF SLP(C)No.8365 OF 2017 (CC NO. 1516)]

13. The appeal has been filed against the judgment of the Delhi High Court dated 31.03.2016 in W.P.(C)No. 9286 of 2015. The High Court

relying on its earlier judgment dated 10.11.2014 in Union of India & Ors. vs. Prem Pal Singh (Supra) had dismissed the writ petition. The respondents were also engaged as casual labourers, who were accorded temporary status and thereafter were regularised. Original Application filed by the respondents were allowed holding that they were entitled to reckon the entire period of temporary service for pensionary benefit, which order was affirmed by the High Court.

[C.A. No.3944 OF 2017(ARISING OUT OF SLP(C)No. 3719 OF 2017)]

14. This appeal has been filed against the judgment and order dated 18.01.2016 in W.P.(C) No.11521 of 2015. The High Court relying on its earlier judgment dated 10.11.2014 in Union of India & Ors. vs. Prem Pal Singh (Supra) dismissed the writ petition. The respondents were also initially appointed as casual labourers and thereafter, granted temporary status and subsequently, were regularised for the permanent posts. They filed an O.A. before the Central Administrative Tribunal, claiming reckoning of entire period of temporary service for pensionary benefit, which application was allowed, aggrieved by which order Union of India had filed an application, which had been dismissed.

15. From the facts, as noted above, it is clear that all the writ petitions filed by the Union of India giving rise to the above appeals have been dismissed relying on the judgment of the High Court dated 10.11.2014 in W. P.(C) No. 7618 of 2014 and W. P.(C) No. 7627 of 2014. Against the judgment dated 10.11.2014 in W. P.(C) No. 7618 of 2014, an SLP (C) No. 23720 of 2015 had been filed, which was heard on 08.03.2017. SLP (C) No. 23720 of 2015 had been disposed of in view of the statement made by the learned counsel for the respondents as noticed in the order dated 08.03.2017.

However, against the same judgment dated 10.11.2014 rendered in W.P(C)No. 7618 of 2014 and W.P.(C) No. 7627 of 2014 the Union of India has filed SLP(C) No. 23725 of 2015 arising out of W.P.(C)No. 7627 of 2014 which is also taken up for consideration in this batch of appeals.

16. Judgment of Delhi High Court dated 10.11.2014 had been followed in all other cases. We shall refer to the judgment of the High Court dated 10.11.2014 as the impugned judgment while considering all these appeals.

17. We have heard, Mr. Maninder Singh, learned Additional Solicitor General on behalf of the appellants. We have also heard Mr. M.C. Dhingra, and other learned counsel appearing for the respondents in support of the judgment of the Delhi High Court.

18. Learned Additional Solicitor General in support of the appeal contended that the High Court committed error in holding that a casual employee is entitled to reckon the 100 per cent period after getting temporary status for computation of pension. He submitted that the computation of pension is governed by statutory rules, namely, Railway Services (Pension) Rules, 1993 (hereinafter referred to as 'Rules,1993'), under which only 50 per cent period can be counted of a casual labour, who attains a temporary status as per Rule 31 of Rules,1993.

He contended that the judgment of Andhra Pradesh High Court in General Manager, South Central Railway, Secunderabad & Anr. vs. Shaik Abdul Khader reported in 2004 (1) SLR 2014 which is the basis of the judgment of the High Court, had itself been dissented and not followed by the Andhra Pradesh High Court in General Manager, South Central Railway vs. A. Ramanamma(Supra) decided on 01.05.2009. It is contended that casual labourer who is granted temporary status is paid out of contingency and is governed by Rule, 31 of Rules, 1993.

19. He further contended that the issue is completely covered by the judgment of the Apex Court reported in General Manager, North West Railway & Ors. vs. Chanda Devi, 2008 (2) SCC 108 and High Court as well as Tribunal had committed error in holding that casual worker after obtaining temporary status is entitled to reckon 100 per cent period of service. He submitted that the Delhi High Court has committed error by not following the judgment of this Court in Chanda Devi case (Supra) and inappropriately distinguished the same by saying that it did not consider Rule, 20 of Rules, 1993.

20. Learned counsel for the respondents refuting the submission of counsel for the appellants contended that the High Court has not committed any error in dismissing the writ petition of the appellants. It is contended that after obtaining the temporary status entire service is to be reckoned for computation of pension. It is further contended that under Rule, 20 of Rules, 1993 qualifying service to a Railway Servant commences from the date he takes charge of the post either substantially or in officiating or in temporary capacity of employment.

The respondents were granted temporary status, their working is in temporary capacity and they are entitled for the benefit under Rule, 20 of Rules, 1993. It is contended that the judgment of the Andhra Pradesh High Court in General Manager, South Central Railway vs. Shaik Abdul Khader(Supra) had rightly been relied by the High Court.

21. Mr. M.C. Dhingra contended that there is no difference between Railway Servants, one who is paid out of Contingency or one that who is paid out of Consolidated Fund. He submitted that no distinction can be made from the source of payment.

22. From the above submissions of the learned counsel for the parties and materials on record, the only issue which arises for consideration in these appeals is:

Whether the entire services of a casual worker after obtaining temporary status till his regular absorption on a post is entitled to be reckoned for pensionary benefit or only 50 per cent period of such service can be reckoned for pensionary benefit?

23. In so far as reckoning of 50 per cent casual period, there is no challenge and it is clear that the said reckoning is in accordance with Rule 31 of Rules, 1993 and the benefit of said 50 per cent services of casual period had already been extended to the respondents. Thus, we need to answer in these appeals the only question as noted above.

24. The Tribunal as well as High Court has referred to Para 20 of the Master Circular No. 54, Para 2005 of Indian Railway Establishment Manual (IREM) as well as Rules, 1993.

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."

26. Next Provision need to be noted is Para 2005 of IREM, which is as follows:-

"2005 IREM: 2005. Entitlements and privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 day or 360 days of continuous employment (as the case may be).

(a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D & A rules. However, their service prior to absorption in temporary/ permanent/ regular cadre after the required selection/ screening will not count for the purpose of seniority vis-a-vis other regular/ temporary employees. This is however, subject to the provisions that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered.

Casual labour including Project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily rated casual labour will not be entitled to these benefits.... ..”

27. Railway Services (Pension) Rules, 1993 have been framed under proviso to Article 309 of the Constitution of India. Rule 20 and Rule 31 of Rules, 1993 which are relevant for our purpose, are extracted as below: -

"20. Commencement of qualifying service- Subject to the provisions of these rules, qualifying service of a railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity: Provided that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post:

Provided further that -

(a) in the case of a railway servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose; and

(b) in the case of a railway servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity."

"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 shall be taken into account for calculating pensionary 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, though not 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;

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

NOTE –

(1) the provisions of this rule shall also apply to casual labour paid from contingencies.

(2) The expression “absorption in regular employment” means absorption against a regular post.”

28. The perusal of para 20 of the Master Circular indicates that only half of the period of service of a casual labour after attainment of temporary status on completion of 120 days continuous service if it is followed by absorption in service as a regular Railway employee, counts for pensionary benefits.

29. Para 2005 of Indian Railway Establishment Manual also contains the same scheme for reckoning the period for pensionary benefit. Para 2005 contains the heading: “2005. Entitlements and Privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 days of continuous employment (as the case may be).”

30. The above heading enumerates the privileges admissible to casual labour who are treated as temporary. Clause(a) of para 2005 provides:“...Casual labour including Project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits.”

31. Let us now look into the judgment of High Court dated 10.11.2014 to find out the reasons for holding that the casual labour after obtaining temporary status is entitled to reckon entire period of service for pensionary benefits. In Para 7 of the judgment the High Court refers to para 20 of the Master Circular and para 2005 of IREM as administrative instructions clarifying that half the period spent as casual labourers would be eligible to reckon for the purpose of

pension. In Para 6 of the judgment following was stated by the High Court:

"6. It would be immediately apparent that the Master Circular No. 54 and para 2005 of the IREM deal with a situation where casual labourers/workers are eventually regularised after attainment of temporary status. The combined effect of these is to entitle the individuals who work as casual workers for a period, to reckon half of that period for the purpose of pension..."

32. The High Court in the impugned judgment has relied on Rule 20 of Rules, 1993 and judgment of Andhra Pradesh High Court in General Manager, South Central Railway, Secunderabad & Anr. Vs. Shaikh Abdul Khader(Supra). Andhra Pradesh High Court in the above case after referring to Rule 31 of Rules, 1993, para 20 of Master Circular No.54 of 94 and para 2005 of IREM as well as Rule 20 laid down following:

"...If this sub-para is read with para-20 and also with Rule-31, there remains no doubt that on absorption whole of the period for which a casual labour worked after getting temporary status would have to be counted and half of the period has to be counted of the period for which a casual labour worked without being absorbed. Once he is given temporary status that means that he has been absorbed in the department. Even para 2005(a) has been drafted in the same way because of the fact that even such casual labour who have attained temporary status are allowed to carry forward the leave at their credit in full to the new post on absorption in regular service.

Therefore, we have no doubt in our mind that once temporary status is granted to a person who is absorbed later on in regular service carries forward not only the leave to his credit but also carries forward the service in full. Half on the service rendered by him as casual labour before getting the temporary status has to be counted. Therefore, we do not feel that the Tribunal was wrong in coming to the conclusion it has, although we may not agree with the reasons given by the Tribunal. The view taken by us is further strengthened by mandate of Rule-20 of Railway Services(Pension) Rules which lays down:

"20. Commencement of Qualifying service: Subject to the provisions of these rules, qualifying service of a railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. Provided that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post.

Provided further that

(a).....

(b).....”

Therefore, we hold that the respondent was entitled to get the service counted in full from January 1, 1983. He was also entitled to get half of the service counted before January 1, 1983 from the date he had joined in the railways as casual labour.”

33. The above judgment of Andhra Pradesh High Court was subsequently considered by the Andhra Pradesh High Court itself in Writ Petition No. 10838 of 2001, the General Manager, South Central Railway, Secunderabad & another Vs. A.Ramanamma decided on 01.05.2009 wherein earlier judgment of Andhra Pradesh High Court in Shaikh Abdul Khader(Supra) was not followed after referring to judgment of this High Court in General Manager, North West Railway & others Vs. Chanda Devi, 2008 (2) SCC 108.

34. Following are reasons given in subsequent judgment for not following Shaik Abdul Khader(Supra):

“ Similarly, Shaik Abdul Khader(supra) directing counting of the entire service rendered by a casual labour after getting temporary status even before absorption for purposes of qualifying service for pension/family pension, runs contrary to the distinction between 'casual labour with temporary status' and 'temporary railway servants' recognized by Chanda Devi(supra) and other decisions of the Supreme Court.

The conclusion in Shaik Abdul Khader(supra) that once a casual labour is given temporary status, that means that he has been absorbed in the department, does not appear to fit in with the interpretation of the rules and the legal position by the Apex Court.”

35. The Judgment of this Court in Chanda Devi's case(Supra) considered the nature of employment of casual labour who was granted temporary status. In the above case, Smt. Santosh, the respondent was widow of Sh. Ram Niwas who was a project casual labour. Under the scheme framed by Union of India in pursuance of order of this court in Inderpal Yadav Vs. Union of India, 1985 (2) SCC 648, Ram Niwas was treated as temporary employee w.e.f 01.01.1986. After the death of Ram Niwas, her widow filed the claim for grant of family pension which was rejected by the Railway against which the widow approach the Central Administration Tribunal.

The Tribunal allowed the claim, Writ Petition filed by Union of India was dismissed by the Rajasthan High Court against which the appeal was filed. After referring to Rule 2001, Rule 2002 and Rule 2005 of IREM, this Court held that Rule 2005 clearly lays down the entitlement and privileges admissible to casual labour who are treated as temporary i.e. given temporary status.

36. This Court further held that there is a distinction between the casual labour having a temporary status and temporary servant, para 24 of the judgment is relevant which is quoted as below:

"24. The contrast between a casual labour having a temporary status and a temporary servant may immediately be noticed from the definition of a temporary railway servant contained in Rule 1501 occurring in Chapter XV of the Manual:

"1501.(i) Temporary railway servants Definition- A 'temporary railway servant' means a railway servant without a lien on a permanent post on a railway or any other administration or office under the Railway Board. The term does not include 'casual labour', including 'casual labour' with temporary status', a 'contract' or 'part time' employee or an 'apprentice'."

37. This Court in the above case has also disapproved the judgment of Gujarat High Court wherein it was held that casual labour after obtaining temporary status becomes a temporary railway servant. The reasons given by Gujarat High Court were extracted by this Court in para 27 of the judgment, and in para 31 of the judgment Gujarat High Court's judgment was disapproved. Para 27 and para 31 are extracted as below:

"27. The Gujarat High Court in *Rukhiben Rupabhai Vs. Union of India* no doubt on analysing the scheme filed before this Court, opined:

"32. This change has been made by the Railways after the Apex Courts decision in *Inder Pal Yadav* case. The original definition of 'temporary railway servant' is clear, but in the abovequoted definition in Rule(1501), the Railways have included the 'casual labour with temporary status', thereby, taking them out from the category of 'temporary railway servant'.

How and why this change has been made, what procedures were adopted for making the change, there is no whisper, although, this change has grievously affected the casual labour becoming temporary on completion of 360 days' continuous employment, and committed breach of the Apex Court's decision in *Inder Pal Yadav* case followed by *Dakshin Railway Employees Union Vs. GM, Southern Railway*, (1987) 1 SCC 677, 1987 SCC (L&S) 73, making casual labour 'temporary railway servant'. Since there exists only four categories, namely,

(1) permanent,

(2) temporary,

(3) casual labour, and

(4) substitutes, casual labour, under the original scheme approved in cases referred to hereinbefore, becomes 'temporary railway servant', after completion of 360 days' continuous employment, therefore, he cannot be made 'casual labour with temporary status' by subsequent gerrymandering by the Railways by its circular dated 11.09.1986, which was not brought to the notice of the Apex Court in Dakshin Railway Employees case. Therefore, this circular has no legal sanction against the Apex Courts decision in Inder Pal Yadav case, contrary to original scheme and as such, hit by Articles 14, 16, 21, 41/42 of the Constitution of India." But evidently the provisions of the Railway Manual were not considered in their proper perspective.

31. The Gujarat High Court in our opinion, therefore, committed a fundamental error in opining otherwise. It failed to notice that when casual labour has been excluded from the definition of permanent or temporary employee, he with temporary status could not have become so and there is no legal sanction therefore. It is for the legislature to put the employees to (sic) an establishment in different categories.

It may create a new category to confer certain benefits to a particular class of employees. Such a power can be exercised also by the executive for making rules under the proviso appended to Article 309 of the Constitution of India. Dakshin Railway employees Union Vs. GM, Southern Railway whereupon reliance has been placed by the Gujarat High Court in Rukhiben Rupabhai does not lead to the said conclusion as was sought to be inferred by it. The question therein was as to whether any direction was to be issued to include the petitioners therein in the scheme for absorption as formulated pursuant to the directions of the Court. "

38. In Chanda Devi's case, ultimately this Court set aside the judgment of Rajasthan High Court which held that the widow of Shri Niwas was entitled for pension. This Court held that there is a distinction between casual labour having temporary status and the temporary servant. The cases before us are all the case where casual labour has been granted temporary status. Grant of temporary status is not equivalent to grant of an appointment against a post.

39. Much reliance has been placed by learned counsel for the respondent as well as Delhi High Court on rule 20. Rule 20 provides: "20...Subject to the provisions of these rules, qualifying service of a railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity: Provided that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post..."

40. Rule 20 provides that qualifying service shall commence from the date the employee takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. Rule 20 is attracted when a person is appointed to the post in any of the above capacities. Rule 20 has no application when appointment is not against any post.

When a casual labour is granted a temporary status, grant of a status confers various privileges as enumerated in para 2005 of IREM. One of the benefits enumerated in para 2005 sub clause(a) is also to make him eligible to count only half of the services rendered by him after attaining temporary status. Rule 20 is thus clearly not attracted in a case where only a temporary status is granted to casual worker and no appointment is made in any capacity against any post. The Delhi High Court in the impugned judgment relies on proviso to Rule 20 for coming to the conclusion in para 7 of the judgment.

"7. The proviso, in our opinion, puts the controversy beyond a shade of doubt in that if an employee officiates in service or is treated as temporary railway servant and subsequently regularized or granted substantive appointment, the entire period of his combined service as temporary appointee followed by the service spent as a permanent employee has to be reckoned for the purpose of pension. Since Rule 20 does not deal with what is to be done with the period of service spent as casual labourer, para 20 of the Master Circular 54 and para 2005 of the IREM address the said issue. Being administrative instructions, they clarify that half the period spent as casual labourers would be eligible to be reckoned for purposes of pension."

41. The proviso to Rule 20 reads as:

"Provided that officiating or temporary service is followed, without interruption, by substantive appointment in the same or in another service or post."

42. The above Proviso has to be read along with the main Rule 20, when main Rule 20 contemplates commencement of qualifying service from the date he takes charge of the post, the appointment to a post is implicit and a condition precedent. The proviso put another different condition that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post. The proviso cannot be read independent to the main provision nor it can mean that by only grant of temporary status a casual employee is entitled to reckon his service of temporary status for purpose of pensionary benefit.

43. The Delhi High Court in impugned judgment has not relied the subsequent judgment of Andhra Pradesh High Court in A.Ramanamma dated 01.05.2009 and did not follow the judgment of

this court in Chanda Devi case (Supra) on the ground that Rule 20 specifically the proviso has not been considered. This Court in Chanda Devi's case did not refer to Rule 20 since Rule 20 had no application in the facts of that case because the appointment of husband of respondent in Chanda Devi's case was not against any post. Rule 20 being not applicable non-reference of Rule 20 by this Court in Chanda Devi's case is inconsequential. In para 8 of the impugned judgment, the Delhi High Court for not relying on A.Ramanamma and Chanda Devi case gave following reasons:

"8. In the opinion of this Court, the subsequent ruling of the Andhra Pradesh High Court in Ramanamma(supra), with respect, does not declare the correct law. Though the judgment has considered certain previous rulings as well as the provisions of the IREM and Rule 31 of the Railway Services(Pension) Rules, the notice of the Court was not apparently drawn in that case and the Court did not take into account Rule 20, especially the proviso which specifically deals with the situation at hand. Likewise, Chanda Devi(supra) did not consider the effect of Rule 20, which, in the opinion of this Court, entitles those who work as casual labourers; are granted temporary status, and; eventually appointed substantively to the Railways, to reckon the entire period of temporary and substantive appointment for the purposes of pension."

44. The judgment of Andhra Pradesh High Court in A.Ramanamma case had considered in detail the judgment of this Court in Chanda Devi's case as well as Para 20 of Master Circular and para 2005 of IREM and has also considered other case of this Court and has rightly come to the conclusion that casual labour after obtaining temporary status is entitled to reckon only half of the period. It may, however, be noticed that in A. Ramanamma case the Andhra High Court has also held that 50% of service as casual labour cannot be counted, which is not correct. Rule 31 of Rules, 1993 provides for counting of service paid from contingencies. Note 1 of Rule 31 provides:-

" The provisions of this Rule shall also apply to casual labour paid from contingencies when Note 1 expressly makes applicable Rule 31 to the casual labour they are also entitled to reckon half of casual services paid from contingencies."

45. Thus except to the above extent, the judgment of Andhra Pradesh High Court in A. Ramanamma case lays down the correct law.

46. As observed above, the grant of temporary status of casual labour is not akin to appointment against a post and such contingency is not covered by Rule 20 and the same is expressly covered by Rule 31 which provides for "half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment subject to certain conditions enumerated there

in.” Thus Rule 31 is clearly applicable while computing the eligible services for calculating pensionary benefits on granting of temporary status.

47. In the impugned judgment of the Delhi High Court it is held that entire services of casual labour after obtaining temporary status who was subsequently regularised is entitled to reckon. Casual labour who has been granted temporary status can reckon half of services for pensionary benefits as per Rule 31. The reasons given by the Delhi High Court in the impugned judgment in para 6, 7 and 8 having been found not to be correct reasons, we are of the view that judgment of Delhi High Court is unsustainable and deserved to be set aside.

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.

49. There is one more aspect of the matter which needs to be noted. There is specific rule in Rules, 1993 i.e. Rule 107, which empowers Pension Sanctioning Authority to approach the Ministry of Railways(Railway Board) for dispensing with or relaxing the requirement of any Rule operation of which causes hardship in any particular case. Rule 107 is quoted as below:

“107. Power to relax – Where the pension sanctioning authority is satisfied that the operation of any of these rules causes undue hardship in any particular case, that authority, may for reasons to be recorded in writing, approach the Ministry of Railways (Railway Board) for dispensing with or relaxing the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

The Ministry of Railways(Railway Board) shall examine each such case and arrange to communicate the sanction of the President to the proposed dispensation or relaxation as it may consider necessary keeping in view the merits of each case and keeping in view of an other statutory provisions:

Provided that no such order shall be made without concurrence of the Department of Pension and Pensioners' Welfare, in the Ministry of Personnel, Public Grievances and Pensions, Government of India.”

50. Thus, in cases of those railway servants who are not eligible as per existing rules for grant of pension and there are certain mitigating circumstances which require consideration for relaxation the proposals can be forwarded by Pension Sanctioning Authority to Railway Board in an individual or group of cases. We, thus, while allowing this appeal and setting aside the judgment of the High Court

leave it open to the Pension Sanctioning Authority to recommend for grant of relaxation under Rule 107 in deserving cases.

51. Shri M.C.Dhingra, learned counsel for the respondent referred to case in Punjab State Electricity Board & Another Vs. Narata Singh & Another, 2004 (3) SCC 317. In the above case, the issue for consideration was as to whether work-charged services rendered by respondent in the Department of Punjab State can be counted for the purpose of calculating qualifying service for pension payable to him as an employee of the Punjab State Electricity Board.

The High Court has issued directions for counting the services rendered in the Irrigation Department of the State of Punjab for calculating pension of the respondent in Punjab State Electricity Board. Punjab State Electricity Board aggrieved by the judgment, filed SLP before this Court. This Court noticed that in the above judgment the Punjab State Electricity Board has adopted earlier decisions in which pensionary liability in respect of temporary services rendered in the Government of India and State Government were taken into consideration. Para 19 and para 20 of judgment as cited below:

"19. The above-mentioned policy decisions taken by the Central Government and the Government of Punjab were taken into consideration by the Board which issued a Memo dated 25-11-1985 with reference to the subject of allocation of pensionary liability in respect of temporary service rendered in the Government of India and the State Government and adopted the policy decision reflected in the Letter dated 20.05.1982 of the Government of Punjab, w.e.f. 31.03.1982 as per the instructions and conditions stipulated in the said letter. This is quite evident from Memo No. 257861/8761/REG.6/V.5 dated 25.11.1985 issued by the Under Secretary/P&R/for Secretary, PSEB, Patiala.

20. The effect of adoption of the policy decisions of the Central Government and the State Government was that a temporary employee, who had been retrenched from the service of the Central /State Government and had secured employment with the Punjab State Electricity Board, was entitled to count temporary service rendered by him under the Central/State Government to the extent such service was qualified for grant of pension under the rules of the Central/State Government."

52. With regard to the work-charged services, Punjab High Court had taken note of the judgment in Kesar Chand Vs. State of Punjab, (1988) 5 SLR 27(Punjab & Haryana) wherein Rule 3.17(ii) of the Punjab Civil Services Rules providing that period of service in work-charged establishments as not qualifying service was struck down. Thus the work-charged services rendered by respondent in the State Government was counted.

53. The above judgment in no manner helps the respondent in the present case. This Court in the above case interpreted statutory rules and circulars issued by the State Government as well as by the Board. The said judgment has no application in the facts of present case.

54. Another judgment relied by Shri Dhingra is in CWP No.2371 of 2010 [Harbans Lal versus State of Punjab & Ors.] decided on 31.08.2010. In the said case also Punjab and Haryana High Court considered the Punjab Civil Services Rules and pension scheme which came into effect w.e.f. 01.01.2004. The said judgment was on different statutory rules and in facts of that case, which does not help respondent in the present case.

55. In view of foregoing discussion, we hold :

i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularised on a regular/temporary post for the purposes of calculation of pension.

ii) the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.

iii) Those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of Rules, 1993.

iv) It is open to Pension Sanctioning Authority to recommend for relaxation in deserving case to the Railway Board for dispensing with or relaxing requirement of any rule with regard to those casual workers who have been subsequently absorbed against the post and do not fulfill the requirement of existing rule for grant of pension, in deserving cases. On a request made in writing, the Pension Sanctioning Authority shall consider as to whether any particular case deserves to be considered for recommendation for relaxation under Rule 107 of Rules, 1993.

56. In result, all the appeals are allowed. The impugned judgments of Delhi High Court are set aside. The writ petitions filed by the appellants are allowed, the judgments of Central Administrative Tribunal are set aside and the Original Applications filed by the respondents are disposed of in terms of what we have held in para 55 as above.

.....J. (A.K. SIKRI)

.....J.(ASHOK BHUSHAN)”

6. In paragraph 55 of the said judgment their lordships held that 50% of the service after obtaining temporary status must be counted for pensionary benefit. They have also added that 50% of the casual labour service also must be added to that. Therefore, the crucial question is that what is the casual labour service which their lordships have meant in our orders as well as the Hon'ble Apex Court orders. After having heard both counsels in great detail, we are of the opinion that it can only be full time casual labour service and not part time casual labour service as part time casual labour service is not taken as a yardstick or methodology for determining pensionable service at any point of time under Indian service law. That being so, we will now hold and declare that applicant will be eligible to count his service from 24.04.2000 onwards and to have it recorded in his service book. No other reliefs can be granted to the applicant on the basis of the facts of this case.

7. The OA is therefore disposed off as above. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00542/2018

Annexure-A1: Copy of the DOT letter dated 07.11.1989

Annexure-A2: Copy of the Superintendent, Central Telegraph Office letter dated 01.01.1996

Annexure-A3: Copy of the G.M. Telecom letter dated 31.12.1998

Annexure-A4: Copy of the Central Administrative Tribunal, Bangalore Bench order in O.A. No. 09/1999 dated 10.08.1999

Annexure-A5: Copy of the G.M. Telecom letter dated 15.09.1999

Annexure-A6: Copy of the representation of the applicant dated 24.09.1999

Annexure-A7: Copy of the GM Telecom letter dated 22.12.1999

Annexure-A8: Copy of the CGM, Telecom letter dated 24.04.2000

Annexure-A9: Copy of the representation of the applicant dated Nil

Annexure-A10: Copy of the CGM, Telecom letter dated 03.08.2004

Annexure-A11: Copy of the pay slip of the applicant

Annexure-A12: Copy of the representation of the applicant dated 24.05.2007

Annexure-A13: Copy of the applicant's complaint to Assistant Labour Commissioner dated nil

Annexure-A14: Copy of the PGM letter dated 03.06.2009

Annexure-A15: Copy of the Assistant Labour Commissioner letter dated 21.07.2009

Annexure-A16: Copy of the representation dated 17.05.2018

Annexure-A17: Copy of the Central Administrative Tribunal, Bangalore Bench order dated 17.08.2016 in O.A. No. 1598/2015

Annexure-A18: Copy of the Hon'ble Apex Court order dated 24.03.2017 in Civil Appeal No. 3938/2017 in SLP No. 23723/2015

Annexures with Reply:

Annexure-R1: Copy of the DoT letter dated 15.09.1999

Annexure-R2: Copy of the order of Central Administrative Tribunal, Bangalore Bench in O.A. No. 09/1999 dated 10.08.1999

Annexure-R3: Copy of the BSNL letter dated 15.06.2001

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