

**Central Administrative Tribunal
Madras Bench**

OA/310/01770/2013 & OA/310/01771/2013

Dated the 29th day of January Two Thousand Twenty

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

OA 1770/2013

R.Krishna Pillai,
S/o Rangasamy Pillai,
54/29, Augusthiar Street,
East Tambaram,
Chennai 600003. .. Applicant
By Advocate **M/s.Karthik Mukundan & Neelakantan**

Vs.

1. Union of India, rep. by
Chairman,
Railway Board,
Rail Bhavan, New Delhi-1.
2. General Manager,
Southern Railway,
Park Town, Chennai-3.
3. Chief Personnel Officer,
Southern Railway,
Park Town, Chennai-3. .. Respondents

By Advocate **Mrs.Meera Gnanasekar**

OA 1771/2013

P.R.Parithivaanan
S/o Rukmanikrishnan,
No.3 Tank Street,
Peramanoor,
Maraimalai Nagar(PO),

Chengalpattu,
Kanchipuram District 603 209. .. Applicant
By Advocate **M/s.Karthik Mukundan & Neelakantan**

Vs.

1. Union of India, rep. by
Chairman,
Railway Board,
Rail Bhavan, New Delhi-1.
2. General Manager,
Southern Railway,
Park Town, Chennai-3.
3. Chief Personnel Officer,
Southern Railway,
Park Town, Chennai-3. .. Respondents

By Advocate **Mrs.Meera Gnanasekar**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OAs are filed seeking the following relief(s):-

OA 1770/2013:

“(i) to set aside order No.P(s)353/IX/CP263/2013 dated 24/4/2013 issued by the third respondent insofar as it grants consequential arrears only with effect from 11/10/2007 and

(ii) to set aside Memorandum No M/P(S&T)402/IX/court case dated 15/5/2013 issued by the third respondent insofar as it grants proforma promotion to the applicant as Technician grade III only with effect from 1/5/85 instead of 6/2/1981 the date of promotion of the applicant's immediate junior to the said grade and

(iii) consequently direct the respondents to grant proforma promotion to the applicant as Technician grade III with effect from 6/2/1981, the date on which his immediate junior, Mr.C.Vishnuprasad was promoted with all consequential monetary benefits including arrears of pay and allowances from the said date and;

(iii a) as per the amended order in Hon'ble Tribunal in MA 751/16 in OA 1770/16 dt. 27/9/16 “consequently direct the respondents to fix the qualifying service of the applicant as 28 years and 10 months and on the basis, compute his retirement benefits including gratuity;

(iv) further direct the respondents to revise the pension and other retiral benefits including gratuity payable to the applicant from the date of his retirement and pay the arrears of the same with interest and;

(v) further direct the respondents to pay costs to the applicant and pass such further or other orders as may be deemed fit and proper.”

OA 1771/2013:

“(i) to set aside order P(S)353/IX/CP263/2013 dt. 24/4/2013 issued by the third respondent insofar as it grants consequential arrears only with effect from 11/10/2007 and

(ii) to set aside Memorandum No M/P(S&T)402/IX/Court case dt. 15/5/2013 issued by the third respondent insofar as it grants proforma promotion to the applicant as Technician grade III only with effect from 1/5/85 instead of ¼/1981, the date of promotion of the applicant's immediate junior to the said grade and

(iii) consequently direct the respondents to grant proforma promotion to the applicant as Technician grade III with effect from ¼/1981, the date on which his immediate Jr., Mr.V.Radhakrishnan was promoted with all consequential monetary benefits including arrears of pay from the said date with interest and costs and

(iv) grant financial upgradation under the Modified Assured Career Progression Scheme in the PB-2 with grade pay of Rs.4200 w.e.f. 1/9/2008 and;

(v) consider the case of the applicant for the benefits flowing from the cadre restructuring order dated 8/10/2013 consequent to revision of the date of entry in Grade I with effect from 08.2.1996 at par with his junior V.radhakrishnan with all consequential benefits flowing therefrom and;

(vi) pass such further or other orders as may be deemed fit and proper.”

2. As the issue involved in all these applications is identical and the relief sought for also is similar, these applications have been heard together and are being disposed off by this common order.

3. In view of the fact that both the applicants have filed OAs for similar relief and the facts are also similar, for the sake of convenience the OA 1771/2013 is taken as leading case.

4. The applicant's case in brief is that he was engaged as Casual Labourers' in the Signal and Telecommunication (S&T) Wing of the Southern Railway. Thereafter the applicant was absorbed as Group-D on 26.7.83, promoted to Semi Skilled on 18.5.89, Skilled Grade III scale on 02.3.07, to Skilled Grade II on 29.6.09 and Grade I on 02.8.11. The applicant retired after filing this OA on 31.1.14. The applicant was appointed as Casual Labourer w.e.f. 11.6.1973. The "Openline Casual Labourers" (O.L.C/L) were given benefits like temporary status after efflux of time ie. continuous service of 4 months and they will get benefits of Group-D staff. Only regular staff are eligible for pensionary benefits. The qualifying service is counted only from the date of their regularization. The Railway Board as per their order dt. 14.10.80 had conceded to count 50% of temporary service of casual labourers before they were regularly appointed as qualifying service for pensionary benefits. The project casual labourers can get temporary status only from 01.1.81.

5. Some of the labourers of Pothanur Division had filed OA 849/90 before the Ernakulam Bench and the Tribunal had granted relief to those employees who are working as casual labourers. Thereupon the applicant and some others filed OA 1394/92 before this Tribunal seeking similar relief. This Tribunal had allowed the application on 13.4.94 directing the respondents "*to issue appropriate orders and instruction to the effect that 50% of the service of the applicants after completion of 6 months from the date of their initial appointment as casual laborer till their date of absorption as qualifying service for pension and other retiral benefits. This order shall complied with by intimation being sent to the applicants within 6 months from*

the date of receipt of the copy of this order".

6. The applicants then filed a Contempt application as CA 58/95 for non-implementation of the direction. The respondents then filed a Memo showing the date of entry, qualifying service, regularization of service etc. But the applicant was not given a copy and the Tribunal happened to close the CA on 25.7.95.

7. It was verified and the applicant found that the respondents had not given fixation by the order dt. 19.2.96.

8. The applicant thereafter filed OA 885/1996 on 19.2.96 before this Tribunal for granting the benefits by virtue of granting temporary status, pursuant to order in OA 1394/1992 and fixation pay and allowances, medical attendants, leave rules, leave salary etc. But the Tribunal had dismissed the said OA on 22.8.96.

9. The applicant moved Appeal (Civil) No.2481/98 before the Hon'ble Apex Court and the Hon'ble Apex Court had directed the respondents to fix the status of the applicants – whether opneline or Project Casual Labour.

10. Since no order was passed, CA 2481/98 was filed and the respondents issued a non-speaking order stating that the applicants are "Project Casual Labourers".

11. The applicant alongwith 30 others filed OA 532/2002 before this Tribunal against the order of the respondents regarding the status.

12. The Tribunal dismissed the OA on 11.4.03 holding that the applicants are project casual labourers.

13. *The above decision of the Tribunal was challenged before the Hon'ble Madras High Court in WP 1351/2004 and WP 2554/2002 and the Hon'ble High Court set*

aside the order of the Tribunal and held that the applicants has to be treated as openline Casual Labourers and they are entitled to the relief sought. The respondents filed SLP and the Hon'ble Apex Court had dismissed the SLP making the decision of Hon'ble Madras High Court dt. 11.10.07 finally.

14. The applicant accordingly is entitled to get temporary status on completion of 4 months of continuous service as openline casual worker.

15. The applicant approached the Chief Personal Officer claiming advancing his dates of temporary status and grant of consequential reliefs. The respondents considered hm as openline casual labourer and he was given temporary status retrospectively w.e.f. 10.12.1973 (earlier as Project Casual Labour 01.1.1981). He was also granted pensionary benefits reckoning 50% of service as qualifying service and the arrears due to refixation w.e.f. 11.10.07 (date of High Court judgment) Rs.95,313/-.

16. According to the applicant, by applying next below rule, the respondents ought to have given regularisation in group-D retrospectively alongwith one V.Radhakrishnan w.e.f. 23.5.79 and consequential benefits like arrears of pay etc.

17. The respondents filed detailed objection admitting the decision of the Hon'ble High Court of Madras to treat the applicant as openline Casual Labour, dismissal of the SLP and implementation of the order. As per the order of the Hon'ble High Court, they had retrospectively granted temporary status w.e.f. 10.12.73 and paid the arrears due to fixation from the date of Hon'ble High Court order i.e. 11.10.07. The said Radhakrishnan which the applicant compares was regularised on 23.5.79 and the

applicant was regularised on 26.7.83. He cannot be granted proforma promotion on 01.4.81. The MACP benefits can be granted only if the applicant has not got any promotion. The applicant was granted 3 promotions as on 08.2.96. So he is not entitled to MACP benefits as claimed by him.

18. We have heard both sides. The earlier dispute was whether the applicant was an openline Casual Labour or Project Casual Labour. This dispute was finally decided and the Hon'ble High Court has held that the applicants has to be considered as openline Casual Labour and they are entitled to get reliefs prayed for as per order in WP 2554/02 and 1351/04 dt. 11.10.07. The respondents as per the said order had given retrospective temporary status w.e.f. 10.12.73. He was given fixation arrears w.e.f. the date of order of the Hon'ble High Court i.e. 11.10.07. Though the counsel for the applicant contended that he is entitled to change of date of regularisation and other promotions, he could not substantiate whether there existed vacancies for the same. The counsel for the respondents invited our attention to the order of the Hon'ble High Court and would contend that court had ordered that the applicant had to be treated as openline Casual Labourer and it has not ordered for any other reliefs like re-fixing of promotion and granting of arrears of pay retrospectively. They also rely upon the decision of Hon'ble Supreme Court in ***Union of India & Anr. v. Tarsem Lal & Ors. [2007] 1 SCC (L&S) 63*** wherein it was held that the principle of no work no pay has to be adopted in these type of cases.

19. The only point to be decided in these cases is whether the applicant in both the OA are entitled to get their date of regularisation and dates of promotion to Semi

Skilled, Skilled Grade II and Grade I refixed with all arrears of pay. Now, it is settled that applicants have to be considered as openline Casual Labour w.e.f. 10.12.73 and they were given all benefits of refixation of pay and other benefits. They have also been granted 50% of the service as qualifying service and arrears of pay consequent to refixation w.e.f. the date of judgment i.e. 11.10.07. According to the respondents, an amount of Rs.3,90,248/- is paid as arrears to the applicant in OA 1771/2013. The Hon'ble High Court has not given any special direction to pay arrears retrospectively. There is no specific pleading giving details to the effect that the applicants were discharging their duties in the posts as claimed by them. Since they have not worked in the said promotion posts on notional fixation, they are also not entitled to get any arrears of pay as held by the Hon'ble Apex Court in ***Union of India & Anr. v. Tarsem Lal & Ors.*** (case referred supra) in this case. The applicants have got 3 promotions and they are not entitled to any MACP benefits.

20. So, we are of the opinion that applicants in OAs. 1770 & 1771 of 2013 are not entitled to get retrospective promotions and consequent arrears of pay and reliefs as claimed by them.

21. In the result, OAs. 1770 & 1771 of 2013 are dismissed. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

29.01.2020

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