CENTRAL ADMINISTRATIVE TRIBUNAL

CHENNAI BENCH

OA/310/00260/2017

Dated the , day of December Two Thousand Nineteen

CORAM : HON'BLE MR. T. JACOB, Member (A)

Smt. Erugu Subbamma,
Retd. Helper I/Engineering,
4-1-2-113, Mangapathy Naidu Nagar,
Nayudupeta,
Nellore District - 524126. ….Applicant

(By Advocate M/s. Ratio Legis)

Vs

1. Union of India rep by,
The General Manager,
Southern Railway,
Park Town, Chennai - 3.

2. The Senior Divisional Personnel Officer,
Chennai Division,
Southern Railway, Chennai. ….Respondents

(By Advocate Dr. D. Simon)

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

> "To call for the records related to conferment of temporary status to the applicant and further to direct the respondents to treat the entire temporary status period as qualifying service for the purpose of pension and other retirement benefits and to pass such other order/orders as this Hon'ble Tribunal may deem fit and proper and thus to render justice."

2. The facts of the case as stated by the applicant are as follows:

The applicant was engaged as a casual labourer in Chennai Division in Southern Railway and extended with temporary status on 10.03.1977 and subsequently regularised against substantive vacancies on 09.05.1989. The respondents have failed to consider the entire period of temporary status service for the purpose of retirement benefits like gratuity and other attendant benefits in spite of the fact that Pension Rules provided for the same and the similarly situated employees were bestowed with such benefits. The representation dated 11.06.2016 seeking similar benefits were not acted upon and hence this original application is preferred before this Hon'ble Tribunal seeking the above relief inter-alia on the following grounds :

i. Denial of re-working of qualifying service treating the temporary status in full as the Rules in vogue, is contrary to the statutory provisions and an act coupled with colourable exercise of authority which is non-est in law.

ii. In the wake of the fact that Rule 20 of the Pension Rules 1993 stipulates that commencement of 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 and as such the applicants were engaged in the seventies and eighties and extended with temporary status on completion of 120 days, the respondents ought to have accounted the qualifying service from the date on which the temporary status was accorded to the applicants instead of date of substantive appointment and as such the action of the respondents is per se illegal and in gross violation of Rule 20 of the Railway Services (Pension) Rules, 1993.

iii. In the wake of the fact that para 21 of the Master Circular No. 54 is specific on the service which are declared non qualifying service.

- in a part time capacity;
- at casual market rates;
- as an apprentice;
- in a non-pensionable post;
- in a post paid from contingencies except as provided on daily rates basis; on a contract basis except when followed by confirmation without break.

iv. The impugned non inclusion of temporary status service in full as qualifying service is in gross violation of para 21 of the Master circular issued by the Railway board under Rule 123 of Indian Railway Establishment Code

Vol. I and hence unsustainable in law.

v. In as much as Rule 24 of Railway Service Pension Rules 1993 bestows that the contract service followed by regularisation is accounted for qualifying service; the action of the respondents in misinterpreting the rules framed by the Hon'ble President of India under Art 309 of the Indian Constitution is despicable and hence impermissible in law.

vi. In the wake of the law settled in catena of cases by various High Courts and confirmed by the Hon'ble Supreme Court on the issue of consideration of entire period of temporary status service, the action of the respondents in not implementing the same is appalling and the impugned non inclusion of the same to the applicants is unsustainable in law.

3. The respondents have filed reply. It is submitted that the applicant was granted temporary status on 10.03.1977 and empanelled/regularised on 09.05.1989 and therefore, from 10.03.1977 to 09.05.1989, 50% of the service has been taken, in terms of Rule 31 of the Railway Services Pension Rules. As far as the casual labour service prior to grant of temporary status i.e. 10.03.1977 is concerned, the applicant has not produced any documents to prove her casual labour service and therefore, the same will be considered only on production of documentary proof for the casual labour service prior to the grant of temporary status. Therefore, at this juncture, the pension already granted is correct and does not require any revision.

4. The respondents would further submit that the applicant is not entitled to count the full temporary service period as qualifying service as the law has been laid down

by the Hon'ble Supreme Court in UOI Vs Rakesh Kumar (Civil Appeal 3938 of 2017). Accordingly, the applicant's qualifying service has already been correctly worked out from 10.03.1977 to 28.02.2005 as follows:-

From 10.03.1977 to 09.05.1989 – half of the period has been reckoned and from 09.05.1989 full service has been taken into account to arrive at the qualifying service in terms of the judgement in Civil Appeal No.3938 of 2017. Therefore, his total qualifying service has been worked out to 22 years and his terminal benefits are arranged based on 22 years of qualifying service. The respondents submit that the Writ Petition No. 7618 of 2014 namely UoI Vs Prempal Singh relied upon by the applicant has been over ruled by the Supreme Court in Civil Appeal dated 24.03.2017 in Civil Appeal No. 3938 of 2017. Therefore, the applicant is not entitled for counting the entire period of temporary service in full for the purpose of qualifying service for retirement benefits.

5. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

6. Having regard to the above facts and circumstances of the case, the point for consideration in this OA is whether the service of the applicant under temporary status can be reckoned as qualifying service for pension and other retirement benefits.

7. The respondents have produced the Service Register in respect of the applicant. Page-1 of the Service Register states that the applicant was appointed as Casual Labour and conferred with temporary status on 10.03.1977. (CPC Woman Khalasi). Page-4 of the Service Register states that the "Applicant has been absorbed as

Temporary Gangwoman on 09.05.1989 under De-casualisation Scheme". De-Casualisation is applicable only to casual labours and not to any other category of labours like Substitutes. Subsequently, she was promoted as Khalasi Helper and in scale Rs. 800-1150 w.e.f. 21.03.1994 and retired as helper in grade in scale Rs. 2650-4000 on 28.02.2005. Therefore, she is not entitled for treatment of the temporary service put in by her from 10.03.1977 to 09.05.1989 as qualifying service for the purpose of pensionary benefits. In support of their case, the respondents have relied upon the case of Kureshabibi vs, Union of India (General Manager, Eastern Railway) decided by the Hon'ble Jharkhand High Court in WP(S)No,5831 of 2015 wherein the nomenclature of CPC Khalasi as a Casual Labour (Contingency Paid Casual Khalasi) is highlighted.

8. For proper appreciation of the case, certain provisions of the attendant pension Rules, the Railway Establishment Manual and executive instructions if any are required to be referred to. The applicant has relied upon Rules 20, 21, 24 and 31. Similarly, the respondents have relied upon the provisions of Rule 18, 20 and 31 and also laid emphasis in the Apex Court decision in the case of Union of India v Rakesh Kumar. (2017) 13 SCC 388. In addition, the basic definition of the terms, “pension” and “qualifying service” as per the Pension Rules would make it clear as to whether the claim of the applicant is legal and justified.

> Definitions
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> Sub Rules under Rule 3
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> (19) “pension” includes gratuity except when the term pension is used in contra distinction to gratuity but does not include

dearness relief.

(22) “qualifying service” means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules;

Rule 20 of the Railway Pension Rules, 1993 reads as under:-

“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 17.04.1950, 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.

* * *

Rule 31 of the Pension Rule states as under:-

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 1-1-1961 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."

Tandem with the above provisions are certain Master Circular and IREM, issued by the Railways. The same are as under:-

25. Para 20 of Master Circular No.54:-:

"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 Rule 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 days 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 and the date of their regular appointment after screening/selection shall determine their seniority vis-à-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.
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> 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."

9. A detailed analysis by way of compare and contrast had been made by the Apex Court in the case of Rakesh Kumar (supra) wherein, the Apex Court has held as under:-

> **'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.
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> **29.** Para 2005 of the Indian Railway Establishment Manual also contains the same scheme for reckoning the period for pensionary benefit. Para 2005 contains the heading:
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> "**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)**."
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> **30.** The above heading enumerates the privileges admissible to casual labour who are treated as temporary. Clause (*a*) of Para 2005 provides:
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> "**2005. (*a*)** … 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."

10. After referring to various decisions of different High Courts, the Apex Court has, ultimately authoritatively pronounced as under:-

> **53.** In view of the foregoing discussion, we hold:
> **53.1.** 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.
> **53.2.** The casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.
> 53.3. 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 of such post as per Rule 20 of Rules 1993.

11. Referring to the above judgment, the respondents have stated that 50% of the Casual Labour service from 10.03.1977 to 09.05.1989 and 100% service from 09.05.1989 to 28,.02.2005 have been reckoned as qualifying service and the qualifying service worked out to be 22 years.

12. The applicant continued as a Casual Labour with temporary status till 09.05.1989 and her regularisation is perfectly legal. She was thus absorbed as a regular employee w.e.f. 09.05.1989. The applicant's service as casual labour and after conferment of temporary status was paid only out of contingency fund and only 50% of service will count for qualifying service in terms of Rule 31. Her claim for reckoning full period of casual labour service as qualifying service for pension is unsustainable.

13. While the above is the situation, the fact remains that qualifying service as per definition is one and the same both in respect of Pension as also Gratuity. Further,

pension includes Gratuity by its own definition. Thus, though the claim of the applicant to the extent of reckoning full term of casual labour is not acceptable, if she had not been paid Gratuity taking into account 50% of the casual labour service the same is her irrefutable entitlement. Her claim is for revising the retirement benefits and as such, this OA partly succeeds to the extent that the applicant is entitled to reckon 50% of casual labour service as qualifying service to be added to the regular service, not only for pension but also for Gratuity and if she has not been paid taking into account the 50% of casual labour service, the difference in gratuity arising out of the same, shall be paid and it is accordingly ordered. Time calendared for compliance of this order is three months.

14. The OA is disposed of on the above terms. No costs.

(T. JACOB)
MEMBER(A)
-12-2019

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