CENTRAL ADMINISTRAT IVE TRIBUNAL
AHMEDABAD BENCH...

O.A.No.159/2005 With M.A.No. 353/2018
Ahmedabad, this the 29th day of June, 2020

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Judicial Member
Hon'ble Dr. A.K. Dubey, Administrative Member

Pratapbhai M. S/o Shri Mansing, aged 76 years, Retired as Khalasi under DRM (E), BRC, resident of Village Antela, Holi Faliya, post Antela, Ta:Devgadh Baria, District Dahod.
[By Advocate : Ms. S.S.Chaturvedi] .....Applicant

Versus

1- Union of India notice served through Chairman, Ministry of Railway, Railway Board, Railbhavan, New Delhi – 110 001.
2- General Manager, Western Railway, Churchgate, Mumbai – 400 020.
3- Divisional Railway Manager (E), Western Railway, Pratapnagar, Baroda – 390 004. ...Respondents
[By Advocate : Mr.M.J.Patel]

O R D E R (Oral)

PER JAYESH V. BHAIRAVIA :

1. The applicant, Pratapbhai Mansing was engaged as a Casual Labour by the Railway-respondent and was granted temporary status on 30.3.1986. He was regularly absorbed in service on 15.11.1996 and retired on attaining the age of superannuation on 31.5.2000.

2. Applicant's claim for pension and commutation of pension was denied, therefore, he preferred a representation on 26.8.2000, however, the same was unanswered, consequently, he had approached this Tribunal by filing OA No. 85/2004 which was disposed of vide order dated 16.2.2004 with a direction to the respondents to decide his representation within a period of fifteen days. In response to the said direction of this Tribunal, the respondent No. 3 i.e. Divisional Railway Manager, Baroda, had considered the representation of the applicant and rejected the same vide impugned order dated 16.4.2004 on the ground that the applicant had rendered total qualifying service of only 8 years 7 months 15 days with further observation that in terms of Rule 69-B of Railway Service (Pension) Rules, 1993, (hereinafter referred to as "the Rules of 1993), an employee is entitled for pension only if he completes minimum 10 years qualifying service, therefore,

he was not found eligible for sanction of pension. The said decision dated 16.4.2004 (Annex.A/1) is impugned in the present O.A.

3. The applicant has mainly sought the relief to quash the impugned order dated 16.4.2004 (Annex.A/1) and direct the respondents to pay him pensionary benefits from the date of his retirement dated 31.5.2000 including commuted pension as also to pay interest @ 12% on delayed payment of pension including commuted pension.

4. It is worthwhile to mention here that initially the claim of applicant to calculate his entire service period from the date of grant of temporary status as qualifying service had been accepted by this Tribunal by following the judgment passed by Hon'ble High Court of Gujarat in the case of ***Smt.*** **Rukhiben Vs. UOI & Ors.** [SCA Nos. 15807 and 15808 of 2003] and directed the respondents to sanction his pension since the applicant had rendered total 14 years service. The said order passed by this Tribunal on 13.9.2005 (Annex.A/16) was challenged by the U.O.I. before the Hon'ble High Court by way of SCA No. 7872/2006. Since the judgment passed in the case of Rukhiben was under challenge before the Hon'ble Apex Court during the pendency of O.A. therefore, no reliance ought to have been placed. Further, taking note of the fact that by order dated 27.7.2011 in Civil Appeal No. 7145/2005, the Hon'ble Apex Court had quashed and set aside the order rendered in the case of ***Rukhiben*** (supra). Consequently, the Hon'ble High Court vide order dated 22.4.2013 in SCA No. 7872/2006 pleased to quash and set aside the order dated 13.09.2005 passed by this Tribunal with liberty to revive the present OA with permission to amend it on the same line as the challenge is made in the O.A. No. 375/2011 with regard to legality and validity of the amended definition of ''temporary Railway servants'' which has resulted in excluding casual labour even with temporary status as contained in the Circular dated 11.9.1986.

5. It is further noticed that since the original record of the present O.A. was not traceable, applicant's application for revival of OA and for amendment, could not be heard for longtime. Thereafter, on request of counsel for applicant to allow her to reconstruct the OA was accepted on 22.1.2018. In the meantime, the counsel for the parties submitted that the copy of records of the present O.A. has been found, accordingly, vide order dated 18.2.2020, the O.A. was reconstructed. Both the counsel for the parties have gone through the reconstructed O.A. along with Annexures and consented to the same, the

application of the applicant to revive this OA as per the order of Hon'ble High Court was allowed.

On request of counsels for the parties, the present OA No. 159/2005 along with MA 353/2018 (for amendment) was taken up for hearing **through Video Conferencing for final hearing.**

6. It is submitted by the counsel for the applicant that to avoid any technicality the applicant had filed the MA for amendment with a view to comply the order passed by the Hon'ble High Court. It is also submitted that during the pendency of present MA and OA, in light of judgment of Hon'ble Supreme Court in the case of ***Union of India & Ors. Vs. Rakesh Kumar*** [reported in 2018 (1) SCC (L&S) 51 : (2017) 13 SCC 388], the respondents herein, have modified the terms of definition of "Temporary Railway Servants' contained in the Para 1501 of the IREM (Vol.-I) whereby the casual labours even with temporary status has been included as 'temporary Railway servants'' and further decided to reckon 50% of casual service and service undergone with temporary status for the purpose of calculating qualifying service. Therefore, now there is no grievance exists against the respondents for non-inclusion of service of casual labours in the definition of "Temporary Service in Railways".

7. On request of the applicant, to comply with the direction issued by the Hon'ble High Court, the amendment sought by the applicant in MA 353/2018 has been allowed, however, the counsel for applicant has fairly submitted that she do not press the amendment prayer with regard to challenge of definition of temporary service in Railways (Annex. A/19, 20 & 22).

8. Learned counsel for applicant mainly submitted as under :-

8.1 The applicant in his OA (Para 4.2) averred that applicant was engaged as a Casual Labour/Khalasi with the respondent-Railways. He was granted Temporary Status on 30.3.1986 and subsequently he was regularised/absorbed w.e.f. 15.11.1996 and later, superannuated on 31.5.2000. For the said service rendered by him, respondents have issued a service certificate also (Annex.A/2).

8.2 After retirement, the applicant was paid total Rs. 72,624/- towards PF, GIS, DCRG and Leave Encashment by the respondents vide order dated 31.5.2000 (Annexs.A/7 to A/9).

8.3 The learned counsel for applicant submits that the respondents had erroneously calculated the qualifying service in the impugned order 16.4.2004 (Annex.A/1) and, thereby, deprived him for pensionary benefits.

8.4 Learned counsel for applicant submitted that the claim of the applicant for reckoning his qualifying service, is required to be calculated in light of the judgment passed by Hon'ble Apex Court in the case of ***UOI & Ors. Vs. Sarju*** SLP(C) 20041/2008 decided on 30.09.2011 (Annex.A/21). In the said judgment, the Hon'ble Apex Court upheld the order passed by various Benches of this Tribunal and the judgment passed by Hon'ble High Court of Patna wherein it was held that for the purpose of counting of qualifying service for pensionary benefits, the half period of service undergone as casual labour and 100% period of Temporary Status (TS) as also the entire regular service period require to be counted as qualifying service. Therefore, in the case of applicant the entire i.e. 100% service period to be reckoned from the date of grant of Temporary Status to him till his superannuation for the purpose of counting his qualifying service.

It is submitted that applicant was granted temporary status w.e.f. 30th June, 1986 and was regularized on 15.11.1996. The said service period ought to be reckoned 100% as qualifying service as well entire service period from 15.11.1996 to 31.5.2000 (i.e. date of superannuation). According to the applicant, after granting temporary status he was regularly appointed and thus he had served the respondents for 13 years 11 months and this entire period ought to have been counted as qualifying service for grant of pension.

8.5 It is further contended that applicant was not engaged for any limited period or for any specific project work. In fact, he had rendered service as casual labour by following grant of Temporary Status and subsequently retired on 31.5.2000 as regular employee, therefore, applicant's case is required to be considered in light of the judgment passed by Hon'ble Apex Court in the case of ***UOI & Ors. Vs. Sarju*** (supra).

In addition reliance has also been placed on the following judgments :

(i) General Manager, South Central Railway Vs. Shaik Abdul Khader decided on 23.6.2003 by Hon'ble Andhra Pradesh High Court.

(ii) UOI & Ors. Vs. the Registrar, CAT & Ors. dated 26.10.2016 passed by Hon'ble High Court of Madras.

(iii) Pratap Singh Vs. UOI & Ors decided on 6.1.2004 by the Jodhpur Bench of this Tribunal.

8.6 It is also contended by applicant in para 4.12 of OA that he was appointed/engaged as casual labour in the month of December 1972 and thereafter he was granted TS on 30.3.1986, therefore, from December 1972 to 30.3.1986 he had rendered total 14 years service as casual labour, 50% of it comes to 7 years service and the same is required to be considered as qualifying service. In addition to it, the applicant had rendered total 10 years 7 months 15 days service from the date of grant of Temporary Status (TS) to him on 30.3.1986 till the date of regularization i.e. 15.11.1996. The said service period is to be reckoned 100%. Further, he rendered regular service from 15.11.1996 to 31.5.2000 (date of superannuation) totaling 3 years 6 months 16 days, which is to be reckoned 100%. According to the applicant after deducting non qualifying service of 2 months 15 days his net qualifying service comes to 20 years 11 months 15 days. However, the respondents vide impugned order dated 16.4.2004 had erroneously and illegally shown qualifying service of applicant as only 8 years 7 months and 15 days, therefore, the impugned order is bad in law, and arbitrary and, the same is required to be set aside.

8.7 The learned counsel for the applicant further submitted that in para 4.9 and also in para 5 (ii) of the O.A. it is contended that before grant of T.S. on 30.3.1986, the applicant had worked as daily wager from 1983 to 1986 at Champanner and Samalya. His said period as casual labour has not been counted by the respondents as qualifying service.

8.8 It is further contended that a similarly situated employee one Shri Hira Balu rendered shorter service than the length of service of the applicant even though he has been granted benefit of pension and in this regard applicant has placed reliance on the service certificate issued to said Shri Hira Balu, wherein, the service period of the said employee has been shown as 27.2.1986 to 31.3.1997 (Annex.A/14), therefore, applicant is also entitled for same benefit.

8.9 Learned counsel for applicant submits that the case of applicant is required to be considered in the light of the judgment passed by Hon'ble Apex Court in the case of ***UOI & Ors. Vs***. ***Sarju*** and it is submitted that judgment passed by the Hon'ble Supreme Court in the case of ***UOI & Ors. Vs. Rakesh Kumar & Ors***.(supra) is not applicable in the facts and circumstances as contended by the applicant.

9. On the other hand, respondents have filed their Written Statement and denied the contentions raised by the applicant.

10. The counsel for respondents Mr. M.J. Patel mainly submitted as under :-

10.1 It is contended that for counting the qualifying service of Casual Labours/Temporary employees with Temporary Status and after their absorption for purpose of sanction of pension, is governed under the provisions of Para 20 of the Master Circular No. 54, Para 2005 of the Indian Railway Establishment Manual as also under the provisions of Rule(s) 20, 31 and 69-B of the Railway Services (Pension) Rules,1993.

10.2 It is also contended that as per extant instructions issued by the Railway Board vide letter dated 28.11.1986, 50% of the service after attaining temporary status will be counted on regular absorption and 100% service to be reckoned from the date of regularisation till superannuation for the purpose of qualifying service.

10.3 It is further contended that in response to the direction of this Tribunal in OA No. 85/2004 respondent No. 3 i.e. Divisional Railway Manager, Baroda, had considered the claim of the applicant for pension and for that purpose, eligibility of the applicant was assessed by counting his qualifying service in terms of the extant rules which reads thus :

CALCULATION OF QUALIFYING SERVICE

(1) TS service from 30.3.1986 till 15.11.1996	**: 50% of it = 5 Yrs.3 Months 22 days**	
(2) Regular service From 15.11.1996 to 31.5.2000	**: 100% of it = 3 Yrs.6 Months 16 days**	
		8 Yrs.10 Months 8 Days
Non-qualifying Service (Leave Without Pay)	**(-)**	**- 02 Months 24 Days**
Total Qualifying Service		**8 Yrs. 7 Months 15 Days**

10.4 The learned counsel for the respondents submitted that department had calculated the qualifying service of the applicant for the purpose of treating his eligibility towards pension in terms of Rule 69-B of Railway Service (Pension) Rules, 1993. According to said provisions, an employee would be entitled for pension only if he completes minimum 10 years qualifying service, but as applicant's qualifying service was only 8 Years 7 months and 15 days, which is less than 10 years, therefore, he was not held eligible for sanction of pension. It is submitted that the reasons for not accepting the claim of applicant as stated in the impugned order dated 16.4.2004 were just and proper and terms of the existing rules.

10.5 The respondents have denied the contention of the applicant that he had rendered total qualifying service of more than 13 years. The calculation as offered by the applicant is contrary to the provisions of extant rules as well as against the law laid down in ***UOI & Ors. Vs. Rakesh Kumar and Ors.*** (supra). The judgment relied upon by the applicant i.e. Sarju's case, is no more a good law in the light of ***Rakesh Kumar's*** judgment.

10.6 The respondents have denied the contention of the applicant for claiming parity with some other employees in absence of supporting material for calculation of qualifying service of said Shri Hira Balu.

The respondents have also denied that applicant had ever worked before 1986, as claimed by him. It is submitted that there is no material on record except the mere averments in the OA which too are in consistent and, therefore, could not be relied upon in absence of any material or supporting evidence in this regard.

10.7 Learned counsel for the respondents further submits that applicant is not entitled for pension since he has not rendered qualifying service under the provisions as explained in speaking order dated 16.4.2004 (Annex.A/1). The impugned decision was passed in terms of the existing rules as also the law laid down by the Hon'ble Apex Court in the case of ***UOI & Ors. Vs. Rakesh Kumar and Ors***. reported in [2018(1) SCC (L&S) 51], therefore applicant is not entitled to any relief as claimed in this O.A.

11. Applicant has filed rejoinder and reiterated his submissions. Additionally, it is stated that applicant is not aware about the details of Railway Board's letter dated 28.11.1986 and, therefore, he is not in a position to say anything in this regard. The counsel for applicant reiterated the submissions to grant benefit of pension on the ground of parity.

12. The counsel for the respondents denied the contentions raised by the applicant in rejoinder.

13. We have heard the learned counsel for both sides and carefully perused the material on record.

14. Pursuant to the direction of the Hon'ble High Court in SCA 7872/2006 dated 22.4.2013, on revival of this O.A. the necessary amendment was carried out by the applicant. It is also noticed that challenge to the legality of amendment of definition of Temporary Railway Servants as per Circular 11.09.1986 and other related prayer sought in OA No. 375/2011 was rejected by this Tribunal

on 11.4.2014. Counsel for the applicant submits that the grievance with respect to amendment of definition of temporary Railway servants, now does not survive.

15. The learned counsel for applicant mainly submitted that respondents have erroneously calculated his qualifying service. It is stated that the qualifying service of the applicant for grant of pension is required to be calculated in light of the judgment passed by the Hon'ble Apex Court in the case of ***UOI Vs. Sarju*** (supra).

By relying upon the said judgment as also other judgments referred in para 8.5 above, the applicant's counsel vehemently submitted that 100% service period i.e. from the date of grant of temporary status i.e. from 30.3.1986 to 15.11.1996 (date of substantive appointment / absorption) is required to be counted as qualifying service instead of counting only 50%. In addition to it, it is also claimed that his entire service period i.e. from the date of his regularisation till his superannuation should be reckoned for the purpose.

On the other hand, respondents have denied the said claim and submitted that calculation arrived at regarding applicant's qualifying service vide impugned order is in terms of pension rules as well as in consonance with the law laid down by the Hon'ble Apex Court.

16. The issue, therefore, involved in the present case 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 ?*

17. The issue of reckoning qualifying service of casual labour/temporary Railway servant, for the purpose of grant of pension now does not res integra more particularly in the light of judgment passed by Hon'ble Apex Court in the case of ***UOI & Ors. Vs. Rakesh Kumar & Ors.*** reported in (2018)1 SCC (L&S) 51: (2017) 13 SCC 388. In the said case, the Railway Department aggrieved by the Delhi High Court's judgment confirming CAT, Principal Bench order directed to count 100% service of casual labours after their TS till regularisation/absorption, had preferred the said SLP. Hon'ble the Apex Court after considering the provisions with regard to reckoning service period for the purpose of qualifying service for sanction of pension to casual labour under the Railways establishment and various judgments on the subject held that ''*the casual worker after obtaining temporary status is entitled to reckon only 50%*

of his services till he is regularised on a regular / temporary post for the purpose of calculation of pension.'' It is appropriate to reproduce the relevant observation and conclusion of the Hon'ble Apex Court in the case of **Union of India vs. Rakesh Kumar** (2018)1 SCC (L&S) 51 which reads as under :-

> *"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.*
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> *19. The learned ASG 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 the Rules, 1993.*
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> *20. The 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.*
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> *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.*
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> *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:*
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> > *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?*
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> *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- 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 of 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."*

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:*
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> > *Provided further 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;*
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> *(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;*
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> *(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;*
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> *(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.*
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> *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. Rule 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 Rule 2005 provides:

> *"**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".*

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:

> *"8. 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:*
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> > *"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).....*
>
> *9. 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):

> *"70.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, Rule2002 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:*
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> > *"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'."*

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:*
>
> > *"31. 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, namly, (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. "

37. 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.

38. Much reliance has been placed by learned counsel for the respondent as well as Delhi High Court on Rule 20. Rule 20 provides:

"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..."

39. 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."*

40. 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."*

41. 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.

42. 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."*

43. 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:-

> *"Note.-(1) 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."*

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

44. 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.

45. 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.

46 to 52. xxxx xxxx

53. In view of 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 to such post as per Rule 20 of Rules, 1993.

53.4 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.

54. 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 53 as above."

18. From a bare perusal of aforesaid judgment, it is seen that in para No.33, the Hon'ble Apex Court held that 'Andhra Pradesh High Court itself considered the judgment passed in ***Abdul Khader's case*** [(2004) 1 SLR 214,] in their subsequent judgment i.e. **South Central Railway Vs. A. Ramanamma** decided on 1.5.2009 [2009 SCC (Online) AP 933]. Wherein order passed in the ***Abdul Khader's case*** was not followed by following the judgment passed in ***North West Railway Vs. Chandadevi*** [2008 (1) SCC (L&S)399].

Further, the Hon'ble Apex Court, in Para 34 has also referred the reasons given by the Andhra Pradesh High Court for not following the ***Abdul Khader*** case in its subsequent judgment passed in A. Ramanamma case (para 70 referred). It is further noticed that the Hon'ble Apex Court in Para No. 43 of ***Rakesh Kumar's*** judgment (supra) finally held that the judgment of Andhra Pradesh High Court in ***A. Ramanamma*** case lays down the correct law in respect to calculate of service period of a casual labour for qualifying service.

19. On our careful examination of the judgment in **UOI Vs. Sarju (supra)** and other orders/judgments relied upon by the counsel for applicant, it is noticed that in case of Sarju, the Hon'ble Apex Court upheld the judgment and orders passed by Hon'ble High Court of Patna and the order of CAT Patna Bench which were based on the case of ***South Central Railway V. Abdul Khader***. In this regard, it will be fruitful to mention here that the observation given in judgment ***Abdul Khader's*** case was not followed by Andhra Pradesh High Court in its subsequent judgment in ***A. Ramanamma*** and the reasons given for it by the Hon'ble Andhra Pradesh High Court, have been declared as correct law, by the Hon'ble Apex Court in Rakesh Kumar's case (supra). Therefore, in our considered opinion, judgment passed in Abdul Khader's & Sarju's case, have lost its applicability in the light of law laid down by Hon'ble the Apex Court in ***Rakesh Kumar's*** case. Hence, the submission made on behalf of the applicant, is not acceptable.

20. In the present case, it is noticed that the respondents have calculated 50% of the service of applicant from the date of attaining temporary status till his regular absorption as Khalasi i.e from 30.03.1986 to 15.11.1996. The respondents had also calculated the entire service period of applicant after his regular absorption till superannuation i.e. from 15.11.1996 to 31.05.2000 for the purpose of qualifying service.

After deducting 2 months 24 days i.e. Leave Without Pay (LWP), the total qualifying service comes to 8 Years 7 Months 15 Days vide speaking order dated 16.4.2004 (Annex.A/1). It is further noticed that respondents have also recorded their findings that since the applicant has not completed minimum 10 years qualifying service as per Rule 69 B of the Railway Servants (Pension) Rules, 1993, the applicant is not found eligible for pensionary benefits. The said finding of the respondents in order dated 16.4.2004, in our view, is in consonance with the provisions pertaining to grant of pension under the Railway Servants (Pension) Rules, 1993 as also the law laid down in the case of Rakesh Kumar (supra), thus, we do not find any infirmity in the decision of the respondent Department in rejecting the claim of applicant.

It is further noticed that applicant has not been able to place any material to support his claim for counting of his casual service either from 1972 or from 1983 as qualifying service. In this regard it is apt to note that except his inconsistent pleadings in different paras in the memo of O.A. stating that he was engaged as casual labour in 1972 and in other para, his engagement has been mentioned as 1983. Except only one service certificate (Annex.A/2) that he was engaged during March 1986 to May 2000, nothing supportive documentations are placed on record. In this view of the matter, we too do not find any material on record that he was engaged as casual labour as claimed by him. Under the circumstances, we do not find any merit in the submissions put forth by the applicant to substantiate this claim.

21. In the result, the O.A. fails as we do not find any infirmity in the decision of the respondents in rejecting applicant's claim. Accordingly, the O.A. is dismissed with no costs.

[A.K.Dubey]
Member (A)

[J.V. Bhairavia]
Member (J)

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