

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 1847/1990

DATE OF DECISION : 27.02.1992

SHRI BHAGWAN DASS

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

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SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI H.P. CHAKRAVORTY

FOR THE RESPONDENTS

...SHRI M.L. VERMA

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*

2. To be referred to the Reporter or not? *Yes*

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant was engaged as Khallasi. The applicant got disabled due to some accident allegedly said to have been occurred while the applicant was on duty, but denied by the respondents, in which one of the arms of the applicant was lost. The applicant was disengaged, but subsequently he was given the appointment as a Mate w.e.f. 27.3.1959 in a casual capacity as a daily rate casual labourer. The applicant continued to work and attained the age of superannuation on 30.8.1989. During all this period, the applicant was not regularised nor

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screened nor given the regular pay scale. So after retirement the applicant was not granted any pension, gratuity, leave salary etc.

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2. The applicant in this application under Section 19 of the Administrative Tribunals Act, 1985 claimed the relief that the respondents be directed to release the pension, gratuity, leave salary, service certificate and other retirement benefits including interest on the above 210% p.a. It is further prayed that the respondents be directed to regularise the service of the petitioner in regular service giving benefits of pay and grade on or from 27.3.1959 as given to his juniors.

3. The facts of the case are that the applicant was appointed as Khallasi from 1956 and was never regularised nor was given regular pay scale. According to the applicant, due to some accident in Railway workshop, the applicant lost one of his arms from the shoulder and he was given only Rs.100 as compensation. The applicant was engaged on 27.3.1959 on compassionate ground as Mate in casual capacity in Signal and Telecom Depot at Jhansi. The applicant continued to work in the same capacity till he attained the age of superannuation. The ground taken by the applicant is that he has rendered 33 years' uninterpreted service from 27.3.1959 to 30.4.1989 and

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since junior counterparts have been granted status of regular employee and allowed advancement in higher grades, the same has been denied to the applicant. It is stated that under para-2512/ ^{of IREM} the services of the applicant should have been regularised. The applicant has been continued as casual labourer, service card No.93 (Annexure A1 to the application). The applicant was also not regularised and a few months before his retirement, the applicant was not regularised even under handicap quota as is evident by the letter of the Deputy CST (C) dt. 3/5.4.1989 (Annexure A2). The applicant on his retirement was only paid balance of NCPF-Rs.1057/- and Rs.62 TA for June, 1989, in all Rs.1119/-. The applicant's claim is ^{also} on the basis that he was given Railway passes (Annexure A4 and A5) in 1986 and 1989. A few days before retirement, the applicant made representation dt. 6.7.1989, but to no effect.

4. The respondents contested the application and stated that the application is barred under Sections-20 & 21 of the Administrative Tribunals Act, 1985. It is stated that the applicant worked as Khallasi only a few days and he was only a daily rated casual labourer engaged on 27.3.1959 in the office of respondent No.3, Divisional Manager, Central Railway, Jhansi. The applicant was

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never made regular under rules. Many casual labourers who were found fit were regularised under the scheme who served 5 years as casual labourers and they were given temporary status and were paid accordingly. But the applicant was never made regular/temporary employee and since he was only a casual labourer, nothing is due from the respondents to the applicant. As such, the applicant is not entitled to any claim.

5. I have heard the learned counsel at length and perused the record. The present application has been filed on 12.9.1990, but the permission to file the MP in the Principal Bench was only granted on 21.12.1990. The applicant obviously filed this application one year after his retirement and during his tenure of service he has never come to the Court or before the Tribunal for getting his services regularised. He was continued to be paid as a daily rated casual labourer, obviously because he was not medically fit and had lost one of his arms. The applicant could not establish that this loss of arms has taken place due to some accident in the course of his duty while engaged as a Khallasi. Though the applicant was engaged as a Khallasi, but the applicant himself admits that he was given appointment w.e.f. 27.3.1959 as a Mate in casual capacity. Thus the prayer for

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regularisation at this stage when the applicant has already retired is obviously not sustainable under law. It is also barred by Section 21 of the Limitation Act because the applicant should have come much earlier when the grievance of non regularisation has arisen to him. The cause of action which has arisen continued to run and ended when the applicant/superannuated. During the course of service with the respondent No.3, neither the applicant ever agitated the point nor has filed any proceedings before a competent court. The matter is totally stale and cannot be looked into now.

6. Since the applicant was not even a temporary employee, so no question of grant of pension arises to him.

7. However, in view of the Railway Board's Circular No.E(LL) 85 AT/GRA/1-1 dt. 26.2.1986, the applicant can be granted the relief of DCRG and the relevant circular is quoted below :-

"Subject : Payment of Gratuity Act, 1972 and the Rules framed thereunder-Application to casual labour on Railways.

Reference this Department's letters Nos.E(LL)76-AT/GRA/1-4 dt.7.5.1977 and No.E(LL)75AT/GRA/1-3 dated 2.12.1978 in which the Railways were advised that only such casual labour as are employed in factory establishments on the Railways would come under the scope of the Payment of Gratuity Act, 1972 and not those casual

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labour who are employed either in the Open Line or in the Projects, on Railways. The matter has been further considered keeping in view the judgment of the Supreme Court of India in the case of State of Punjab V. Labour Court Jullundur (AIR 1979 SC 1981) and Kerala High Court in the case of M.P. Sankara Pillai v. Southern Railway No. 4543/1976 and in consultation with the Legal Advisers of the Department of Railways and the Ministry of Labour. This Department has been advised that the provisions of Payment of Gratuity Act, 1972 are applicable to all casual labour employed on Railways, whether on Open Line, Project or in factory establishments. Accordingly, the Railway Administrations should take necessary steps to comply with the provisions of the Act and in the event of casual labour demitting service on superannuation, retirement including retrenchment, resignation, death or disablement, payment of gratuity, as may be due in accordance with the provisions of the Payment of Gratuity Act, 1972 should be made to the casual labour, whether on daily rates or on monthly rates of wages. Calculation of gratuity in such cases should be made in accordance with the clarification issued by the Ministry of Labour vide their letter No.S-70024/12/84-SS, IV dated 30.5.1985 (copy enclosed).

2. The amount of gratuity paid should be booked to a separate sub detailed head of account 1180 (General Charges Establishment under the appropriate main works (Cap/DRF/DF) or Revenue Head Classification under Demand No. 13-Abstract 'L', Minor Head 700-Gratuities and special contribution to PF.

3. In respect of Casual labour who continue to be in employment and/or who have been or/are proposed to be appointed to regular service in a Railway post (Permanent or temporary), further instructions will follow for regulating the payment of such gratuity under the Payment of Gratuity Act, 1972.

4. Necessary not additional funds required for this purpose should be specially incorporated under the relevant demands/Grants in the Budget/Revised Estimates for the current/next year.

5. This issues with the concurrence of the Finance Directorate of the Department of Railways and has the approval of the President.

COPY

No.S-70024/12/84-SS.IV
Government of India
Ministry of Labour

New Delhi, dated the 30th
May, 1985

To

All the State Governments/Union Territory Administrations.

Subject : The Payment of Gratuity Act, 1972-Calculation of the amount of gratuity payable under the Act.

Sir,

I am directed to say that the Supreme Court had in its judgement in the case of M/s Digvijay Woollen Mills

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Limited v. Mohindra Prataprat Buch and others held that for the purpose of sub-section (2) of section 4 of the Payment of Gratuity Act, the amount of gratuity in respect of monthly rated employees has to be calculated by dividing the monthly wages by 26 and multiplying by 15. The Supreme Court has also held in the case of Jeewan Lal Limited V. E. Govindan and others that 20 months wages specified under sub-section (3) of section 4 of the Payment of Gratuity Act means wages for 600 days, i.e., 20 months multiplied by 30. In this connection, a copy each of the two judgments are enclosed (Annexure I and II) for ready reference.

2. This Ministry has been advised that the Supreme Court has interpreted the law, as it is, and it will be applicable to all cases of payment of gratuity under the Payment of Gratuity Act, 1972. This may kindly be brought to the notice of all concerned for information and necessary action.

Yours faithfully,
Sd/-

(A.K. Bhattarai)
Under Secretary"

8. The learned counsel for the respondents, Shri M.L. Verma could not show that the relevant provisions of the circular are not applicable to the case of the applicant.

9. In view of the aforesaid circular of the Railway Board dt. 26.2.1986, the applicant is entitled to 20 months of wages, i.e., wages equivalent to 600 days. The applicant, however, could not be regularised under para-2512 of IREM. The applicant cannot be granted regularisation.

10. The application is, therefore, disposed of in the following manner :-

The respondents are directed to pay gratuity to the applicant in accordance with the circular of the Railway Board dt. 26.2.1986 and 600 days of wages

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calculated at the rate admissible to him on 30.8.1989.
along with 12% interest be paid to him preferably within
a period of three months from the date of receipt of
this order. The other relief of pension and leave salary
as well as regularisation of service is disallowed.
In the circumstances, the parties to bear their own
costs.

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J. P. Sharma
(J.P. SHARMA) 27.2.92
MEMBER (J)