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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 421 OF 1995.

Cuttack this the 22<sup>nd</sup> day of April, 1998.

KRUPASINDHU SWAIN.

....

APPLICANT.

- VERSUS-

UNION OF INDIA & OTHERS.

....

RESPONDENTS.

( FOR INSTRUCTIONS )

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
22.4.98

*S.K. Agarwal*  
(S.K. AGARWAL) 22.4.98  
MEMBER (JUDICIAL)

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Central Administrative Tribunal  
Cuttack Bench : Cuttack.

Original Application No. 421 of 1995.  
Cuttack this the 22nd day of April, 1998

CORAM:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.  
&  
THE HONOURABLE MR. S.K. AGARWAL, MEMBER(JUDL.)

IN THE MATTER OF :-

Shri Krupasindhu Swain, aged about  
60 years, Son of late Balakrishna  
Swain, Village-Chapada, Po. Nalibar,  
Dist. Jagatsinghpur.

..... APPLICANT.

By legal Practitioner : Mr/s. S.P. Mohanty,  
P.K. Lenka,  
Advocates.

- Versus -

- 1) Union of India represented by the Chief  
General Manager, S.E. Railway, Garden  
Reach, Calcutta.
- 2) Senior Project Manager, Headquarters,  
S.E. Railway, Bhubaneswar.
- 3) Deputy Chief personal Officer(Con.),  
S.E. Railway, Bhubaneswar.

..... RESPONDENTS.

By legal practitioner:- M/s. B. Pal, O.N. Ghosh,  
Senior Standing  
Counsel (Railways).

*[Signature]*  
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O R D E R

MR. S.K. AGARWAL, MEMBER(JUDICIAL):-

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for a direction to the Respondents to grant pensionary benefits to the applicant and for a further direction to the respondents to calculate the qualifying service of the applicant for pensionary benefits after expiry of six months of his casual employment by recognising his temporary status and the Railway Board's Circular at Annexure-5 requires modification to cover the case of the applicant.

2. In brief, the facts of this case, as stated by the applicant, are that in the year 1969, the South Eastern Railway, compulsorily acquired certain lands of the applicant for construction of Railway line and in consideration of the compulsory acquisition of land, the applicant was appointed as Khalasi on casual basis with effect from 15.12.1971 under the South Eastern Railway and was posted at Gorakhnath Railway Station, Chapada. His date of casual employment has been indicated in the identification memo dated 8.4.1986 issued by the Railway Authorities, in Annexure-1. It is stated that the applicant was posted at different places such as Raghunathpur, Cuttack, Talcher, Patpur, Kerada and Mancheswar

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without break in his casual employment in construction work and other work under the South Eastern Railway. It is stated that in the continuity of service, the applicant acquired temporary status with effect from 1.1.1981 and his temporary service was regularised with effect from 1.2.1991 and he was confirmed in his post w.e.f. 2.2.1991. It is stated that vide letter at Annexure-2, the applicant was informed that he will be retiring from Railway service on superannuation with effect from 31.12.1993 on attaining the age of superannuation i.e. 58 years. Service certificate issued to the applicant shows that at the time of his retirement, the applicant was working as Store Watchman and his last pay was Rs. 919/-. The grievance of the applicant is that he is not allowed any pensionary benefits. His service taken from the date of recognition of his temporary status till his date of retirement calculated in Annexure-2, comes to 8 years only which is not a requisite qualifying service to earn him any pension. In such calculation, the Respondents have taken into account 50% of temporary period of service of the applicant for determining the length of qualifying service. There is no Railway rule yet to support this method of calculation. But such calculation has been made on the basis of a circular dated 8.6.1987. In the result, the applicant has been prevented/deprived of getting any pensionary benefits. A reference has been made to Section 3(7) of the Railway Act,

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1980 and Railway Establishment Code (Vol.1), Rule 103(3) and the recommendation of the 3rd Pay Commission. It is stated that the applicant had also approached the authorities on several occasions and he has also made representation to that effect on 28.1.1995 which is still pending. It is, therefore, submitted that direction may be given to the Respondents for grant of pensionary benefits to the applicant and further direction may be given to the Respondents for calculation of qualifying service of the applicant for pensionary benefits after expiry of six months of his casual employment by recognising his temporary status and the Railway Board's circular at Annexure-5 be modified accordingly.

3. Counter has been filed by the Respondents. It is admitted in the counter that the applicant was engaged as casual khalasi w.e.f. 15.12.1971 and attained temporary status with effect from 1.1.1981 and was regularised w.e.f. 1.2.1991 and confirmed on 2.2.1991. It is stated that as per Rule 623 of Railway Pension Rules, 1950, A railway servant who has completed less than ten years of qualifying service<sup>5</sup> is entitled to ONLY A GRATUITY. Pension is granted to Railway servants who have completed ten or more years<sup>do</sup> of qualifying service. AS casual labourers~~do~~ not hold a Civil post, and their engagement is casual in nature, which is extended from time to time, therefore, those casual labourers who have attained temporary status are eligible for counting only half the period of service rendered

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by them before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. It is stated that in the instant case, the qualifying service from 1.1.1981 to 1.2.1991 barely comes to five years and thereafter comes to three years only. Thus he has a qualifying service of eight years only. As such, the applicant is not entitled to draw pension. Therefore, on the basis of the averments made in the counter, the Respondents have requested that this petition has no merit and it should be dismissed in limine.

4. We have heard Shri S.P. Mohanty, learned counsel for the applicant and Shri B. Pal, learned Senior Standing Counsel appearing on behalf of the Respondents, and perused the whole records.

5. Learned counsel for the applicant has vehemently argued that the applicant was engaged as casual labourer on 15/12/1971 and since then he has been working with Railway without any break till the date of his retirement i.e. 31.12.1994 but illegally, he has been denied the pension. He submitted that the services of the applicant, after expiry of six months, of casual employment must be taken into consideration for computation of his qualifying service and the Railway Board's circular at Annexure-5 may be modified accordingly. Learned counsel for the applicant, Mr. Mohanty relied upon the decision

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of the Honourable Supreme Court in the case of L. ROBERT D' SOUZA VRS. EXECUTIVE ENGINEER, SOUTHEASTERN RAILWAY AND ANOTHER, reported in AIR 1982 SC 854 ; and in the case of INDERPAL YADAV VRS. UNION OF INDIA AND OTHERS reported in 1985 (2) SCC 648 and argued that the period of service of the applicant, after expiry of six months of casual work, must be taken into consideration for computation of his qualifying service for the purpose of pension.

On the other hand, learned Senior Standing Counsel Mr. Pal, appearing on behalf of the Respondents has opposed these arguments of the learned counsel for the applicant and stated that according to Railway Pension Rules, Railway Servants who has completed less than ten years of qualifying service is only entitled to gratuity and not pension. He has also referred circular issued by the Railway Board at Annexure-5 and contended that in view of the Railway Board's circular issued by the Railway and pension rules, the applicant is not entitled to pension.

6. We have given our thoughtful consideration to the argument of both parties and also given utmost attention to the citations referred by the learned counsel for the applicant. In the Manual of Railway Pension Rules, 1950, the qualifying service has been defined in rule 104 which reads as follows:-

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"104. The quantum of ordinary gratuity/pension and

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death-cum-retirement gratuity depends mainly on the following three factors; (1) Length of qualifying service-Continuous temporary of officiating service under the Government of India followed without interruption by confirmation in the same or any other post, in full as qualifying service except:-

- (i) periods of temporary of officiating service in a non-pensionable establishment.
- (ii) periods of casual/daily rated service and periods of service of casual employees treated as temporary on completion of six months' continuous service until they are absorbed against regular temporary/permanent posts."

The Manual of Railway Pension rules, 1950, more particularly rule 623 provides that a Government servant who has completed less than ten years qualifying service is entitled to only gratuity. Pension is granted to a railway servant, who have completed ten years or more qualifying service. Railway Board's letter No. E(NG)/11/85/CL/6 dated 28.11.1986 (Annexure-2) provides as follows:-

"Counting of the period of service of project casual labour after their attainment of temporary status as qualifying service for pensionary benefits on absorption in regular employment on Railways.

In the Ministry of Rly's letter No. E(NG) 11/78/CL/12, dated 14.10.1980 it was laid down that half the period of service put in by casual labourers on open line after attaining temporary status would count as qualifying service for pension on their eventual absorption in regular employment. It was added therein, however, that labour employed on projects (or project casual labour) will not come under the purview of the said orders.

  
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2. As railway Administrations are aware, the benefit of temporary status has since been extended to project casual labour vide Ministry of Rlys's letter No.E(NG) 11/84/CL/41, dated 1.6.1984, read with this Ministry's letter of same number of dated 11.9.1986.

3. In the PNM meeting between the Board and the NFER, the Federation had requested that in the case of project casual labour also half the service rendered by them, after attaining temporary status, if the same is followed by absorption in regular employment, should be reckoned as qualifying service for pensionary benefits.

4. The Ministry of Railways have considered the matter and have decided that in the case of project casual labour too, half the service rendered by them, after attaining temporary status in terms of the instructions of 1.6.1984 and 11.9.1986 referred to in para 2 supra, will be reckoned as qualifying service for pension, on their eventual absorption in regular employment. The conditions attached to reckoning of such service for pensionary benefits as enjoined in the ministry of Railways' letter of 14.10.1980 cited above, will mutatis mutandis apply in the case of project casual labour also".

Rly.

Para -2005 of the Indian Establishment Manual, Vol III also provides the rights of a casual labourer are as follows:-

\*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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- (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-a-vis other regular/temporary employees.

This is, however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered.

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

(b) such casual labour ...

(c) No temporary posts shall be created to accommodate such casual labour, who acquired temporary status, for the conferment of attendant benefits like regular scale of pay, increment etc. After absorption in regular employment, half of the service rendered after attaining temporary status by such persons before regular absorption against a regular/temporary/permanent post, will qualify for pensionary benefits, subject to the conditions prescribed in Railway Board's letter No. E(NG) 11/78/CL/12, dated 14.10.1980 (letter No. E(NG) 11/85/CL/6 dated 28.11.1986 in the case of Project casual labour)".

  
Pension signifies pensioner wages and it is earned in lieu of the service put in by an employee. Regularisation is a sine quo non for grant of pension meaning thereby regularisation is a pre-requisite for grant of pension.

7. A casual labour has been defined in para 201(1) of Chapter XX of the I.R.E.M., Vol. II, as one whose employment is intermittent, sporadic or extends over a short period or continued from one work to another work.

Under Rule 2005 of I.R.E.M. , Vol.II, 1990 Edn. and Rule-31 of the Railway Services (Pension) Rules, 1993 and provisions of Rules, 101, 102 and 409 (ii) of Manual of Railway Pension Rules, 1950 lays down that pensionary benefits would be admissible to the casual labourer attaining temporary status and after they are absorbed in Group D Post. Rule 2006 of I.R.E.M. Vol. II 1990 Edn. lays down the law regarding absorption of casual labour in regular vacancy, it has been laid down therein that such absorption is not automatic but is subject, inter alia, to availability of vacancies, suitability and eligibility of the individual casual labourer and rules regarding seniority, unit method of absorption etc. decided by the Railway Board. Sometimes, casual labourers with temporary status, despite rendering service of so many years, are not regularised. In that case, justice, equity and fair play demands that fixation of deemed provision shall be applicable in such situation. In the case of GITARANI SANTRA AND ANOTHER VRS. UNION OF INDIA AND OTHERS reported in (1997) 36 ATC 396(FB), it was held that despite non-regularisation of casual labourer with temporary status who has been working continuously for a long period, shall be deemed to have been regularised on the date of normal age of superannuation, if he completes 20 years of service after temporary status for the purpose of getting pension. In the case reported in (1994) 28 ATC 462

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Madan Singh Vrs. Union of India it was held that only 50% of service rendered by a casual labourer after temporary status shall be counted as qualifying service for pension under rules.

8. In the instant case, the applicant acquired temporary status on 1.1.1981 and was regularised with effect from 1.2.1991 and confirmed on 2.2.1991. But the applicant never agitated this fact before any competent authority or the Court that he should have been granted temporary status just after completing six months from the date on which he was engaged as casual labourer. Therefore, the argument of the learned counsel for the applicant that ~~if~~ the engagement of the applicant from 15.12.1971 till the date of his retirement should be taken into consideration for the purpose of pension does not hold good, in view of the above rules meant for casual labourers. We are, thus, of the opinion that the applicant has been rightly denied the benefit of pension as he does not fall in any of the provisions of the rules for entitlement of pension. Therefore, the applicant, was rightly denied the benefits of pension.

9- In the result, we find no merit in this application and the Original Application is dismissed but without any order as to cost.

*Somnath Som*  
(SOMNATH SOM)  
VICE CHAIRMAN

KNM/CM.

*S.K. Agarwal*  
(S.K. AGARWAL)  
MEMBER (JUDICIAL)