

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 454 OF 1995.

Cuttack this the 22nd day of April, 1998.

Sankar Malla.

... ..

Applicant.

-Versus-

Union of India & Others.

... ..

Respondents.

(For Instructions)

1. Whether it be referred to the reporters or not? **Yes**
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not? **No**

Somnath Som
SOMNATH SOM
VICE-CH **22.4.98**

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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 454 of 1995.

Cuttack this the 22nd day of April, 1998.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. S.K. AGARWAL, MEMBER (JUDICIAL)

...

Shri Sankar Malla, aged about 59 years,
Son of late Ananda Malla, Village-
Chapada, P.O. Nalibara, Dist. Jagatsinghpur.

... APPLICANT.

BY LEGAL PRACTITIONER:- M/s. S.K. Mohanty, S.P. Mohanty, P.K. Lena,
Advocates.

-Versus.-

1. Union of India represented through its
Chief General Manager, S.E. Railway,
Garden Reach, Calcutta.
2. Senior Project Manager, Headquarters,
South Eastern Railway, Bhubaneswar.
3. Deputy Chief Personnel Officer (Con.), S.E. Rly,
Bhubaneswar.

... RESPONDENTS

BY LEGAL PRACTITIONER : M/s. B. Pal, O.N. Ghosh, Senior Standing
Counsel (Railways).

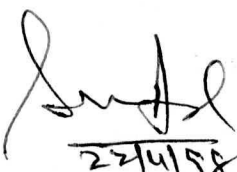
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O R D E R

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

In this Original Application, under section
19 of the Administrative Tribunals Act, 1985, the applicant has
prayed the following reliefs:-

- a) to give direction for grant of pensionary
benefits to the applicant;


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- b) to give further direction for calculation of qualifying service of the applicant for pensionary benefits after expiry of 6(six) months of his casual employment by recognising his temporary status.;
- c) The Railway Board's Circular in Annexure-3, requires a modification to cover the case of the applicant in the light of discussion, and to that effect necessary direction to the Railway Authorities may have to be issued so that the entire period of his service from the date of recognition of temporary status to the date of confirmation will be treated towards pensionary benefit,
- d) and pass such or such other order , as may be deemed just and proper;

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 Gorakhanath Railway Station, Chapada. His date of casual employment has been indicated in the certificate given by the Permanent Way Inspector, Cuttack-

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P.D.C. Construction, South Eastern Railway, Gorakhnath, dated 5.3.1974 (Annexure-1). It is stated that the applicant was posted at different places such as Raghunathpur, Talcher, Mancheswar and Cuttack etc. without break in his casual employment in construction work and other work under the South Eastern Railway. It is stated that the applicant, while continuing as such, got temporary status with effect from 1.1.1981 and was confirmed in his post on 22.2.1991. Vide letter at Annexure-2, the applicant was informed that he would be retiring from Railway Service on superannuation with effect from 31.7.1994 on attaining the age of 58 years. It would be evident from Annexure-2, that at the time of his retirement, the applicant was working as Gangman and his last pay was Rs. 931/-. It is stated that even though after the retirement, the applicant submitted his pension papers along with joint photographs etc. but, till today, he has not been granted any pensionary benefits. It is stated that after submission of pension papers and photographs etc, the applicant had also personally pursued the matter in the Railway office for grant of pension. But he was informed orally by the concerned authority that he would not be entitled to pension as he has not completed the requisite years of qualifying service. The grievance of the applicant is that he was not allowed any pensionary benefits. His service taken into consideration from the date of recognition of his temporary status till his date of retirement comes to eight years and five months, which is not a requisite qualifying service to earn /entitle him any pension.

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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 (Annexure-3). In the result, the applicant has been deprived of getting any pensionary benefits. It is stated that if the entire period of service rendered by the applicant from 15.12.1971 to 31.7.1994 is taken into account, by the Respondents, then the applicant would be entitled to his pensionary benefits on the basis of his requisite period of qualifying service. In this connection, learned counsel for the applicant, has also relied upon a decision of the Ernakulam Bench of the Central Administrative Tribunal reported in (1989)9ATC 95 (P.Narayan Vrs. Union of India and others and stated that as per Rule 4 of pension rules, temporary or officiating service rendered without interruption by confirmation in the same or different post shall count in full as qualifying service. Hence in the instant case of the applicant, 50% of his temporary service as has been taken for determining qualifying service may not be held good law. A reference was also made to Section 3(7) of the Railway Act, 1980 and Railway Establishment Code (Vol.1) Rule 103(3) and the recommendation of the 3rd Pay Commission. It is further stated that the applicant had also approached the authorities on several

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occasions and he has also made representation to that effect on 25.1.1995 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-3 be modified accordingly.

3. Counter has been filed by the Respondents. It is admitted in the counter that the applicant was engaged as a Casual Khalasi w.e.f. 15.12.1971 and got temporary status with effect from 1.1.1981 and was confirmed in his post on 2.2.1991. It is submitted that the case of the applicant was examined and qualifying period of service of the applicant comes to 9 years, 11 months 15 days and the same has been held to be 10 years. The applicant's case for grant of pension has been processed and he will be paid pension after processing is over and such pension will be paid with effect from 1.8.1994 as per the Rules. It is further stated that the rule in question for granting temporary status applies to casual labourer in open line. For project casual labour, a minimum period of 360 days of continuous working is required as on 1.1.1981 or thereafter as per Inderpal Yadav's case. In this way, the Respondents have requested that the Original application filed by the applicant is devoid of merit and is liable to be

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dismissed.

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 the said period of engagement has not been taken into consideration for granting pension in favour of the petitioner. It is 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-3 may be modified accordingly. Learned counsel for the applicant Mr. Mohanty relied upon the decision of the Hon'ble Supreme Court in the case of L. ROBERT D' SOUZA VRS. EXECUTIVE ENGINEER, SOUTH EASTERN RAILWAY AND ANOTHER reported in AIR 1982 SC 854; , In the case of INDERPAL YADAV VRS. UNION OF INDIA AND OTHERS reported in 1995 (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.

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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-3 and contended that in view of the Railway Board's Circular issued by the Railway and pension rules, the applicant is not entitled to full pension and he is only entitled to the pension taking into consideration the ten years of service of the applicant.

6. We have given our thoughtful consideration to the arguments of both the parties and also given utmost attention to the citations referred to by the learned 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 death cum retirement gratuity depends mainly on the following three factors; 1) length of qualifying service-continuous temporary or 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 or 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, 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.

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 NFIR 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 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".

Para-2005 of the Indian Rly. Establishment Manual, Vol.II 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).

(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 acquire 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 person 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)/11/73/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) 2.

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

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status and after they are absorbed in Gr.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 and 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 GITA RANI SANTRA AND ANOTHER VRS. UNION OF INDIA AND OTHERS reported in (1997) 36 ATC 396 (FB) it was held that despite nonregularisation 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 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.

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8. In the instant case, the applicant acquired temporary status on 1.1.1981 and was regularised/confirmed with effect from 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 completion of six months from the date on which he was engaged as casual labourer. Therefore, the argument of the learned counsel for the applicant that 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.

9. We are, therefore, of the opinion that the Respondents have rightly taken into consideration ten years of qualifying service for the purpose of pension and have rightly denied to take into consideration the full period of service of the applicant for the purpose of pension as he does not fall in any of the provisions of the rules for entitlement of full pension.

10. Therefore, the Respondents are hereby directed to pay the pension of the applicant taking into consideration the ten years of qualifying service on the date of superannuation within 30 (thirty) days from the date of receipt of a copy of this order.

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11. With the observations made in para-10 above,
the Original Application is disposed of leaving the parties
to bear their own costs.

Somnath Singh
(SOMNATH SINGH)
VICE-CHIEF

S. K. Agarwal
(S. K. AGARWAL) 22/4/98
MEMBER(JUDICIAL)

KNM/CM.