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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 940 OF 1996
Cuttack this the 6th day of September, 1999
October

Sridhar Baral

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
6.10.99

b. 20-55
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.940 OF 1996
Cuttack this the 6th day of September, 1999
October,

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Sridhar Baral,
S/o. Lte Dinabandhu Baral,
At: Termanpur, PO: Rahama
Dist: Jagatsinghpur

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Applicant

By the Advocates : M/s.K.K.Swain
P.N.Mohanty
M.R.Nayak

...Versus...

1. Union of India represented by the General Manager, South Eastern Railway, Garden Reach, Calcutta-43
2. The Divisional Railway Manager, South Eastern Railway, Khurda Road, Orissa
3. The Senior (Divisional Personnel Officer) South Eastern Railway, Khurda Road, Orissa
4. The Bridge Inspector (Regirdering) Nirupa, South Eastern Railway, Jagatpur Cuttack, Orissa

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Respondents

By the Advocates : M/s.B.Pal
P.C.Panda
S.K.Ojha
P.Das

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ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, Sridhar Baral, who retired on superannuation on 30.9.1995 as a Railway Gangman prays for sanction of pension and enhanced pension by treating 50% of his casual service as qualifying service. His case is that he worked as Gangman on casual basis from 1.11.1977 to 31.12.1982 and with effect from 1.1.1983, he was absorbed on permanent basis. While continuing so, he was absorbed in P.C.R. post on 1.2.1991.

2. The version of the respondents-railways is that applicant was initially engaged as casual labour in construction organisation on 1.11.1979. He was conferred temporary status on 1.1.1983 in the scale of pay of Rs.200-250/-. Thereafter he was regularised in the Construction Organisation against 60% Permanent Construction Reserve(P.C.R.) posts as Khalasi with effect from 1.2.1991 and was confirmed as Khalasi with effect from 2.2.1991 in the pay scale of Rs.750-940. Further he was allowed to continue as Gangman in Construction Organisation in the pay scale of Rs.775-1025/-. On being transferred from Construction Line, he joined in Open Line on 7.9.1994 and finally retired on superannuation on 30.9.1995.

No rejoinder having been filed by the applicant, factual version of the Department has to be accepted as correct, more so, when there is no averment in the application that he had worked on casual basis in Open Line.

The applicant, however, bases his claim on Annexure-1, which is said to be a typed copy of common judgment dated 30.1.1995 passed by Single Member of

Ernakulam Bench of the Central Administrative Tribunal in Original Application Nos. 843/94, 844/94, 853/94 and 954/94. The Department, on the other hand relied on Establishment Sl. No.239/80 dated 31.1.1980, which excludes casual labourers employed on projects to get the benefit of addition of 50% of their service after attainment of temporary status as qualifying service for pensionary benefits, though such benefit is conferred on casual labourers engaged in Open Line.

As earlier stated, the version of the Department has to be accepted as correct. As per this version, the applicant was engaged as casual labourer in Construction Organisation with effect from 1.11.1979 and conferred ~~carried~~ temporary status on 1.1.1983. He was regularised in Construction Organisation on 2.1.91 and confirmed as Khalasi on 2.2.1991. Under the Railway Pension Rules, one would not be eligible for pension unless he completes 10 years of qualifying service. Even on the basis of Railway Board Circular, i.e. Establishment Sl. No.239/80 dated 31.1.1980 (Annexure-R/1), considering 50% of temporary status from 1.1.1983 till 31.1.1991, which comes to four years 15 days and is added to regular service with effect from 1.2.1991 to 30.9.1995 (4 years, 7 months and 29 days), the total qualifying service would come to 8 years and 14 days only and as such the applicant is not eligible for pension.

Annexure-1, which is said to be a true copy of common judgment of Ernakulam Bench disposed of on 30.1.1995 relying on some previous decision of Madras Bench and of Ernakulam Bench, lays down that 50% of continuous casual service, after the casual employee

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completes six months of service, will be reckoned as qualifying service for the purpose of pension. The judgment, however, is completely silent as to whether the applicants therein served as casual labourers under the respondents-railways in Construction or Project Organisation. Hence it cannot be presumed that this judgment deals with casual labourers of Construction or Project Organisation of the Railways. Assuming the applicants therein were under Construction or Project Organisation, this judgment cannot be accepted as good law in view of the decision of the Hon'ble Supreme Court in the case of Union of India vs. K.G.Radhakrishna Panker reported in 1998 SCC(L&S) 1281. In this Supreme Court case the question for consideration was whether employees, who were initially engaged as Project Labourers by the Railway Administration and were subsequently absorbed on regular/temporary/permanent basis were entitled to have the services rendered as Project labourers prior to 1.1.1981 (date 1.1.1981 is significant pursuant to the direction given by the Hon'ble Apex Court in Inderpal Yadav case pronounced on 18.4.1985) counted as part of qualifying service for the purpose of pension and other retiral benefits. By interprating circular dated 14.10.1980 (Annexure-R/1), para-2501 of the Railway Establishment Manual and many previous decisions of that Court and decisions of various C.A.T. on this point, the Hon'ble Apex Court ultimately held that service rendered as project labourers, who were absorbed on regular/permanent/temporary basis prior to 1.1.1991 cannot be counted for the purpose of retiral benefits and accordingly set aside the judgments of

various Benches of the C.A.T. giving such benefits. However, the Hon'ble Apex Court held that service benefit of circular dated 14.1.1980 will be applicable to the project casual labourers after they are treated as temporary on the basis of the scheme as accepted in Inderpal Yadav case. Thus the legal position is clear that unless the railway employee has 10 years of qualifying service, he will not be eligible for pension. Hence prayer of the applicant for sanction of pension and enhanced pension cannot but be disallowed. However, he is entitled to gratuity under Rule-69 of the Railway Services(Pension) Rules, 1993(Annexure-A/2) as admitted by the respondents in their counter that applicant's gratuity has been settled at Rs.12, 608/-.

In the result, while dismissing this application on merit, we direct the respondents to pay the gratuity amount as settled within a period of 30(Thirty) days from the date of receipt of this order, if not already paid. There shall however, be no order as to costs.

Somnath Som
(SOMNATH SOM)

VICE-CHAIRMAN

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B.K.SAHOO

6.10.93
(G.NARASIMHAM)
MEMBER (JUDICIAL)