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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 50 of 2005
Cuttack, this the 13th day of February, 2007.

Panchu Mohanty

..... Applicant

Versus

Union of India & Others

..... Respondents

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not? *yes*
1. WHETHER it be circulated to all the Benches of the Tribunal or not? *yes*

Erda
130207
(N.D.RAGHAVAN)
VICE-CHAIRMAN

B.B.Mishra
(B.B.MISHRA)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 50 of 2005

Cuttack, this the 13th day of February, 2007.

CORAM:

THE HON'BLE MR.N.D.RAGHAVAN, VICE-CHAIRMAN
&
THE HON'BLE MR.B.B.MISHRA, MEMBER(A)

1. Panchu Mhanty, aged about 62 years, son of late Bikala, At-
Kaunriapal, Po: Belapada, Via: HIndol Road, District-Dhenkanal.
..... Applicant

By legal practitioner: Mr. M.C.Nayak, Advocate

-VERSUS-

1. Union of India represented through its General Manager, WEast Coast
Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. The Divisional Railway Manager, East Coast Railway, Khurda Road
Division, Jatni, Dist. Khurda.
3. Senior Divisonal Personnel Officer, East Coast Railway, Khurda Road,
Jatni, Dist. Khurda.

..... RESPONDENTS

By legal practitioner Mr. O.N.Ghosh, Advocate



ORDER

MR. B.B.MISHRA, MEMBER(A):

The case of the Applicant, in nut shell, is that during 1966-1986 he had worked on casual basis under Section Engineer (P.Way) South Eastern Railway, Dhenakanal. By order dated 09.09.1987 he was granted the scale of Rs.775-1025/- on completion of 120 days of continuous service as casual labourer and conferred with the temporary status. On 30.09.1995 he was regularized in Railway service and on 31.03.2002 he retired on reaching the age of superannuation. His grievance is that since he was not paid pension and family pension he submitted representations which having been rejected under Annexure-A/4 dated 28.08.2004/13.09.2004 he has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 with the following prayers:

“(i) to quash and set aside the order (Annexure-A/4) with declaration that the applicant was conferred with temporary service with effect from 10.07.1987 and that 50% of the period of service of applicant as casual labour with temporary service till 29.05.1995 and 100% of the period of regular service of the applicant from 30.05.1995 till 31.03.2002 have to be taken into account for the purpose of determining the entitlement of the applicant to get pension and family pension;

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(ii) to direct the Respondents to grant pension to the applicant with effect from 01.04.2002 and make payment thereof with interest at 12% per annum;

(iii) to award the cost of the proceeding in favour of applicant."

2. Respondents resisted the claim of the Applicant in their counter filed on 28th January, 2006 by stating that the Applicant was engaged in the railways in the year 1987 on TLR sanction and got temporary status and CPC scale with effect from 14.05.1990. He worked as temporary CPC Gangman from 14.5.1990 to 29.5.1995 and was regularized on 30.05.1995. Thereafter his services were confirmed with effect from 30.05.1996 and he retired from the post of Sr. Trackman with effect from 31.03.2002 on attaining the age of superannuation. After his retirement except pension and family pension, all other dues entitled by him as per the Rules, were paid to him. In regard to entitlement of pension and family pension, it has been averred by the Respondents in their counter that as per Rules, after retirement from railway service, one is entitled to pension/family pension provided he/she has put in 10 years minimum regular qualifying service. It has been further averred that for computing the qualifying service 50% of CPC service from the date of attaining the age of temporary status and 100% from the date of regularization shall be taken into consideration for calculating the qualifying service to be eligible for

pension & Pension. It has also been averred that as in the instant case taking into 50% of the service of applicant from 14.05.1990 till regularization (29.02.1995) and 100% of regular service from 30.05.1995 till retirement (31.03.2002) it comes of only 9 years 3 months and 9 days of service, which is less than minimum qualifying regular service of ten years, he is not entitled to pension.

3. Applicant has stated in this Original Application that only to deprive the applicant of his pension/Family pension, the Respondents with ulterior motive, have shown the date from which he started his service under the Railways as '14.05.1990' and in spite of his representation to show the date in the service certificate as 10.07.1987 (i.e. the date when temporary status was granted to him) in place of 14.05.1990, no revised certificate was issued to him. He has stated that when on completion of 120 days of casual service, by order dated 10.07.1987 he was granted the CPC scale it is erroneous on the part of the Respondents to say that the applicant was conferred with temporary status with effect from 14.05.1990. His next ground of challenge is that there is no provision to appoint a casual labour against any TLR sanctioned post on temporary basis and, therefore, this not only contradicts their own order dated 9.9.1987 granting the Applicant CPC scale but also runs counter to the system of engagement of casual labour and

conferment of temporary status on casual labour on completion of 120 days of continuous service. It is his case that when the concerned field officer i.e. Assistant Engineer, S.E. Railway, Dhenaknal vide his office memorandum dated 28.11.2001 stated the date of appointment of applicant as 10.7.1987 which is supported by Annexure-A/1, the respondent-authorities especially respondent no.3 acted illegally and arbitrarily in choosing 14.5.1990 as the date of conferment of temporary status and also taking 10.7.1987 as the date of applicant's appointment as casual labourer. The next ground taken by the applicant in support of his prayer is that he had put in 120 days of continuous service as casual labourer as on 10.07.1987, having been conferred with temporary status with effect from 10.07.1987 (Annexure-A/1) 50% of the period of service as casual labourer with temporary status i.e. from 10.07.1987 to 29.05.1995, comes to 3 years, 10 months and 10 days, and 100% of his regular service from 30.05.1995 to 31.3.2002, which comes to 6 years 10 months and 1 day, totaling 10 years 8 months and 11 days have to be taken into account for the purpose of determining the entitlement of applicant to get pension and family pension. As against this the Respondents in their counter have stated that the applicant was engaged from 10.07.19897 to 23.10.1989 as monsoon petrolman against TLR sanction. His engagement was not continuous one. Taking into consideration/

his qualifying period of casual engagement, he was conferred with temporary status and given CPC scale. They have therefore, strongly opposed the stand of the Applicant and have stated that there being no merit in this OA the same should be dismissed. Applicant has also filed rejoinder which have been taken note of.

4. In course of hearing Learned Counsel appearing for the respective parties by taking us through the materials placed on record, have reiterated their stand taken in the pleadings.

5. After hearing the parties and going through the materials placed on record, we find no wrong either in the matter of conferment of temporary status or date of regularization of the service of Applicant. We also find no wrong in the matter of calculation of the period of qualifying service of the applicant as it was perfectly done in accordance with Estt. Sl. No. 239/80 which *inter alia* provides as under:

“Estt. Sl. No. 239/80

No.P/R/CL/0

Dated 31/10/1980

A copy of Railway Board's letter No. E(NG)II/78/CL/12 dt.14.10.1980 together with copies of its enclosures referred to therein is published for information and guidance.

2. This has reference to this office Estt.Srl.No.196/70.

Copy of Railway Board's Letter No. E (NG) II/78/CL/12 dated 14th October, 80 addressed to the General Managers, All India Railways and others.

Counting of the period of service of Casual Labourer after their attainment of temporary status, on completion of 120 days continuous service, as qualifying service for Pensionary Benefits – on absorption as regular railway employee.

As a result of representations from the recognized labour unions and certain other quarters, the Ministry of Railways had been considering the demand that the period of service in the case of casual labour (i.e. other than casual labour employed on Projects) after their attainment of temporary status, on completion of 120 days' continuous service, should be counted as qualifying service for pensionary benefits, if the same is followed by their absorption in service as regular railway employees. The matter has been considered in detail in consultation with the Ministry of Home Affairs considered in detail in consultation with the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) and the Ministry of Finance. Keeping in view the fact that the aforesaid category of employees on their attainment of temporary status in practice enjoy more privileges as admissible to temporary employees such as they are paid in regular scales of pay and also earn increments, contribute to P.F. etc. the Ministry of Railways have decided with the approval of the President that the benefits of such service rendered by them as temporary employees before they are regularly appointed should be conceded in them as provided in the Ministry of Finance O.M. No. F. 12(1)-SV/68 dated 14th May, 1968 (copy enclosed for ready reference). The concession of counting half of the above service as qualifying for pensionary benefits as per the OM of 14th May, 1968 would be made applicable to casual labour on the railways who have attained temporary status. The weightage of the past service would be limited from

1.1.1961 in terms of condition(s) of the OmM ibid. Past cases of retirement before the date of this letter will not be re-opened.

2. Daily rated casual labour or labour employed on Projects will not however, be brought under the purview of the aforesaid orders.

3. As regards "Substitute Service" the service as Substitute counts for pensionary benefits from the date of completion of six months' (3 months' in the case of teachers) continuous service as substitute provided it is followed by absorption in regular class III/class IV service without break, as already provided in Railway Ministry's letter No. F(E)III.69PN-1/21 dated 22.7.70 (copy enclosed for ready reference).

4. Necessary amendments to the Manual of Railway Pensioni Rules, 1950 will be issued separately.

5. This issues with the concurrence of the Finance Directorate of the Railway Board."

6. Applicant did not make any attempt prior to his retirement seeking advancement of the date of conferment of temporary status or regularization. Therefore, it is too late in the day to say anything with regard to this.

7. The Applicant has unnecessarily made bald and frivolous allegations that the Respondents have done something wrong with ulterior motive without any substance/substantial evidence. Time without number, the Hon'ble Apex have not only ruled not to take cognizance of the bald and unfounded allegations of *mala fide*/bias in absence of any documentary

proof but also repeatedly held that the Court/Tribunal should be slow to draw inference from dubious facts. **[Union of India &Ors. V. Ashok Kumar & Ors, 2006 (I) AISLJ 312 = 2006 SCC (L&S)47].** The Hon'ble Apex Court have also noticed that the allegations of *mala fides* are often more easily made than proved and, therefore, it was observed that the very seriousness of such allegations demands proof of a high order of credibility **[E.P.Royappa v. State of T.N., AIR 1974 SC 555=1974 SCC (L&S) 165=(1974)4 SCC 3].** Natural justice also demands that opportunity should be given to the party against whom such allegation of *mala fide/bias* is alleged. In the instant case, none of these principles has been fulfilled by the Applicant. Therefore, while declining to accept the unfounded allegations, we are impelled to record our dis-approval of unsubstantiated allegations as above.

8. The fact remains that the Applicant had dedicated his youth for near about three decades in the Railways both on "casual" & "casual with temporary status" basis and on "regular" basis. The only question needs to be answered as to whether the Railways are justified in not sanctioning the pension and pensionary dues in favour of the Applicants ?. In this connection, we would like to note that the issue regarding grant of pension/family pension to such type of Railway servants, has been the

subject matter of several litigations. Similar issues decided by the Hyderabad Bench of this Tribunal came up for further judicial scrutiny of the Hon'ble High Court of Andhra Pradesh in the case of **GENERAL MANAGER, SOUTH CENTRAL RAILWAY, RAIL NILAYAM SECUNDERABAD, AP AND ANOTHER vrs. SHAIK ABDUL KHADER** (Reported in 2004 (2) ATJ 23) ; wherein while confirming the orders of the Hyderabad Bench of this Tribunal , the Hon'ble High Court directed that the Applicant, therein, to be entitled to count full service period of temporary status till regularization for the purpose of pension and half of the service before the period of temporary status. This Bench of the Tribunal in the case of **GIDU PRATAP vrs. UNION OF INDIA** (OA No. 671 of 2002,, disposed of on 23rd September, 2004) , taking support of the decision of the Hon'ble High Court of Orissa in the case of **SETTLEMENT CLASS IV JOB CONTRACT EMPLOYEES UNION, BALASORE vrs. STATE OF ORISSA AND OTHERS** (rendered in OJC No. 2047 of 1991 disposed of on 24-03-1992) and the decision of the Hon'ble Apex Court of India rendered in the case of **YASHWANT HARI KATAKKAR vrs. UNION OF INDIA & OTHERS** (reported in 1995 AIR SCW 370) has also directed the Respondents to take such of the periods from the casual service/casual with temporary status service in order to grant the minimum pension to the

Applicant in order to see that the applicant after spending his youth in the Railways should not move from pillar to post with begging bowls at the old age. The Ahmedabad Bench of this Tribunal in the case of **Smt. Vallam Badia vrs. Union of India and others** (reported in 2003(2) CAT AISLJ 271), after holding that a temporary status employee is entitled to pension, has directed for payment of family pension to the Applicant. Very recently the Principal Bench of this Tribunal in the case of **Smt. Anita Devi Vrs. General Manager, North Central Railway and others** (in OA No. 284 of 2005 disposed of on 17.01.2006), after taking note of the decisions of the Hon'ble Apex Court rendered in the cases of **RAM KUMAR & OTHERS vrs. UNION OF INDIA & OTHERS** (reported in 1996 (1) SLJ (CAT) 116); **UNION OF INDIA & OTHERS vrs. SUKANTI & ANOTHER etc.**(SLP 3341/93) ; **UNION OF INDIA & OTHERS vrs. RABI BIKANER & OTHERS** (1998 (1) SLJ 181 (SC), Full Bench decision of this Tribunal rendered in the case of **GITA RANI SANTRA vrs. UNION OF INDIA & OTHERS** (reported in 1997-2001)AT FBJ 295); co-ordinate Bench decision rendered in the case of **SMT. URMILA DEVI vrs. UNION OF INDIA AND OTHERS** (O.A. No. 1257/2004 decided on 26.08.2005), in the case of **SMT. VALLAM BADIA vrs. UNION OF INDIA AND**

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OTHERS (reported in 2003(2)CAT 271) and taking into consideration the provisions of the Rules in paragraph 33 has held as under:-

“If one has regard to the above, having regard to the law laid down in Ram Kumar’s case and more particularly when Railway Services Pension Manual do not stipulate continuous service as a temporary government servant on extension of benefit at par with temporary govt. servant to those casual labourers, who had acquired temporary status, the widow of a deceased casual labour is certainly entitled to the family pension which is implicit in the rules and clarified by the law laid down by the Apex Court”.

9. This Bench of the Tribunal while confronting with this situation, in earlier occasion in the case of **Sachi Prusty VRS. Union of India and others** rendered in O.A. No. 501 of 1996 disposed of on 24th April, 2002, had directed the Respondents that for the purpose of calculating the minimum period of qualifying service for grant of pension and pensionary benefits, his earlier temporary/casual period of service should be reckoned as pension is not a bounty to be paid by the Government and pension is being paid for maintenance of the Government servant and his family members during the rainy days of life. Further in the case of **Benu Baral & 5 others v. Union of India and others** (OA Nos. 1416 of 2003 and others 17th February, 2006) this Bench of the Tribunal, after taking note of various decisions of the Hon’ble Apex Court had directed the Respondents/Railways to pay those applicants minimum pension/pensionary benefits. Some of the

observations of this Tribunal made in the case of Benu Baral (supra) are extracted below:-

“10. One earns pension at early days for his sustenance during old age when he is crippled and unable to discharge any duties. Therefore, it is not the basic question as to whether one is entitled pension; the question of sustenance of livelihood is the actual consideration. If on technical grounds one is debarred of such right, it would certainly be an injustice caused to an employee who had spent his youth for the nation; which is not the intention of the rule making authority. Rules/Regulations/Instructions are framed/issued for maintaining an orderly society. If Rules framed by Government is opposed to public policy or is against the very object to be achieved, the same needs to be interfered with to meet the social justice to the people. Regularization after conferment of temporary status is not within the control of the employee. A temporary status employee has been allowed to enjoy all the benefits like the regular employee. Therefore, the decision of the Railway Board to take only 50% of the temporary status period for calculating the qualifying service is against the common conscience. That apart, in the rules it has been made clear that “qualifying service” means service rendered; while on duty or otherwise; which shall be taken into account for the purpose of pensions and gratuities admissible under these Rules. The Applicants have been deprived of their livelihood during old age due to short fall of qualifying period of service, either by six months one year or two years etc. With relaxation, the Applicant No.1 is entitled to get minimum pension even if there are shortage of six months.

11. Right to ‘life’ is not merely confined to mere physical existence; but it includes within its ambit

the right to live with human dignity. Right to live is also not restricted to mere animal existence. It means something more than just physical survivals. The right to live is not confined to protection of any faculty or limb through which life is enjoyed or the soul communicates with outside world but it also includes the right to live with human dignity and all that goes along with it for bare necessities of life; such as adequate nutrition, clothing and shelter. An equally important facet of that right is the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. Therefore, non-payment of pension to the applicant on technical ground is an way of interfering with the constitutional mandate as provided under Article 21 of the Constitution of India.”

With the above discussions/observations, it has been concluded as under:

“12. For the foregoing discussions, it is held that not only the Applicant No.1 but also all the Applicants are entitled to the minimum pension; for which Respondents are hereby directed to grant the Applicants minimum pension by taking into computation so much of their earlier service period as required, in order to make good of the deficiency of the period of qualifying service of ten years and grant them minimum pensionary benefits from the date of their retirement, within a period of 180 days from the date of receipt of a copy of this order. In the result, these Original Applications stand allowed. There shall be no order as to costs.”

10. Recently, the Hon'ble Gujarat High Court in a similar situation, after taking note of the authority of various decisions of the

Hon'ble Apex Court of in the case of **Rukhiben Rupabhai v. Union of India and Others**, ATJ 2006 (2) ATJ page-1 at paragraph 39 observed as under:

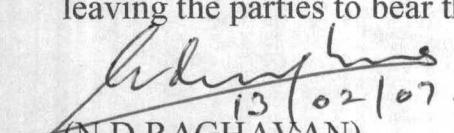
“In the backdrop of these circumstances and the submissions advanced for our consideration, the irresistible and legitimate conclusion is that when casual labourer has served for requisite period continuously, he has to be treated temporary, in other word, he is a ‘temporary railway servant’. This is incidence of statutory provision and judicial pronouncements. Having acquired this status, he is entitled to pension and other consequential benefits on superannuation, and on his demise in harness or after superannuation his widow becomes entitled to family pension. Regularization against a permanent post made on availability or creation of a permanent post, may be there, but pensionary right do not depend on regularization/confirmation, of course, whether such posts are available or not, employee should be deemed to have become permanent, since laxity in this regard on the part of the employer should not militate against the right of the employee. Describing of an employee ‘casual/temporary status/and depriving him statutory and constitutional rights under Arts.14,16,21,41 and 42. Therefore, appointment against permanent post along with colleagues as per seniority in the Department, which, he is deemed to be appointed against the available post. Circular dated September 11, 1986 is against decision of Apex Court in Inder Pal Yadav Case ? (supra), therefore, illegal, and cannot be given effect to by the Railways changing the position of ‘casual labour’ from ‘temporary labour’ to ‘casual labour with temporary status’.”

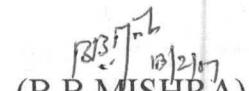
11. It is settled principles of law in the case of **Rooplal and others v. Lt. Governor through Chief Secretary Delhi and others**, (2000) 1 SCC 644 that decision of the Co-ordinate Bench is binding on another Bench; unless, on disagreement, matter is referred to a Larger Bench for proper adjudication.

12. None of the parties have also placed any materials that the orders of this Tribunal made in the above cases have been set aside by any higher Court.

13. In view of the discussions made above, in our opinion non-payment of the pension/family pension to the Applicant is wholly unjustified. Therefore, taking into consideration the ratio of the above quoted decisions, the order under Annexure-A/4 dated 28.08.2004/13.09.2004 is hereby quashed. The Respondents are hereby directed to consider the grant of the minimum pension to the Applicant within a period of 180 days from the date of receipt of this order.

14. In the result, this Original Application stands allowed by leaving the parties to bear their own costs.


i3/02/07
(N.D.RAGHAVAN)
VICE-CHAIRMAN


BBM/13/2/07
(B.B.MISHRA)
MEMBER (A)