

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 05/03/2008

O.A. No .604 of 2006

Sudarsan @ Sudarsan Behera ... Applicant

versus

Union of India & Ors. ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *Y*
2. Whether it be circulated to all the Benches of CAT or not? *Y*


(M.R.MOHANTY)
VICE-CHAIRMAN

12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 05/03/2008

PRESENT:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN

In the Matter of:

O.A. No .604 of 2006

Sudarsan @ Sudarsan Behera ... Applicant

versus

Union of India & Ors. ... Respondents

(For Full details, see the enclosed cause title)

For Applicant: : M/s.R.K.Samantasinghar, Sanjeet Das, Counsel.

For Respondents: Ms.S.L.Patnaik, Counsel

O R D E R

Per MR.M.R.MOHANTY, VICE-CHAIRMAN (J):

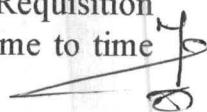
1. Heard Mr. Samantasinghar, Learned Counsel appearing for the Applicant and Ms. S.L. Patnaik, Learned

Signature

Counsel appearing for the Respondents and perused the materials placed on record.

2. No pension and other pensionary benefits having been granted to him, the Applicant (a retired Senior Trackman of Railways) has approached this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985.
3. According to the Respondents, one must have at least ten years qualifying service, as per rules, to get pension. According to the Respondents, the Applicant was admitted to CPC scale with effect from 11.07.1987 that he was given temporary appointment on 10.05.1990 and made permanent with effect from 27.03.1996 and that he retired from Railway service on 31.3.2001. It has been disclosed in para 3 of the Counter filed on behalf of the Respondents/Railways as under:

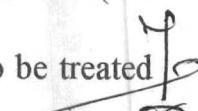
"The applicant initially was engaged in year 1986 as Mansoon Patrolman casually on the daily rated basis against temporary Labour Requisition (TLR) sanctioned post as available from time to time



and utilized as such, in broken spells, for the period ending up-to 10.7.87. Subsequently, he was granted CPC scale w.e.f. 11.07.87. Thereafter, he had been utilized in the same capacity and scale, in broken spells, against TLR sanctioned post as available from time to time up-to 09.5.90. He was given temporary appointment in the post of Gangman in scale Rs.775-1,025/- w.e.f. 10.05.1990 and continuously worked thereafter. His temporary service of Gangman was regularized w.e.f. 27.03.1996. Subsequently he was retired on superannuation w.e.f. 30.4.2002 as Senior Trackman in scale Rs.2,650-4,000/- (RSRP)." (emphasis supplied).

4. Thus, it appears that the Applicant became a temporary Railway Servant w.e.f. 10.05.1990 and was became a permanent Railway Servant w.e.f. 27.03.1996 and continued in service till his retirement on 30.04.2002. In that event, the Applicant having served the Railways (in pensionable establishment) from 10.05.1990 up to 30.04.2002 (i.e. more than 10 years) he is/was to get pension under the Rules.

5. However, in the counter in question (in same para 3) a stand has also been taken (by the Respondents) that 50% of the period spent by Applicant as a temporary Railway Servant (i.e. from 10.05.1990 to 20.03.1996) is/was only available to be treated

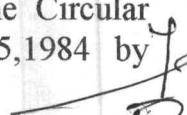


as qualifying service for pension; for the reason of Railway Board's letter dated 14.10.1980/S.E.Railway Estt.Srl.No.239/80. Railway Board's circular dated 14.10.1980 (as circulated in SER Estt.Sl.No.239/80 only requires '**50% of casual employment with Temporary Status**' to be computed for calculating pension period. It did not say that 50% of the period spends as a Temporary Railway Servant to be counted for pension. Therefore, the said objection of the Respondents is hereby over-ruled.

6. It is worth noting here that the validity and legality of not counting the full service of 'temporary status' period came up for consideration before the Division Bench of the **Hon'ble Gujarat High Court** in the case of **Rukhiben Rupabhai -v- Union of India and others** (reported in 2006 (2) A.T.J. Page-1). Relevant portion of the observations/directions for just decision of this case are extracted herein below:

"37. In the definition of 'temporary railway Establishment Manual, Vol.1 (Revised Edition), 1989, Railway Administration made change and included 'casual labour with temporary status', 1986, which is contrary to the Apex Court decision in Inder Pal

Yadav case (supra). Under Indian Railway Establishment Code, Volume 1, fifth Editon-1985, definition of 'the railway servant' in Sec. 103(43) excludes 'casual labour' only and not 'casual labour with temporary status'. 'Casual labourer' becomes **temporary railway servant** on completion of 360 days continuous employment as per Apex Court decision in Inder Pal Yadav's case (supra) approving the Railway Scheme of Absorption to this effect. Subsequent change of 'temporary railway servant' by Railways to 'casual labour with temporary status' is the creation of Circular dated September 11,1986, which lacks legal sanction. As per Apex Court decision in Ram Kumar (Review) case (supra) dated April 19, 1987, 'temporary railway servant' is entitled to pensionary benefits. This is provided in Manual of Railway Pension Rules, 1950 on acceptance of IVth Pay Commission recommendations by the Railways. Having obtained the approval of the Apex Court in Inder Pal Yadav's case (supra) absorbing casual labour as 'temporary railway servant' and on reiteration of the same position in Dakshin Railway Employee's case (supra), no change in the position of casual labour could be there without sanction of Court. Railways could not have deprived 'casual labourer' acquiring the status of temporary railway servant' on completion of 360 days continuous employment from pensionary benefits by changing their status from 'temporary railway servant' to casual labour with temporary status'. Full Bench decision of Central Administrative Tribunal, Cuttack dated 11th October, 2001 does not take into account the Apex Court's decision in Ram Kumar (Review) case (supra), Inder Pal Yadav case (supra), the Circular dated June 1, 1984 read with June, 25,1984 by



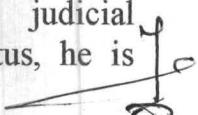
Railway Administration and also the Railway Board's decision dated April 15, 1987. The decision was based on *Union of India v Rabia Bikaner*, AIR 1997 SC 2843, in which, decision in *Ram Kumar (Review)* case was not considered. Before the Apex Court, decisions in *Inder Pal Yadav Case* (supra), *Dakshin Railway Employees case* (supra) and *Ram Kumar (Review)* case (supra) were not placed for consideration, therefore, Central Administrative Tribunal deviated from its earlier view, in large number of case, that widow of railway employee with temporary status was entitled to family pension, relying on *Rabia Bikaner's* case (supra). The Tribunal had been taking the stand that widow of a railway servant is entitled to pension till decision of *Rabia Bikaner*. For example, *Mr. Mohanbhai Lakhbhai v Union of India and Ors*, (OA No. 419 of 2000) decision on 31.07.2002. This decision was subject-matter of challenge in *Union of India v Mohanbhai Lakhbhai* (Spl. C.A.No. 6164 of 2003). Division Bench by decision dated 5.5.2003, confirmed the decision of the Central Administrative Tribunal (Also see *Union of India v Devshi Valjibhai*: Spl. C.A.No. 12298 of 2002 decided on 21.1.2003, *Union of India v Alena Loyal*, since deceased through his legal heir: Spl.C.A.No.1595 of 2002 decided on 24.4.2003).

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39. 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 words, he is a 'temporary railway servant'. This is incidence of statutory provision and judicial pronouncements. Having acquired this status, he is



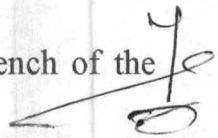
entitled to pension and other consequential benefits on superannuation, and on his demise in harness or after superannuation his widow becomes entitled to family pension. Regularization against a permanent post made on availability or creation of a permanent post, may be there, but pensionary right do 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 challenging the position of 'casual labour' from 'temporary casual labour' to 'casual labour with temporary status'.

40. Substitutes, if absorbed against regular posts, would be entitled to pensionary benefits. In case they were holding temporary status before appointment as substitutes they shall be treated 'temporary railway servants'. The period spent by them as casual labour, before appointment as substitute, shall be counted for acquiring status of 'temporary railway servant', thereby becoming at par with other temporary railway servants for pensionary benefits and his widow to family pension. The contentions advanced by learned counsel for the petitioners are accepted and those of the respondents rejected. The casual workers attain the status of 'temporary railway servant' and are further

entitled to regularization against available posts as per seniority, however, non-regularization against permanent posts, would not deprive them of retiral pension. Their widows/widowers, on his/her demise, whether during service or after superannuation, would be entitled to family pension, same would be the position of substitute, in the circumstances discussed above."

7. In absence of any subsequent decision of any of the counts taking contrary view than what has been taken by Hon'ble Gujrat High Court, this Tribunal is bound to accept and hold that Applicant is entitled to pension and pensionary benefits, even assuming for a moment that the Applicant got temporary status and regularization from the date disclosed by the Respondents.

8. In view of the above, there is no need to go to the further controversy in regard to date of conferment of temporary status and regularization.

9. Therefore, the Respondents are hereby directed to calculate, sanction and disburse the pension and pensionary benefits of Applicant taking into consideration the full period of service from the date of conferment of temporary status till retirement by applying the decision of the Division Bench of the 

-9-

20

Hon'ble Gujrat High Court in the case of Rukhiben Rupabhai
(supra). Since the grievance of Applicant pertains to pension and Applicant is waiting to get the same since 2001 entire exercise should be completed and payment (both arrear and current pension) should be made available to the Applicant within a period of 90(ninety) days from the date of receipt of a copy of this order. Any further delay in the matter of payment of pension (and pensionary benefits) shall entitled the Applicant to get interest at the rate of 12% per annum which shall be borne by the Officer(s) responsible for it.

10. In the result, this OA stands allowed with the observations and directions made above. There shall be no order as to costs.

11. Send a copy of this order to the Chairman of Railway Board at New Delhi; who should give his personal consideration in the matter for amendment/issuance of necessary instructions in the light of the decisions rendered by the Hon'ble Gujrat High Court (supra) which would not only save many poor retired persons of

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the Railways and their family members but also the time and
money of the Railways in fighting out such litigations.

Y. Cole
05/03/08
(M.R.MOHANTY)
VICE-CHAIRMAN