CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

O.A.No. 86/2011 with M.A. No. 63/2011

Jodhpur, this the Ist day of January.2013

CORAM

HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER

Bhera Ram s/o Shri Uma Ram
aged about 64 years resident of Village & Post Alai,
District Nagaur (Raj), retired from the
post of Khalasi Helper in the Office
of Senior Section Engineer (C&W),
North Western Railway, Mertaroad,
District Nagaur (Raj).

..... Applicant

[Through Mr. S.K.Malik, Advocate]

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. Divisional Rail Manager, North Western Railway, Jodhpur Division, Jodhpur.
3. Senior Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur.

.....Respondents

[Through Mr. Vinay Jain,Advocate]

ORDER

This OA is not directed against any impugned order but for non payment of pension to the applicant on his retirement from service.

2. The applicant has prayed in his application for the following relief(s):

(a) By an appropriate writ, order or direction Respondents be directed to make payment of pension and pensionary benefits on

superannuation of the applicant with effect from 1.1.2007 till date of payment along with 12% interest per annum.

(b) ***Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.***

Case of the applicant:

3. The applicant is a retired employee. He was initially engaged as casual labour on 28.9.1966 at Surpura Railway Station, North Western Railway. He worked as such up to 31.8.1973 and thereafter his services were disengaged. Even though the applicant had worked more than 120 days continuously he was not granted temporary status though Para 1709 of IREM Vol.I 1989 edition provides for such regularization. In order to show that he has worked during the above period, he has produced A/1 Casual Labour Card. Following the decision of the Hon'ble Supreme Court in ***Inder Pal Yadav 1 (1985) 2 SCC 648*** respondents issued appointment letter dated 13.8.1998 to the applicant to join the post of Substitute Gangman/Khalasi in the pay scale Rs.2610-3540 [A-2]. Applicant joined the post of substitute Gangman/Khalasi w.e.f.16.8.1998 and continued till his retirement on 31.12.2006 from the post of Helper Khalasi. On 2.12.2006 [A/3] applicant made a representation for taking into consideration his casual service from 28.9.68 to 31.7.73 for pensionary benefits. However, the respondents calculated his service as eight and half years without considering the period of service rendered as casual labour [A/4]. The applicant was denied pension as he had not completed 10 years qualifying service in the Railways. After retirement the applicant made several representations [A/6 to A/13]. Since the applicant has not been granted pension, he has filed this OA for the aforesaid relief.

4. The applicant filed an MA for condoning the delay in filling this OA stating that pension is a continuing cause of action and delay, if any, could be condoned.

Stand of the respondents:

5. Respondents filed a counter affidavit opposing the prayers in the OA. The respondents state that the applicant was initially engaged as casual labour on 28.9.1968 and worked up to 14.11.1968 and he has not worked 120 days in any spell before screening. Hence, the applicant was not granted temporary status. Following the decision of Hon'ble Supreme Court in ***Inder Pal Yadav (supra)***, the Railway Board took a decision regarding Project Casual Labour in the year 1986 and issued letter dated 11.9.1986 wherein it was decided that casual labour on project who though not in service on 1.1.1981 had been in service in the Railways earlier and had already completed 360 days of continuous employment would be bestowed temporary status. The applicant was an open line casual labourer. The applicant was appointed as substitute Gangman on 13.8.1998 after proper screening. Since he was not granted temporary status, the earlier period for which he had worked could not be reckoned for pensionary benefits. The applicant has worked for 8 years 4 months and 15 days after screening on 16.8.1998 and the minimum required service for pension is 9 years 9 months. As per the casual labour card applicant has only 467 days of casual labour to his credit. In terms of paragraph 31 of RS(P) Rules,1993, 50% weightage of temporary status period is added for the purpose of calculating the service for

pension. The applicant has found wanting by a period of one year four months fifteen days for qualifying for pension which does not appear to be possible even after according a 50% weightage of casual graded scale working. Since he has not completed the qualifying service minimum required, he is not entitled for pension. Hence, the respondents submit that there is no merit in the claim of the applicant and prays for dismissal of the OA.

6. In their reply to MA the respondents submit that repeated representations will not give a cause of action for the applicant and that recurring cause of action will come into picture when applicant will be able to show that he is entitled for pension. Hence, the MA is to be dismissed.

Facts in issue:

7. Having gone through the documents and the annexures adduced by the parties and having heard the learned counsels appearing for them the only issue to be considered here is that whether the applicant fulfills the qualifying service of 10 years as required under law. In a narrower focus, the crux of the issue is whether the applicant could by operation of law be treated as having acquired temporary status after 120 days of casual labour service as per IREM and if the said temporary status be reckoned for working out the extent of qualifying service rendered for the purpose of retirement benefit and pension.

8. It is an admitted fact that Paragraph 179 of the Indian Railway Establishment Manual Vol. I provides:-

"***(xiii) Casual Labour, Substitutes and Temporary hands:-***

(a) Substitutes, casual and temporary work-men will have prior claim over others to permanent recruitment. The percentages of reservation for Scheduled Castes and Scheduled Tribes should be observed in recruitment to temporary or permanent vacancies.

(b) Substitutes, casual and temporary workmen who acquire temporary status as a result of having worked on other than projects for more than 120 days and for 360 days on projects or other casual labour with more than 120 days or 360 days service, as the case may be should be considered for regular employment without having to go through Employment Exchanges. Such of the workmen as join service before attaining the age of 25 years may be allowed relaxation of maximum age limit prescribed for Group 'D' posts to the extent of their total service, which may be either continuous or broken periods.

(c) A register should be maintained by all Divisions concerned to indicate the names of casual labour, substitutes and temporary workmen who have rendered 6 months service either continuous or in broken periods, for the purpose of future employment as casual workmen and also as regular employees, provided they are eligible for regular employment. The names should be recorded strictly in the order of their taking up casual appointment at the initial stage and for the purpose of empanelment for regular Group 'D' posts, they should as far as possible, be selected in the order maintained in the aforesaid registers. In showing preference to casual labour over other outsiders due consideration and Wightage should be given to the knowledge and experience gained by them. Other conditions being equal, total length of service as casual labour, either continuous or in broken periods, irrespective of whether they have attained the temporary status or not, should be taken into account so as to ensure that casual labour who are senior by virtue of longer service are not left out."

9. It is further admitted that as per the directives of the Hon'ble Supreme Court in the ***Inder Pal Yadav & Ors. etc. Vs. UOI and Ors***. etc. [Writ Petition Nos. 4335-4434/83] the Railway had come out with a Scheme the essence of which is contained in Para 5.1 of the Circular PS 9048 No. 220- E/190 XII / Eiv. dated Sept. 17, 1986, reproduced below :-

> ***"5.1 As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as "Project casual labour") may be treated as temporary (temporary status) on completion of 360 days of continuous employment. The Ministry have decided further as under :-***
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> "(a) These orders will cover:-
>
> (i) Casual labour on projects who were in service as on 1.1.1981; and
> (ii) Casual labour on projects, who though not in service on 1.1.1981 but had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or have since completed or

will complete the said prescribed period of continuous employment on re-engagement after 1.1.1981.

The decision should be implemented in a phased manner according to the schedule given below:

Length of service (i.e.continuous employment)	Date from which may be treated as (temporary status)
(i)Those who have completed five Years of service as on 1.1.1981.	1-1-1981.
(ii)Those who have completed three Years but less than five years of service As on 1.1.1981.	1-1-1982.
(iii)Those who have completed 360 days but less than three years of service as on 1-1-1981.	1-1-1983.
(iv)Those who complete 360 days After 1-1-1981.	1-1-1984 or the date on which 360 days are completed whichever is later.

Accordingly, in paras 1 and 2 of the Ministry of Railways letter dated 25.6.1984, the date "1-1-1984" may be read as "1-1-81". The dates occurring hypothetical illustrations given in para 3 thereof would stand modified correspondingly.

As directed by the Supreme Court for implementation of the above scheme, each zonal railway should prepare a list of project casual labour with reference to each Division of each Railway on the basis of the length of service. The man with longest service shall have priority over those who joined later on. In other words, the principle of last come first go or reverse it, first come last go), as enunciated in Section 25G of the Industrial Disputes Act, 1947 should be followed."

Para 31 provides that how the period of service paid from contingency is to be counted. For the sake of convenience paragraph 31 has been quoted below :-

"31. Counting of service paid from Contingencies.- In respect of a railway servant, in service on or after the 22nd day of August, 1968, half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment, subject to the following conditions namely :-

(a) the service paid from contingencies has been in a job involving whole-time employment;

(b) the service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned such as posts of malis, chowkidars and khalasis;

(c) the service should have been such for which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly basis and which, though not analogous to the regular scales of pay, horne some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period by staff in regular establishments;

(d) the service paid from contingencies has been continuous and followed by absorption in regular employment without a break;

Provided that the weightage for past service paid from contingencies shall be limited to the period after 1st January, 1961 subject to the condition that authentic records of service such as pay bill, leave record or service-book is available.

NOTE – (1) the provisions of this rule shall also apply to casual labour paid from contingencies.

(2) The expression "absorption in regular employment" means absorption against a regular post."

11. From the above, it is quite evident that half the service paid from contingency is to be reckoned for calculating the pensionary benefits in regular employment subject to the given conditions. This is also applicable as per Note 1 of Rule 18 to Casual Labours paid from the contingency, which provides as under :

"18. Pensionary, terminal or death benefits to temporary railway servants.- (1) A temporary railway servant who retires on superannuation or on being declared permanently incapacitated for further railway service by the appropriate medical authority after having rendered temporary service not less than ten years shall be eligible for grant of superannuation, invalid pension, retirement gratuity and family pension at the same scale as admissible to permanent railway servant under these rules.

Explanation : For the purpose of sub-rule (1) of this rule "service" shall have the meaning assigned to it in sub-rule (6) of rule 1002 of the Code except that it shall not include the period of first four years of apprenticeship of Special Class Railway Apprenticeship.

(2) A temporary railway servant who seeks voluntary retirement after completion of twenty years of service shall continue to be eligible for retirement pension and other pensionary benefits like retirement gratuity and family pension as admissible under these rules."

12. As a consequence of the implementation of the IV Central Pay Commission, the Railway Board's Circular No. F(E)III/90 PN-1/34 dated 25.10.1990 states as under :-

> ***"In terms of Para 401 of Manual of Railway Pension Rule in calculating the length of qualifying service fraction of a year equal to 6 months and above is treated as completed one half year and reckoned as qualifying service for pensionary benefits.***
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> ***The implication of the above provision in the case of Railway servant who has completed 9 years 9 months and above service but less than 10 years has been examined in consultation with Department of Pension & pensioners Welfare and it has been decided that such a Railway Servant will be deemed to have completed 20 six monthly periods of qualifying service and will be eligible for pension. The said provision will also be applicable for determination of retirement gratuity / death gratuity as admissible in terms of para 7.1 of Board's letter No. PC-IV/87/IMP/PN/1 dated 15.4.87.***

13. This discretion is in the hands of the respondent-authorities to relax three months shortage of qualifying service i.e. those incumbents who have completed 9 years 9 months are also to be treated as if they had completed 10 years qualifying service.

14. Now I take up the issue of delayed filing of the OA. The OA was filed on 28.3.2011 and got time barred on account of delay in filing. The respondents have stated that after the issuance of the Circular dated 17.9.1986 regarding project casual labour – terms of employment of grant of temporary status whereas, the case of the applicant was an open line casual labour and these instructions were not applicable to him and his case was scrutinized and he was given option of joining. At the time of joining, it is a case of the respondents that the applicant has not raised any voice. The applicant submits that he should have been given regular appointment in the

year 1986. It was admitted by the learned counsel for the respondents that the applicant is not entitled to raise a time barred issue now. From the perusal of the records, I find that the applicant had submitted an application on 2.12.2006 even prior to his retirement stating that as per the Casual Labour Card, he has served from 28.9.1968 to 31.8.1973 for a total period of 467 days as a Casual Labourer. The applicant had, inter alia, prayed that this period of 467 days should be included in the Railway service and it should be reckoned for granting the pensionary benefits. The applicant also submitted a calculation sheet wherein the date of his recruitment is shown as 16.8.1998 and that of retirement as 31.12.2006 thereby the total period being 8 years and ½ months. In the column general family pension it is written 'not due'. It appears from the records that there was no reply to this application. I further find that the same very representation has been repeated on 10.5.2007, 19.11.2007, 12.3.2008, 20.8.2008, 23.1.2009, 29.7.2009, 18.3.2009 and 13.8.2010 respectively. The instant application has been filed on 30.8.2011. In the case of **1995 Supreme Court Cases (L&S) 1273 (Before JS Verma and K Venkatswami JJ); MR Gupta vrs Union of India** the Hon'ble Apex Court has held;

> *"4. The Tribunal has upheld the respondents' objection based on the ground of limitation. It has been held that the appellant had been expressly told by the order dated 12.08.1985 and by another letter dated 07.03.1987 that his pay had been correctly fixed so that he should have assailed that order at that time "which was one time action". The Tribunal held that the raising of this matter after lapse of 11 years since the initial pay fixation in 1978 was hopelessly barred by time. Accordingly, the application was dismissed as time barred without going into the merits of the appellant's claim for proper pay fixation.*
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> *5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with*

the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cession of a continuing wrong if on merits his claim is justified. Similarly, any other consequently relief claimed by him, such as, promotion etc. would also be subject to the defence of latches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 01.08.1978 without taking into account any other consequential relief which may be barred by his latches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

6. The Tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of the redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the enquiry of redemption is extinguished. It is settled that the right of redemption is of this kind (see Thota China Subba Rao vs. Mattapalli Raju).

7. Learned counsel for the respondents placed strong reliance on the decision of this Court in S.S.Rathore vs. State of M.P. That decision has no application in the present case. That was a case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case."

15. Therefore, I find that the applicant had submitted repeated representations in the hope that his case would be favourably considered and that he would get justice at the hands of the respondent-organization. However, when the same was not forthcoming, the applicant has preferred the instant OA before this

Tribunal. In the light of the above decision delivered in ***M.R. Gupta's*** case (supra) of the Hon'ble Supreme Court I find that the injury suffered by the applicant was a continuing one. The applicant has filed an MA on 28.3.2011 for the condonation of delay. On the basis of the above discussion, delay in filing the instant OA is condoned and the MA is allowed.

16. Next I take up the issue of 467 days. Annexure [A/1] submitted by the applicant contains a photostated copy of the Labour Card of the applicant. From page 5 of this Labour Card, it is admitted that the applicant had served for a period of 467 days prior to 15.4.1973. The question of counting of past service of casual labour was considered in the case of ***Union of India vs K.G. Radhakrishna Panickar*** (1998) 5 SCC 111 wherein the Apex Court has held as under:-

> ***3. In sub-para (a) of para 2501 of the Indian Railway Establishment Manual (hereinafter referred to as "the Manual"),as it stood at the relevant time, the expression "casual labour" was defined in these terms:***
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> ***"Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour."***
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> ***4. In sub-para (b) of para 2501 of the Manual casual labour was divided into three categories, namely, (i) staff paid from contingencies except those retained for more than six months continuously, known as Open Casual Labour; (ii) labour on projects, irrespective of duration, known as Project Casual Labour; and(iii)seasonal labour who are sanctioned for specific works of less than six months' duration. Persons falling in category (i)who continued to do the same work or***

other work of the same type for more than six months without a break were to be treated as temporary after the expiry of the period of six months of continuous employment. The said period of six months was subsequently reduced to 120 days. Since the period of service of such casual labour, after their attaining temporary status on completion of 120 days of continuous service, was not counted as qualifying service for pensionary benefits and there was a demand for counting of that period of service for that purpose, the Railway Board, by order dated 14-10-1980, took the following decision:

"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 inconsultation 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 PF etc. the Ministry of Railways have decided, with the approval of the President, that the benefit of such service rendered by them as temporary employees before they are regularly appointed should be conceded to them as provided in the Ministry of FinanceOMNo.F.12(1)-EV/768dated 14-5-1968. (Copy enclosed for ready reference.)

The concession of counting half of the above service as qualifying for pensionary benefits, as per the OM of 14-5-1968 would be made applicable to casual labour in the Railways who have attained temporary status. The weightage for the past service would be limited from 1-1-1961 in terms of conditions of the OM ibid. Past cases of retirements before the date of this letter will not be reopened.

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

17. Thereafter, I find that there is no reason mentioned for the applicant being not assigned duties from 31.8.1973 up to his screening and reappointment on 16.8.1988; no reasons whatsoever have been assigned for this at all and the counter reply submitted by the respondents is conspicuously silent on the same. I feel that in view of the above facts, there is no reason as to why half of the period of 467 days should not be reckoned for calculation of pensionary purposes for the applicant. It is to be recalled that the Railways themselves have been generous to a point of making relaxation of three months. Therefore, the difference between the service rendered and the requirement of 9 years and 9 months is only of 1 year and 3 months. If 50% of the 467 days as discounted by the initial 120 days were to be added that would constitute 9 years and 3 months still short of required magic figure of 9 years and 9 months.

18. Thus even after reckoning 50% of the temporary status service is part of qualifying service, the applicant could not fulfil the requirement of rendering a total of minimum 9 years and 9 months to qualify himself for the purpose of pension. As such OA fails and is, therefore, dismissed.

(B K SINHA)
ADMINISTRATIVE MEMBER

jrm