

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member
Hon'ble Mr. Arvind Jayram Rohee, Judicial Member

Original Application No. 50/2012

Anna Ram s/o Mangi Lal, aged 61 years, by caste Mali, R/o Shiv Mandir, Ratanada, Jodhpur (Raj.)

.....Applicant

(By Advocate: Mr. N.S.Khileri)

Versus

1. Union of India through the General Manager, Northern Western Railway (HQ), Jaipur (Raj.)
2. The Divisional Railway Manager, Northern Western Railway, Jodhpur (Raj.)
3. The Assistant Divisional Engineer (HQ), Northern Western Railway (HQ), Jodhpur (Raj.)
4. The FA&CAO, Northern Western Railway (HQ), Jaipur (Raj.)

.....Respondents

(By Advocate : Mr. Kamal Dave)

WITH

Original Application No. 456/2012

Dalpat Singh s/o Shri Sankar Singh, aged 58 years, r/o Badlo Ki Tuti, Shramikpura, Mansuria, Jodhpur (Raj.) at present posted as Mason in the respondent No.3 Deptt.

.....Applicant

Versus

1. Union of India through the General Manager, Northern Western Railway (HQ), Jaipur (Raj.)
2. The Divisional Railway Manager, Northern Western Railway, Jodhpur (Raj.)
3. The Assistant Regional Engineer (Head Quarter), Northern Western Railway (HQ), Jodhpur (Raj.)
4. The Financial Advisor and Chief Accounts Officer, Northern Western Railway

.....Respondents

(By Advocate : Mr. Vinay Jain)

ORDER

Reserved on: 17.08.2015

Delivered on: 20.08.2015

Per Hon'ble Mr. Arvind Jayram Rohee, Judicial Member

This common order will dispose of above referred two Original Applications, since the applicants therein are similarly situated and are claiming the same relief.

2. The facts in brief, which are necessary to understand, consider and resolve the controversy involved in the matter, may be stated as under:-

The applicant in OA No.50/2012 was appointed in the trade of Khalashi on 03.02.1976 and applicant in OA No.456/2012 in the trade of Mason on 13.09.1973. After rendering unblemished

service, applicants in both the OAs retired on superannuation on 30.04.2011

In the previous set of litigation before this Tribunal in OA No.662/1988 filed by the applicants and some other similarly situated employees decided on 26.05.1993, this Tribunal directed the respondent authorities to pay grade scale of Rs. 260-400 from the date they completed 120 days of service or from 18.08.1975, whichever is later and arrears on this amount shall also be paid. It is stated that the applicants in both the OAs have completed 120 days of service on 06.06.1976. The applicants on their retirement revealed that their date of appointment in the cadre of Khalashi and Mason was wrongly shown as 01.08.1989 instead of 06.06.1976. The applicants therefore, submitted that their date of appointment is 06.06.1976, when they have completed 120 days of continuous service and hence, seek the financial benefits in the pay scale from that date.

3. The applicants in both the OAs seek the following reliefs with the only difference about their initial appointment i.e. 03.02.1976 in OA No.50/2012 and 13.09.1973 in OA No.456/2012:-

"A/- By an appropriate order or direction, the respondent authorities may kindly be directed to grant the selection grade to the applicant w.e.f. his date of appointment in service i.e. 03.02.1976/13.09.1973 or in

service i.e. 06.06.1976 and consequent to it, the applicant may kindly be given arrears which became due.

B/- By an appropriate order or direction, the respondent authorities may kindly be directed to give interest @ 18% p.a. on the amount became outstanding due to re-fixation of selection grade.

C/- Any other appropriate relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

D/- Application of the applicant may kindly be allowed with costs."

4. The above reliefs are based on the following common grounds raised by the applicants in both the OAs in Para No.5. The same are as under:-

- "(a) That the action of the respondents in not giving the service benefits to the applicants from the date they joined the service is arbitrary, illegal and unjust and deserves to be declared contrary to the rules and applicants are entitled to get the pension and other service benefits as per the correct appointment date.
- (b) That the applicants have served the respondents with upto the mark services and their entitlement of getting service benefits from the date of appointment cannot be ignored. But the respondents in the instant case have overlooked this aspect and settled the pension of

from the year 1989 and thus the applicants have to suffer recurring financial losses.

- (c) That the applicants are old aged poor persons and not keeping goods health. They were unaware about the tactics of the respondents and thus they could not come earlier before this Hon'ble Court but when they referred their pension payment orders, they came to know that their appointment date has been declared as 01.08.1989 and thus they have suffered a great financial loss.
- (d) That these applications are sustainable on many other legal grounds which the applicants crave leave to urge at the time of admission/hearing of this case."

5. The applicant in QA No.456/2012 has raised one additional ground in support of his claim as stated in Para No.5.4. The same is reproduced here for ready reference:-

"That earlier the General Manager (Applicant), Northern Railway vide his letter dated 18.08.1975 circulated by the Divisional Railway Manager, Jodhpur on 01.08.85, had given the instructions that all the casual labours in skilled categories on completion of four months service are to be given grade of Rs. 260-400. These staff who have completed more than 120 days service were to remain casual labours only even after the grant of the graded scale. The applicant, however, not been allowed this grade scale but junior to him were given the graded scale from 15.07.1985. Therefore being aggrieved by the same, the applicant

No.662/1988 before this Hon'ble Tribunal with a prayer that they should be paid salary in the graded scale from the date they attained the temporary status or from any other appropriate date but at least from 15.07.1985 from which their juniors have been given the scale of Rs. 260-400. Thereafter vide order dated 26.05.1993 the respondent authorities were directed that applicant shall be allowed the grade scale of Rs. 260-400 from the date they completed 120 days service or from 18.08.75, which ever is later, and the arrear on this amount shall also be paid. But the respondents failed to comply with the directions of this Hon'ble Tribunal and on this amounts to contempt of this Hon'ble Tribunal."

6. On notice, the respondents appeared and opposed the claim mainly on the ground that initially the applicants were appointed as Casual Labours and thereafter were granted temporary status in the grade of Khalashi and Mason respectively. However, they were appointed on regular basis only on qualifying the selection process w.e.f. 01.08.1989 and hence by virtue of provisions of Rule 2005 of Indian Railway Establishment Manual (IREM), it is their actual date of appointment on regular basis. The order passed by this Tribunal in previous OA is complied with and the grade scale of Rs. 260-400 was granted to the applicants, from the date they have completed 120 days of service as Casual Labours. This being so, from that date the temporary status was conferred on the applicants till they are

regularly absorbed after qualifying the selection process as per rules, they continued to get the grade pay. As such, their date of appointment on regular basis has been correctly shown and pension was accordingly sanctioned to them. The said date cannot be preponed to the date on which temporary status was granted to the applicants. Some juniors to the applicants, who were granted temporary status have qualified regular selection process prior to the applicants and, hence, they were absorbed from that date on regular basis. The applicants have not come up with genuine claim.

7. Further, on regularization/absorption in regular posts, the applicants were granted all the benefits accrued to regular employees including the benefit of financial upgradations under ACP and MACP schemes. It is stated that the claim of the applicants is also barred by limitation. The applicants have also not submitted any representation after retirement for seeking necessary redress and directly approached this Tribunal without exhausting statutory remedies. For this reason also, the OAs are not maintainable and are liable to be dismissed.

8. The applicant in OA No.50/2012 then filed rejoinder to the reply denying the averments made therein and reiterating the grounds mentioned in the application.

9. On 17.08.2015 when the matter was called out for final hearing, we have heard the oral submissions of Shri N.S.Khileri, learned Advocate for the applicants and Shri Kamal Dave, learned Advocate for respondents in OA No.50/2012 and Shri Vinay Jain, learned Advocate for respondents in OA No.456/2012.

10. We have carefully perused the pleadings of the parties and have given thoughtful consideration to the submissions made before us.

FINDINGS

11. It has been rightly pointed out by the learned Advocate for the respondents during the course of arguments that the entire controversy is governed by the provisions of Rule 2005 of the IREM. Both the learned Advocates for the respondents also placed reliance on the decision in General Manager, North West Railway and Others vs. Chanda Devi, (2008) 2 SCC 108, in which provisions of Rule 2002 and 2005 of IREM and Rule 2 of Railway Services (Pension) Rules, 1993 are elaborately considered. Rule 2002 lays down the rights and privileges admissible to casual labours. The said provision reads as under:-

"2002. Entitlements and privileges admissible to casual labour:- Casual labour are not eligible for any entitlements and privileges other than those statutorily admissible under the various Acts, such as, the Minimum Wages Act, the Workmen's Compensation Act, etc. or those specifically

12. Whereas Rule 2005 clearly lays down entitlement and privileges admissible to casual labours which are treated to be temporary i.e. given temporary status. The entire text of Rule 2005 which is material for the purpose of resolving the controversy between the parties is reproduced here for ready reference:-

"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-à-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 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 who acquire temporary status, will not, however, be brought on to the permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for Group-D posts in the manner laid down from time to time. Subject to such orders as the Railway Board may issue from time to time, and subject to such exceptions and conditions like appointment on compassionate ground, quotas for handicapped and ex-serviceman etc. as may be specified in these orders they will have a prior claim over others to recruitment on a regular basis and they will be considered for regular employment without having to go through employment exchanges. Such of them who join as Casual labour before attaining the age of 28 years should be allowed relaxation of the maximum age limit prescribed for Group-d posts to the extent of their total service which may be either continuous or in broken periods.
- (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 persons before regular absorption against a regular/ temporary/permanent post, will qualify for pensionary benefits, subject to the

No. E(NG) II/78/CL/12 dated 14.10.80 (Letter No. E/(NG)II/85/CL/6 dated 28.11.86 in the case of Project casual labour).

- (d) Casual labour who have acquired temporary status and have put in three years continuous service should be treated at par with temporary railway servants for purpose of festival advance/Flood Advance on the same condition as are applicable to temporary railway servants for grant of such advance provided they furnish two sureties from permanent railway employees.
- (e) Casual labour engaged on works, who attain temporary status on completion of 120 days continuous employment on the same type of work, should be treated as temporary employee for the purpose of hospital leave in terms of Rule 554-R-I (1985 Edition).

A casual labour who has attained temporary status and has been paid regular scale of pay, when re-engaged, after having been discharged earlier on completion of work or for non-availability of further productive work, may be started on the pay last drawn by him. (This shall be effective from 2nd October 1980)."

In the above referred case of Chanda Devi (supra), the Hon'ble Supreme Court while allowing appeal and setting aside the order passed by the Hon'ble High Court of Gujarat, held in Para 31,32 and 33 as under:-

"31. The Gujarat High Court in our opinion, therefore, committed a fundamental error in opinion otherwise. It failed to notice that when casual labour has been excluded from the definition of permanent or temporary employee, he with temporary status could

therefor. It is for the legislature to put the employees to (sic) an establishment in different categories. It may create a new category to confer certain benefits to a particular class of employees. Such a power can be exercised also by the executive for making rules under the proviso appended to Article 309 of the Constitution of India. *Dakshin Railway Employees Union v. GM, Southern Railway* whereupon reliance has been placed by the Gujarat High Court in *Rukhiben Rupabhai* does not lead to the said conclusion as was sought to be inferred by it. The question therein was as to whether any direction was to be issued to include the petitioners therein in the scheme for absorption as formulated pursuant to the directions of the Court.

32. What was protested by conferring temporary status upon a casual employee was his service and by reason thereof the Pension Rules were not made applicable. A workman had not been and could not have been given a status to which he was not entitled to.

33. Recruitment of government employees must be made strictly in terms of the statutory rules. Entitlements of the employees being governed by statute or statutory rules, the question of attribution of any malice in our opinion by the Gujarat High Court was clearly erroneous."

13. The applicants were initially appointed as casual labour and after completing 120 days of continuous service they were granted temporary status and grade of Khalashi and Mason respectively. However, the applicants have suppressed this fact and wrongly pleaded that they were appointed as Khalashi and Mason w.e.f. 03.02.1976 and 13.09.1973 respectively. In railways

casual labours, since it is not possible to cope- up with the situation with the help of the sanctioned strength of Group-D employees. Casual labours are, therefore, appointed either on daily wages, monthly rate of wages or on contract basis with fixed remuneration and such casual labours are continued for years together. In order to absorb such casual labours in regular employment, considering long standing service rendered by them, Rule 2005 in IREM was framed. Such casual labours who are granted temporary status are paid the pay scale of the cadre in which they are granted temporary status. However, such casual labours who are conferred with temporary status cannot be treated as temporary employees or regular employees, since they are not taken up through a regular recruitment process. This being so, although on conferment of temporary status they get the grade pay of a particular Group-D cadre, they cannot be equated with a temporary employee. They are, however, allowed to take part in regular selection process and if found eligible and selected, such railway employees having temporary status are then taken up on permanent or regular establishment and are treated to be in regular employment of railways. Thus, such temporary status employees, however, cannot be treated as in regular employment, unless they qualify in regular selection process. Sometimes, it takes couple of years for absorption of

due selection process for want of vacancies or sometimes the selection process itself is delayed for various administrative reasons.

14. From the above discussions, it is obvious that although a railway employee on completion of 120 days of regular service is granted temporary status from that date, it cannot be said that such service rendered by the employee having temporary status is liable to be counted fully for pension purposes or that from the date they complete 120 days of continuous services and granted temporary status, they are treated in regular employment for pension.

15. It is obvious that the respondents are right in treating the applicants in regular employment from the date they were actually selected and empanelled by the regular selection board for Group-D posts i.e. from 01.08.1989. Half of the service rendered by the applicants from the date of conferment of temporary status till they are employed on regular basis after empanelled by selection board is however counted for pension purposes as per Rule 2005 (c) of the IREM. It is not the contention of the applicants that half of the period of service from 06.06.1976 till 01.08.1989 is not counted by respondents as qualifying service for the purpose of fixation of pension. This is so, because the applicant in OA no.456/2012 has not filed on record copy of

Pension Pay Order. However, the applicant in OA No. 50/2012 has produced copy of Pension Pay Order as Ann.A/4, which specifically states his date of birth as 09.04.1951, his date of appointment as 01.08.1989, his date of retirement as 30.04.2011 and date of commencement of pension as 01.05.2011. It is also stated in it, the length of qualifying service of the applicant for fixation of pension as 26 years. Considering his date of appointment and date of retirement, it is obvious that this period of qualifying service includes half of the service rendered by the applicant after conferment of temporary status i.e. on 06.06.1976 till he was regularly appointed on 01.08.1989.

16. There is no question of granting any selection grade to the applicants from the date of completing 120 days of regular service, from the date they were appointed as casual labour in the trade of Mason or from the date they have completed 120 days of continuous service. However, they are entitled to the regular pay of the post of Mason from the date of conferment of temporary status on them. Further, the applicants have not made any specific grievance that the order passed by this Tribunal in previous OA has not been complied with by the respondents. For the above reasons, we do not find any substance in the contentions of the learned Advocate for the applicants.

17. It is also obvious from record that the applicants directly approached this Tribunal without making any representation to the respondents or putting their grievance and waiting for the decision to be taken by the respondents. This being so, on this technical ground also, the OAs are liable to be dismissed for failing to exhaust statutory remedies before approaching this Tribunal as per Section 20 of the Administrative Tribunals Act, 1985 being premature.

18. However, we do not find any force in the contention of the learned Advocate for the respondents that the OAs are barred by limitation, for the reason that the same are filed within a period of one year from the date of applicants' retirement, which has given rise to cause of action for them to approach this Tribunal.

19. In any case, we are of the considered view that the applicants are not entitled to any relief. Consequently, there cannot be any change in their length of qualifying service for fixation of monthly pension. Both the OAs are therefore, dismissed with no order as to costs.


(ARVIND JAYRAM ROHEE)
Judicial Member


(MEENAKSHI HOOJA)
Administrative Member

Received
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