

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.428/2007
Dated the 2nd day of July, 2008.

CORAM:

HON'BLE SHRI GEORGE PARACKEN, JUDICIAL MEMBER

C Kannankutty,
Keyman, Senior Section Engineer,
Permanent Way(East),
Southern Railway., Palghat.
Residing at Quarters No.577/G,
Old Railway Colony, Olavakode.

... Applicant

By Advocate Mr.T.A.Rajan

V/S

1 Union of India represented by
The General Manager,
Southern Railway,Chennai

2 Senior Divisional Personnel Officer,
Southern Railway,Palghat ... Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

This application having been heard on 10th June, 2008, the Tribunal delivered the following on 02.07.08

(ORDER)

Hon'ble Mr. George Paracken, Judicial Member

The applicant is aggrieved by the Annexure A-6 letter dated 22.6.2006 by which the temporary status granted to him with effect from 21.12.1981 vide Office Order dated 18.3.98 was withdrawn/canceled.

2 The brief facts, according to the applicant, is that he was initially engaged as a casual labourer with effect from 14.4.1973.

Thereafter, he was screened and absorbed alongwith other casual labourers, as a regular Gangman vide Annexure A-2 Office Order dated 22.9.83. While he was working in that capacity, the Section Engineer (East), Permanent Way, Palghat, sent a proposal to the competent authority on 28.12.1996 for grant of temporary status to the applicant stating that he was not granted temporary status on completion of 120 days of continuous service from the date of his initial entry into service. It was further stated that he was engaged in Through Sleeper Renewal (TSR for short) work between Palghat and Parli which was in Open Line and therefore, he was entitled for grant of temporary status from 21.12.1981. The Senior Assistant Engineer Palghat also certified that the applicant has worked in the open line during the aforesaid period. Based on the said proposal/certification, vide Annexure A-3 Office Order dated 18.3.98, he was granted temporary status with effect from 21.12.81 in the scale of pay of Rs.200-250. In the said order, his date of his initial engagement and the date from which he has continuously working were shown as 21.1.1981 and 21.8.81 respectively. It was also stated that he was already screened for absorption against regular vacancy of Gangman in the scale of pay of Rs.200-250 vide Sr.DPO/PGT memorandum no.J/P 564/IX/Screening/PGT dated 11.8.83 and he was posted as regular Gangman vide letter dated 22.9.83. Holding that the aforesaid Annexure A-3 Office Order by which he was granted temporary status from 21.12.81 was issued erroneously, the respondents served him with the Annexure A-4 show cause notice wherein it was stated that he was serving only as a



Project Casual Labourer and therefore, he was eligible for temporary status only as per the rules governing the Project Casual Labourers and the temporary status already granted to him was under the erroneous consideration treating him as an openline casual labourer. The applicant submitted the Annexure A-5 representation dated nil. He pointed out that one Shri K.T.Sethumadhavan, Peon working as Commercial Courier/PGT was working along with him vide Sr.DPO/PGT O.O.No.J/W.II/19/2000 dated 20.6.2000 and he was granted temporary status with effect from 22.12.1981 in the scale of Rs.200-250. He has also submitted that in Railway Board's letter No.E(NG)II/86/CL/SR/62 dated 20.5.88 to the General Manager, Southern Railway, it was clarified that casual gang man with temporary status working in open line project like Complete Track Renewal, Through Sleeper Renewal, Through Rail Renewal etc are also be eligible to the scale of Rs.200-250 in terms of instructions contained in Railway Board's earlier letter No.E(NG)II/82/CL/7 dated 18.11.83 He has also contended that temporary status was given to him after due certification by the Permanent Way Inspector/Palghat and verification by PI/PB/PGT and the revision of the same at a distant date would adversely affect his seniority and further promotion. However, the respondents vide Annexure A-6 letter dated 22.6.06, after considering the aforesaid representation of the applicant rejected his submissions stating that Board's letter quoted in his representation was only a letter regarding grant of scale of Rs.200-250 to open line project casual labourers engaged as Gangman on attaining Temporary status. As regards the case of Shri



K.T.Sethumadhavan, they have stated that the Hon'ble High court of Kerala while disposing of the Writ Petition No.16894/2005 has ordered to extend the benefit as per relevant order to him alone and the said benefit cannot be made applicable in this case. Therefore, the Annexure A-3 temporary status granted to him with effect from 21.12.1981 was canceled.

3 Respondents in the reply have submitted that the applicant has not produced any documents to prove that he was continuously working from 1973 onwards whereas as per Annexure A-3 letter dated 18.3.1998 , his date of initial engagement was 21.1.1981. According to them, the applicant worked under the Section Engineer, Permanent Way (East), Palghat as a casual labourer with effect from 21.8.1981 and he was screened and absorbed as Gangman from 25.9.1983 and he was not granted temporary status prior to his regular absorption. He also did not have any grievance at the material time that he was an open line casual labourer and not granted temporary status after completion of 120 days of continuous service when as per the provisions of IREM, the open line casual labourer who had worked in the same type of work continuously for 120 days were entitled for temporary status and attendant benefits. However, the benefits of temporary status were not available to the project casual labourers till Inder Pal Yadav's (1985(2) SLR 248) case decided by the Hon'ble Apex Court. As per the scheme formulated by the Railway Board and approved by the Hon'ble Apex Court, project casual labourers have become entitled for temporary status on and after 1.1.1981. Those who have completed 5 years service as casual labourer

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as on 1.1.1981 were entitled for temporary status from 1.1.1981 and those who have completed three years service but less than 5 years service as on 1.1.1981 were entitled for temporary status from 1.1.1982 etc. They have submitted that the Annexure A-3 order dated 18.3.1998 granting him temporary status with effect from 21.12.1981 was issued on the basis of the proposal sent by Section Engineer, Permanent Way (East), Palghat wherein it was stated that he was engaged in the TSR work between Palghat and Parli which was in Open Line and therefore, he was entitled for temporary status from 21.12.1981. The Senior Assistant Engineer, Palghat has also certified that the applicant was working in the open line. On the basis of the Annexure A-3 order, the organised labour has made representations for advancement of date of temporary status of one V Sivaraman and 32 others who were also utilised in the same work. Accepting their representations, all those 33 casual labourers were also granted temporary status with retrospective effect. Again, based on the above order, Shri K.T.Sethumadhavan submitted a representation for grant of temporary status from the retrospective date. His request was also granted by the respondents but when the question of pay fixation of the said employee was sent to Accounts Department in 2001, the same was returned with certain objections/observations. On review of the entire matter, the respondents came to know that the TSR work came under the category of Project work and the advancement of the date of temporary status in the case casual labourers engaged in that work were not in order. Having been engaged in the same work, the applicant was also found not



entitled to temporary status. They have also submitted that just because the applicant was working under Section engineer/Open line, it will not ipso facto entitle him to claim that he was engaged as a casual labourer in the open line. Though the Section Engineer, Open Line is entrusted with the maintenance of work on day to day basis, there were works entrusted to him which come under project and the TSR work under the Section Engineer was a project and not open line. As regards the case of Shri K.T. Sethumadhavan is concerned, respondents have submitted that he had filed O.A.722/2002 against the cancellation of the benefits of temporary status granted to him and this Tribunal allowed the O.A vide order dated 2.12.2004 and said the order was challenged before the Hon'ble High Court of Kerala in W.P(C) No.16894/2005(S) and the Hon'ble High Court made the following observations:

"However we reserve the rights of the Railway Administration for maintaining that they have a right to review orders, which might have been issued, where bonafide mistakes had been committed by the officer concerned. Granting of relief in favour of the first respondent will not by itself be a ground for anybody situated like the first respondent to come and claim the benefits and it will be within the rights of the Administration to deal with the issue, as it deems fit, if circumstances require."

4 The applicant has filed a rejoinder producing the casual labour service card (Annexure A-7) which shows that he was engaged as casual labourer on 14.4.1973 and continued to work with intermittent breaks. He has submitted that immediately prior to regular absorption, he was working in an open line establishment and, therefore, there was nothing wrong in the issuance of Annexure A-3. He has further submitted that even if his



casual service was in project, then also he is entitled to get temporary status as he had completed 5 years service as on 1.1.1981. According to him, the establishment under the Permanent Way Inspector (east), Southern Railway, Palghat is an open line establishment and as such he is entitled to get temporary status on completion of 120 days of service. He denied the contention of the respondents that TSR work come under the category of project work and therefore he is not entitled to get temporary status. He has also submitted that all the construction work are not project and all open line works costing over Rsd.20 lakhs are not project works. A work is to be declared as a project by the General Manager & FA CAO. The TSR work was not declared as a project work and as such he is entitled to get temporary status on completion of 120 days of service in the open line establishment. It is also his submission that he was granted the temporary status even before granting temporary status to Shri Sethumadhavan and the judgment of the High Court in the W.P.(C) No.16894/2005 will not give a right to the respondents to review the order granting temporary status to him.

5 In the reply to the rejoinder filed by the respondents, it was stated that the casual service of the applicant from 14.4.1973 to 7.8.1976 was not continuous and there were intermittent breaks in service and hence he is not eligible for temporary status for the service upto 7.8.1976. Moreover, the casual labour service of the applicant from 3.10.1980 to 31.12.1980 is only 87 $\frac{1}{2}$ days and from 1.1.1981 to 18.5.1981 is 138 days of casual labour service. Since it was less than 360 days of casual service,



he is not eligible for temporary status as per the scheme for grant of temporary status to project casual labourers. According to the respondents, the applicant was engaged for project work continuously from 21.8.1981 and completed 360 days on 15.8.1982 and he became eligible for temporary status with effect from 1.1.1984 as per the aforesaid scheme. However, prior to that date itself, he was screened and absorbed as Gangman with effect from 25.9.1983. Since the applicant was absorbed in the regular service on 25.9.1983, granting him temporary status from 1.1.1984 has become redundant. They have again reiterated that the applicant was engaged in TSR work between Palghat and Parli from 21.8.1981 and the said work was a project work.

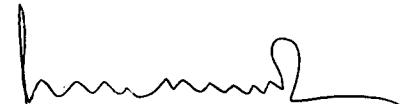
6 I have heard Shri TA Rajan, counsel for applicant and Shri Thomas Mathew Nellimoottil, counsel for respondents. The undisputed facts are that the applicant was initially engaged as a Project Casual Labourer with effect from 14.4.1973. Before he was declared as casual labour with temporary status, he was absorbed as a Gangman on a regular basis with effect from 25.9.1983. Applicant has never claimed at any time that he was entitled to be declared as a casual labour with temporary status either as a Project Casual Labourer or as an Open Line Casual Labourer. Had he been an open line casual labourer, he would have claimed temporary status on completion of 120 days of continuous work from 21.8.1981. He did not do so. It was after several years in 1996 that the Section Engineer(East) Permanent Way Palghat sent a proposal to the competent authority duly certified/verified by Senior Assistant Engineer,



Palghat that the Applicant was working in the Open Line continuously from 21.8.1981 and he was entitled for temporary status on completion of 120 days. Accepting the said proposal, the Respondents granted him temporary status as an Open Line Casual Labourer vide Annexure A 3 order dated 18.3.1998. It was stated in the said order that the applicant was initially engaged as a casual labourer with effect from 21.1.1981 and he was continuously working with effect from 21.8.1981. Applicant accepted the order without any protest though according to the Applicant, he was initially engaged as a Casual Labourer w.e.f. 14.4.1973. It was when similar demand from several other casual labourers through the Organised Labour have starting coming in, the respondents have reviewed the position. Then, it came to light that the TSR work was actually Project work. The submission of the respondents is that just because the applicant was performing the TSR work which is a project work under the control of the Section Engineer, Open Line, he is not entitled to claim himself as an Open Line Casual Labourer and the temporary status under it. I find there is merit in the contention of the respondents. The facts revealed that the applicant was only a project casual labour who worked under the Section Engineer, Open Line during the year 1981 engaged in TSR work which is a project work and not an open line work. When the respondents realised the mistake, they wanted to correct the same by issuing a show cause notice to the applicant in conformity with the Principles of natural justice. The respondents have duly considered the representation of the applicant but since the facts were not in his favour, they have withdrawn the



temporary status granted to the him under the mistaken identity as an Open Line Casual Labour. The applicants' contentions to the contrary that he was an Open Line Casual Labourer has no basis. Accordingly, this OA is dismissed. There shall be no orders as to costs.



GEORGE PARACKEN
JUDICIAL MEMBER

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