

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 431/89 438
XXXXXX

DATE OF DECISION 31-12-1990

G.Ramakrishna Pillai Applicant (s)

M/s K.Ramakumar & Advocate for the Applicant (s)
V.R.Ramachandran Nair
Versus

Union of India (General Respondent (s)
Manager, S.Raly., Madras) & 2 others

Smt. Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 15.7.89, the applicant, who retired as Senior Gangman from Southern Railway on 31.1.89 without getting any pension, but only Death-cum-Retirement Gratuity, has prayed that the respondents be directed to grant him pensionary benefits by reckoning his entire service from 1972 till his retirement on 31.1.89. The brief facts of the case are as follows:

2. The applicant commenced his service under the Railways as a casual labourer on 27.10.72. He claims ^{in 1973} that he attained temporary status on completion of the prescribed period of service and became regular employee with effect from 23.10.78. According to him, since he

had completed more than 10 years of regular service before retirement on 31.1.89, he is entitled to pension by counting his regular service from 23.10.78 and the temporary service prior to that date. On his superannuation on 31.1.89, he was paid only Death-cum-Retirement Gratuity, Provident Fund contribution, encashed leave salary and Group Insurance Scheme, totalling to Rs. 23,694, but without pension, as indicated at Annexure-A.

2. According to the respondents, the applicant was conferred with temporary status on 23.10.78 and appointed as substitute Gangman on 11.2.84 and as empanelled Gangman on 14.4.84. In absence of casual labourer card to be produced by the applicant, the respondents emphatically denied that he entered service on 27.10.72. According to them, since he was granted temporary status on 23.10.78, his service could not have commenced from 1972 as temporary status is conferred on completion of 120 days of continuous service and the applicant was engaged just 4 months before 23.10.78 and certainly not on 27.10.72. If at all, he was engaged on 27.10.72, the engagement must have been of sporadic or intermittent nature and not on a continuous basis. The respondents have stated that on the basis of the applicant attaining temporary status with effect from 23.10.78 and as substitute Gangman on 11.2.84 on a regular basis, his temporary service after 11.2.84 till his date of retirement on 31.1.89 comes to 4 years 11 months and 19 days. In accordance with the relevant rules, half of the service put in by him after attaining temporary status till his regular appointment would only count as qualifying service. Half of such service from 23.10.78 to 10.2.84 comes to 2 years 7 months and 23 days. The total qualifying service, therefore, comes to 7 years 7 months and 12 days which reduced by the periods of leave without pay and suspension to the extent of 1 month 3 days, comes to 7½ years only. With that qualifying service being less than 10 years, he is not entitled to pension. He was

granted service gratuity in lieu of pension and retirement gratuity in accordance with rule 302(ii) read with rule 623 of Manual of Railway Pension Rules, 1950.

3. In the rejoinder, the applicant produced service certificate from 1972 onwards duly authenticated at Annexure-D. In accordance with the statement of service figuring in that Annexure, the applicant has been shown to have been in continuous service from 30.5.72 to 31.12.80. According to him, after ^{he} completed 6 months of continuous service from 27.10.72 he attained temporary status in 1973 and with half of the service after attaining temporary status till his regular appointment as Gangman on 11.2.84 and full temporary service after 11.2.84, he would have completed 10 years 4 months and 9 days of qualifying service after deducting the period of suspension, etc. He has further stated that his pay as a casual Gangman was revised from Rs. 196-232 to Rs. 200-250 with effect from 18.1.77, which shows that he has been granted temporary status before 18.1.77. He has categorically denied that he was conferred temporary status only with effect from 23.10.78.

4. The respondents, in reply to the statement of service produced by the applicant at Annexure-D, filed some documents and indicated that the casual labourer card produced by the applicant showed that he was engaged in a project from 30.5.72 to 22.8.78 and thereafter transferred to Open Line which he joined on 23.8.78 and that he was given temporary status on 23.10.78. They have also produced Office Order dated

2

11.6.79 at Annexure-RI in which project works casual labourers including the applicant (shown at Sl.No. 234), on being taken over from Conversion project to Open Line, were all granted temporary status and revised scale of pay with effect from 23.10.78. They have also produced the Railway Board's letter of 12.6.74 to all General Managers, by which project casual labours are paid scale rate, i.e. 1/30th of the appropriate scale rate, that is, the minimum of the pay scale plus Dearness Allowance per day, on completion of 6 months continuous service in the same type of work. It was also indicated therein that project casual labour will not be entitled to the rights and privileges of temporary employees ~~available~~ to those casual labours who acquire temporary status on completion of 4 months of service. The respondents have also produced copies of the Service Register at Annexure-RIV to indicate that the applicant commenced service on temporary status with effect from 23.10.78 and regular service from 14.4.84.

5. The applicant ^{has} replied stating that in accordance with the statement of service put in by him as given at Annexure-D, though his initial engagement was on 30.5.72 in the Ernakulam-Trivandrum broadgauge Conversion (Survey with effect from 27.10.72, Work) ~~his~~ services were transferred to the Construction unit under the Depot Store and accordingly he attained temporary status in 1972 itself after having put in 120 days of service. He denied that he was put in a project work and stated that he was engaged for regular work of Depot Store Keeper (Construction) and was doing work of the Depot Store Keeper which cater to the project work, Construction work and Open Line work. Thus, he cannot be treated to be working in the project work. He denies having received or ^{been} informed about the Office Order at Annexure-RI listing him along with others as project work

casual labourers being given temporary status with effect from 23.10.78. He has argued that the copy of the Service Book at Annexure-RIV is incomplete and it does not show the details of the entire service. The applicant on his part produced two documents at Annexures F & G. In Annexure-F, casual labourers in the Construction unit of Palghat Division, who entered casual service during 1972 and 1973, were each granted temporary status with retrospective effect from the date they completed six months of service during 1972-73, even though the order itself was issued on 24.9.82. In Annexure-G dated 5.2.85, similarly placed casual labourers of Palghat Division were granted temporary status with retrospective effect from various dates between 1969 abd 1981 on completion of six months of casual service in the Construction unit.

6. The respondents have explained these documents by stating that these casual workers were in the maintenance wing and not working ⁱⁿ any project. They were given temporary status as is given to casual labourers of Open Line.

7. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is not disputed that the applicant would be entitled to pension if he had completed 10 years of qualifying service on 31.1.89 when he retired. It is also — not in dispute that qualifying service is computed by taking the entire period of regular, temporary or permanent service and half of casual service prior to regular appointment, that had been rendered after the applicant had attained temporary status. It is also not in dispute that the applicant was regularly appointed as a substitute

Gangman on 11.2.84 and the respondents have no difficulty in reckoning the entire service after 11.2.84 till the applicant's retirement on 31.1.89 in full as qualifying service. This comes to 4 years, 11 months and 19 days.

8. The point in dispute is how much of the casual service rendered by the applicant from 27.10.72 till his regularisation on 11.2.84 should be reckoned as qualifying service. It is also not in dispute that 50%, i.e. half, of casual service rendered after attaining temporary status ^{boil} counts as qualifying service. Therefore, the dispute ~~is~~ ^{boil} down to one single factor, i.e. when can the applicant be deemed to have attained temporary status. If that date can be determined, half of the casual service from that date till 10.2.84 would be added to the aforesaid regular service of 4 years 11 months and 19 days, reduced by 1 month 3 days of suspension and E.O.L. If the total of qualifying service reduced by one month 3 days is more than 10 years, the applicant would be entitled to pension, otherwise not.

9. A casual labour with temporary status is a hybrid ^{creature} created by the Railways who are on the one hand compelled to engage casual labour on a daily wage basis ^{as} and when work arises, and on the other hand, under pressure and compulsions of socio-economic justice and judicial pronouncements, obliged to give semblance of security and parity of pay to the casual workers as are available to regular Railway servants. While in the case of casual workers engaged in Open Line and day-to-day maintenance work, under para 2501 of the Indian Railway Establishment Manual, casual labour on completion of 6 months of continuous service are given temporary status, those working in specified time-bound projects were not

given this benefit. Those casual labourers who were given temporary status remained as casual employees without holding any post, but they became entitled to certain benefits available to temporary Railway servants. These benefits include protection of Article 311 of the Constitution, Section 25F of the Industrial Disputes Act, notice of termination, monthly wages and increments, etc. They also became entitled to allowances, medical attendance, leave, Provident Fund, terminal gratuity, allotment of Railway accommodation, Railway Pass, etc. like ^{the} temporary government servants. On regular absorption, half the ~~casual~~ service after attaining temporary status is counted for pension. Casual employees engaged on seasonal basis, on completion of 6 months work of similar nature, ~~also~~ also acquire temporary status. It is the casual employees ~~who~~ employed on projects who suffered most as they were not ^{made} entitled to temporary status howsoever long they worked on project, even though from 1974 onwards, they were allowed scale rates of wages available to the ~~lowest~~ grade of regular employees, on completion of 6 months. The injustice of being permanently deprived of attaining even temporary status was, to some extent, mitigated by the Railway Board's Scheme promulgated in 1984, according to which, project casual labour, on completion of 360 days of continuous employment, were allowed to attain temporary status, provided they were in employment on 1.1.84. This scheme came under scrutiny of the Supreme Court in Inder Pal Yadav Vs. Union of India, (1985) 2 SCC 648. The Supreme Court directed that the scheme should be modified so as to grant temporary status to the project casual labour also, on completion of 360 days of service, in a phased manner, provided they were in casual employment on 1.1.81 instead of 1.1.84.

10. Whether a casual worker working in the ~~construction~~ unit for about 20 years could be deemed to be a project casual labour so as to deny him the benefit of temporary ^{alleged} status, as in the case before us, came before the Supreme Court in L. Robert D'souza Vs. Executive Engineer, Southern Railway, 1982 (1) SLR, 864. The Supreme Court held that Shri D'souza, who had been working as a casual labour continuously from 1954 to 1974, when his services were terminated, could not be considered to be a project casual labour as he belonged to ~~construction~~ unit, as he was transferred from place to place, and was never shown to be only on project. The Supreme Court ordained that he has to be deemed to have attained temporary status and therefore his service could not be terminated without any notice. The Supreme Court held that Rule 2501 which keeps casual labour without even temporary status for 20 years is unethical. It held that every ~~construction~~ work does not necessarily become work charged project as visualised in Rule 2501(b) (ii) of the Indian Railway Establishment Manual, disqualifying those working in the ~~construction~~ work from temporary status, irrespective of period of employment. It held that a person belonging to the category of casual labour, but employed in ~~construction~~ work other than work charged project and putting in more than 6 months of continuous service without break, would acquire temporary status by operation of statutory rule. It held that since the appellant was on continuous service for 20 years, it would not be fair to deny temporary status and treat him as casual labour. It also held that ~~construction~~ unit, which is a permanent unit in all Railways, cannot be treated as project. It held that keeping workers

22

X | for 10, 20 and 30 years of service at a stretch as casual labour is contrary to the Directive Principles of the Constitution.]

11. We will take up the case of the applicant before us against the background as briefly delineated above. The crucial document in this case is the service record put up by the applicant with his rejoinder at Annexure-D. This record covers the entire period of his service from 30.5.72 to 31.12.80. The authenticity of the document has not been denied by the respondents who replied to the rejoinder and placed on record additional documents. From the records at Annexure-D, it is clear that the applicant entered service on 30.5.72 and worked there on a casual basis till 26.10.72 for survey work in the broadgauge conversion project between Ernakulam and Trivandrum. The Annexure further shows that the applicant was "actually transferred on 26.8.72 to work under DSK/CON/ERG as per AEN/CON/ERS instructions". This endorsement has been signed by Inspector of Works/CON/ERS. Thereafter, the applicant is stated to have reported for duty ~~on~~ ⁱⁿ the Forenoon of 27.10.72 and his continuous service on a monthwise basis has been recorded as a Watchman from 27.10.72 to 5.4.77. The entries have been authenticated by DSK/CONV/ERG. From 6.4.77 to 22.8.78 he was working as a Khalasi continuously, whereafter he was transferred to the Open Line without any break with effect from 23.8.78. The applicant has produced an Office Order dated 4.11.88 (Annexure-E) revising, inter alia, the applicant's pay from the scale of Rs. 196-232 to that of Rs. 200-250 with effect from 23.10.78 with next increment in October 1979. The applicant relies upon this document to show

2

that he was granted temporary status prior to 18.1.77. The applicant's contention is that from 27.10.72 onwards his services were placed at the disposal of the Construction wing under the Depot Store and subsequently under different sections. He worked in the office of the Depot Store Keeper (DSK) (Construction) which was catering to project work, construction work and Open Line work simultaneously. From the Annexure-D, it is clear that the applicant's services from 27.10.72 were placed under DSK/CONV/ERG which meant that he was working under the Depot Store Keeper in the Conversion Unit and not the Construction unit. Whereas Conversion unit has been shown with the ~~code word~~ of 'CONV.', the Construction unit is shown with the ~~code word~~ of 'CON'. This is also evident from the fact that in the orders produced by the applicant himself at Annexures-F & G, whereby regularisation with retrospective effect has been granted to casual workers of ^{Construction Unit of} Palghat Division, the employees had been shown as casual workers under EF/CON/PGT, whereas in the case of the applicant, he has been shown as working under DSK/CONV/ERG. A project has been defined in Note(1) below para 2501 of the Railway Establishment Manual as follows:

"A project should be taken as construction of new lines, major bridges, restoration of dismantled lines and other major important open line works like doubling, widening of tunnels etc. which are completed within a definite time limit. The General Manager/Heads of the Departments concerned, in consultation with the F.A.&C.A.O. will decide whether a particular open line should be treated as a 'Project' or not, the test to be applied will be whether the work is required for the day to day running of the railway, as distinct from the provision of large-scale additional facilities to improve the carrying capacity of the railway."

12. In accordance with the aforesaid definition, conversion of the metergauge into a broadgauge section being a provision of large-scale additional facility to improve the carrying capacity of the railway, falls squarely within the definition of a 'Project'. This is further corroborated by the fact that, in accordance with the

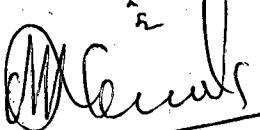
Office Order dated 11.6.79 at Annexure-RI, the applicant, along with other casual labourers, were shown as "the undermentioned project works casual labourers of TVC-ERS conversion project, who are drawing 1/30th of the scale rated daily wages at the time of taking over by open line, are granted temporary status and revised scale of pay at Rs. 196/- in the scale of Rs. 196-232 with effect from 23.10.78." We are not persuaded to recognize the order dated 4.11.88 at Annexure-E produced by the applicant, as any evidence to show that he was granted temporary status with effect from 18.1.77. That order reads as follows:

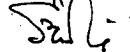
"In terms of Rly. Board's letter No.E (NG) II-76/CL/25 dated 18.1.77, communicated under CPO/MAS letter No.P(L) 407/PNM dat. 19/24.12.79, the pay of the Casual Gangmen of PWI/KTMM Section, who are granted Revised Scale of pay and Ty. status in grade of Rs. 196-232 is fixed in grade Rs. 200-250 with effect from 18.1.77.

Sl.No.	LTI No.	Name	Present pay/Date	Refixed pay/Date
xxxx	xxxx	xxxx	xxxx	xxxx
113.	439	G.Ramakrishna Pillai.	196 23.10.1978	200 23.10.78
			199 23/1.10.79	203 23/1.10.79

13. It is clear from the above that the applicant was given the minimum of the old and revised pay scale not with effect from 18.1.77 or an earlier date but from 23.10.78 and the next increment was given one year later. This shows that the applicant was given temporary status with effect from 23.10.78 and not from an earlier date. The scheme of regularisation of project casual labour circulated by the Railway Board on 1.6.1984 was modified.

by the Supreme Court in Inder Pal Yadav Vs. Union of India and others, (1985)2 SCC 648, granting temporary status to such casual workers who were in service on 1.1.81 instead of 1.1.84. Even those who were not in service on 1.1.81 but had already completed 360 days of continuous employment or would have so completed this period on re-engagement in future were also granted the benefit of temporary status by the Supreme Court in Dakshin Railway Employees Union, Trivandrum Division Vs. General Manager, Southern Railway & Others, AIR 1987 SC 1153, provided they submit their claims before 31.3.87. Even in their cases, the temporary status was to be granted from 1.1.81 or later date on which 360 days are completed. This scheme ^{in any case} is of no avail to the applicant who ^h was granted temporary status with effect from 23.10.78 itself. Since the applicant has failed to establish that he was working in the construction unit and not in the conversion project before he was transferred to the Open Line, no case for ^{judicial} intervention for preponing the date of the applicant's acquiring temporary status earlier than 23.10.78 is made out. The applicant's casual service prior to 23.10.78 thus not qualifying for pension and the applicant's qualifying service after 23.10.78 being less than 10 years, he is not entitled to pensionary benefits. The application has, therefore, to be dismissed ^{though} without costs. We order accordingly.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman