

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.5/97

Wednesday this, the 20th day of August, 1997.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

C.Rajammal,
No.2, Kathirampatti Village,
Ethipatti P.O.
Kunathore, Dharmapuri District,
Tamil Nadu.

.. Applicant

(By Advocate Mr.Martin Thottan for Mr.T.C.Govindswamy)

vs.

1. Union of India through
The General Manager,
Southern Railway,
Headquarters Office,
Park Town P.O.,
Madras-3.

2. The Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat.

3. Senior Divisional Signal & Telecommunications
Engineer/Works,
Southern Railway,
Podanur, Coimbatore.

.. Respondents

(By Advocate Mr.K.V.Sachidanandan)

The Application having been heard on 20.8.97, the Tribunal on the same day delivered the following

O R D E R

The applicant is a widow of late Shri K.Chinnaswamy who while in service of the second respondent as a Khalasi Helper was rendered medically unfit for all classes and consequently terminated from service with effect from 7.7.88 in terms of an Office Order of the second respondent dated 22.7.88. He was not given the invalid pension because his services from 7.3.80 as a regular employee alone was taken into account. He had in fact commenced his service according to the applicant on 7.2.70 under the third respondent and had unbroken service while he was regularised with effect from 7.3.80. The applicant's husband continued to be sick and passed away on 5.7.89. The applicant was

engaged as a substitute on compassionate grounds in the year 1989. She went on making representations for grant of family pension without any success. Coming to know that there are decisions of the Supreme Court as also of the Tribunal declaring that casual labourers of the construction organisation are also entitled to reckon 50% of their casual labour service in computing qualifying service for pension, the applicant made a representation to the second respondent to consider her husband's case accordingly and to give her family pension. This request was turned down by order dated 28.1.93(A3) on the ground that the applicant's late husband having been had only 8 1/2 years of service, he was not entitled to pension. Thereafter coming to know that this Tribunal had in O.A.849/90 and in some later cases held that the organisation of Sr.Signal and Telecommunication Engineering (Sr.DSTE for short) is a non-project permanent organisation and that casual labourers working under it were entitled to the benefit of paragraph 2511 of the Indian Railway Establishment Manual from the date of completion of six months of continuous service, the applicant made a representation on 9.2.96(A4) requesting that she may be granted pensionary benefits on account of the service of her late husband reckoning his continuous service under the Sr.DSTE for the purpose of computation of qualifying service for pension. Finding no response to this representation the applicant has filed this application under Section 19 of the Administrative Tribunals Act for a declaration that her late husband Chinnaswamy was entitled to reckon 50% of his casual service rendered between 7.8.75 and 6.3.80 as qualifying service for pension and for a direction to

respondents to calculate pension/other retiral benefits and family pension accordingly and to give the same to applicant.

2. The respondents in their reply have raised the plea of limitation as the reliefs prayed for relate to 1989. On merits the respondents contend that the applicant's husband commenced service on 6.4.71 and not on 7.3.70 as casual labourer under the third respondent. However, the respondents do not dispute the allegation that ever since the commencement of the casual service under the third respondent, he continued in service uninterruptedly till he was regularly absorbed on the post of Khalasi Helper on 7.3.80. The claim of the applicant for grant of invalid pension/family pension is resisted on the ground that the organisation under third respondent being a project, the casual labourers under that organisation are not entitled to count half of the period of their casual service for the purpose of computing the qualifying service for pension under paragraph 2511 of the Indian Railway Establishment Manual. They contend that only with effect from 1.9.81 the decision of the Hon'ble Supreme Court in Inderpal Yadav's case is applicable for grant of such benefits on the project casual service and as the applicant's husband has been regularised prior to that date, the service rendered by him prior to his regular absorption is not to be counted for the purpose of computing the qualifying service for pension. Referring to the decision of the Tribunal in O.A.849/90 the respondents contend that in the later ruling of the Tribunal in O.A.175/94 and O.A.178/94 this Tribunal has held that the benefit of the judgment in O.A.849/90 would enure to the benefit of the applicants therein only

and not others as there appeared to be no declaration of law.

3. I have carefully gone through the pleadings and the materials available on record and have also heard the learned counsel appearing for both the parties. The respondents have raised the plea that the application is not maintainable for the reason that it has been filed long after the date on which the late husband of the applicant was denied the invalid pension. The claim of the applicant for family pension is also opposed on the same ground. It is well settled now that right to get pension being a recurring cause of action, it cannot be held to be barred though the claim for arrears beyond the period of limitation may not be granted. Therefore so long as the applicant is alive, there is a recurring cause of action and therefore, I am of the considered view that the application in that behalf is perfectly within the period of limitation and the same is not liable to be rejected on the ground of limitation.

4. Now the question is whether the half of the period of casual service of the late husband of the applicant prior to his regular absorption following the casual service uninterruptedly has to be counted towards qualifying service or pension. The answer to this question would depend on a decision as to whether the organisation of the Sr.DSTE is a project or a non-project permanent establishment. Apart from stating in the reply statement that the organisation under third respondent is a project nothing has been brought on record by the respondents to show that it is so. On the contrary in the order in O.A.849/90, it was held that the Sr.DSTE is a non-project permanent establishment .I am informed that the Special Leave Petition filed against this judgment has been dismissed. Learned counsel for the respondents argued that in the judgment in O.A.175/94 and O.A.178/94 this Bench of the Tribunal has held that the benefit of the judgment in O.A.849/90 would not enure to the

applicants in O.A.175/94 and O.A.178/94 on the ground that there was no declaration of law to be followed as a precedent. In O.A.849/90 it has been held that Sr.DSTE is a non-project permanent establishment. This decision of the Tribunal on the disputed question whether the organisation of Sr.DSTE is a non-project permanent establishment or not has not been overruled by any superior forum so far. Therefore, I accept the case of the applicant that Sr.DSTE is a non-project permanent establishment and that therefore the casual labourers under the organisation after continuous service for six months are entitled to temporary status and that on eventual absorption they are entitled to have 50% of the service rendered after acquisition of temporary status as qualifying service for pension. The respondents while rejecting the claim of the applicant for grant of pensionary benefits due to late K.Chinnaswamy has not taken into account the casual service rendered by him uninterruptedly from the admitted date of 6.4.71 till 7.3.80 on which date he was absorbed on a regular post of Khalasi Helper. The above decision was taken without application of mind to the relevant provision of the Indian Railway Establishment Manual as also the declaration by the Tribunal that the organisation under Sr.DSTE is a non-project permanent establishment.

6. In the light of what is stated above, I am of the considered view that the applicant is entitled to succeed to a very great extent, i.e., to the extent of her eligibility for family pension with arrears at least from a date one year prior to the date on which she made the representation

inviting the attention to the ruling of the Tribunal in O.A.849/90.

7. In the result, the application is allowed in part. The claim of the applicant for arrears of invalid pension which was due to her husband is not granted. The respondents are directed to fix the qualifying service of the applicant's late husband reckoning half the period from 6.4.71 to 7.3.80 add that to the 8 1/2 years of service he had rendered on regular basis, work out the pension and family pension and grant the applicant family pension and also to give her the arrears thereof with effect from the date one year prior to the date of A-4 representation, i.e, 9.2.96. The above said exercise shall be completed and the monetary benefits made available to the applicant within a period of three months from the date of receipt of a copy of this order. No order as to costs.

Dated the 20th August, 1997.



A.V. HARIDASAN
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

C.P(C) No.25/98 in O.A.5/97

Thursday this the 25th day of February, 1999.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. R.K. AHOOJA, ADMINISTRATIVE MEMBER

C. Rajammal,
No.2, Kathirampatti Village,
Ethipatti PO,
Kunathore, Dharmapuri District,
Tamil Nadu.

...Petitioner

(By Advocate Mr. Martin G.Thottan)

Vs.

1. Sri Keerthivasan,
General Manager,
Southern Railway, Madras.
2. Sri Harikrishnan,
Divisional Personnel Officer,
Southern Railway,
Palghat.

...Respondents

(By Advocate Mrs. Sumati Dandapani)

The petition having been heard on 25.2.99, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Learned counsel for the parties state that the High Court of Kerala has stayed the operation of the orders of this Tribunal in O.A.5/97. Therefore, the Contempt Petition (Civil) is closed. No costs.

Dated the 25th day of February, 1999.

R.K. Ahooja
R.K. AHOOJA
ADMINISTRATIVE MEMBER

A.V. Haridasan
A.V. HARIDASAN
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

CP(C) No. 41/2003 in OA No. 5/1997

Wednesday, this the 13th day of August, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. C. Rajammal,
W/o late K. Chinnaswamy,
Permanent Address: No.2 Kathirampatti Village,
Ethippatti PO, Kunathore,
Dharmapuri Dt.Petitioner

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Shri Aaivu,
Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.Respondent

[By Advocate Mr. Sunil Jose, ACGSC]

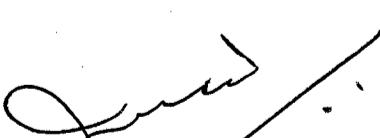
The petition having been heard on 13-8-2003, the
Tribunal on the same day delivered the following:

O R D E R

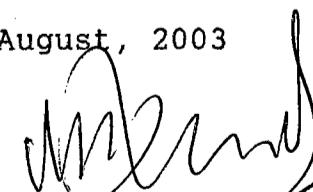
HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Learned counsel of the petitioner states that the
directions contained in the Tribunal's order in OA No.5/1997
have since been complied with by the respondent and that
therefore, there is no need to proceed further with the
Contempt Petition (Civil). In the circumstances, we see no
reason to proceed further with the Contempt Petition (Civil)
and the same is closed. Notice is discharged.

Wednesday, this the 13th day of August, 2003


T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN