IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. ~~XXXXX~~ 443 of 1991

DATE OF DECISION 30-4-92

V.V.Viswambaran Applicant (s)

M/s K.Ramakumar and Ramachandran Nair Advocate for the Applicant (s)

Versus

Union of India rep.through General Manager, Southern Railway and others Respondent (s)

Smt.Sumati 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 ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT
(Hon'ble Mr.S.P.Mukerji, Vice Chairman)

In this application dated 10.3.91 filed under Section 19 of the Administrative Tribunals Act the applicant who had been originally working as Casual Labour from 17.4.56 and later regularised as a Gangman with effect from 28.8.75 and retired on 31.5.90 has prayed that his casual service from 17.10.56 should be taken into account for refixing his pension with all consequential benefits.

2. The respondents have admitted that the applicant was in casual employment from 20.7.56 to 27.8.75 when he was regularised but have stated that since his casual service prior to 27.8.75 was in projects that service cannot be taken into account for pension under Rule 104 of the Manual of Railway Pension Rules. Since he was working in a project he could not have been given temporary status prior to 28.8.75

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on which date according to the respondents themselves he was absorbed as a substitute Gangman. They have referred to the decision of the Supreme Court in Inderpal Yadav's case, 1985(2) SCC 468, by which for project casual labour temporary status can be granted only from 1st January, 1981.

3. The applicant has produced a copy of the judgment of this Tribunal dated 30.9.88 at Annexure-D to which one of us (Shri SP Mukerji, Vice Chairman) was a party in which a similar contention of the Railways that the applicants therein worked in the project was not accepted and the respondents were directed to grant pensionary benefits by taking into account the casual service also. He has also referred to the ruling of the Supreme Court in Robert D'Souza's case urging that continued employment followed by regularisation entitles the applicant to the pensionary benefits. Since his employment has been without any break there is no reason why his casual service should not be taken into account for pension.

4. The respondents have distinquished the applicant's case from that of Robert D' Souza's who was in continuous service for 26 years and was sent out without giving any notice. They have also distinquished the applicant's case from that of the applicant in O.A.352/86 which was decided by the judgment at Annexure-D by stating that the applicant in that case was working as a Lascar without any break whereas the appplicant in accordance with the service card at Annexure-I suffered a break in his casual service for one month in 1964 and for seven months between 1966 and 1967. They have stated that the applicant's regular service from

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28.8.75 till the date of his retirement on 31.5.90 has been fully taken into account for computing his pension. They have stated that in 1956 the applicant had been engaged in the construction organisation as a casual labour and the casual labour service card produced by him shows that he was utilised for project work under the Inspector of Works for doubling of tracks etc.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. From the service card it is clear that atleast from 20.7.67 the applicant was having continuous service right upto 28.8.75 when he was regularly appointed as Gangman. This very Bench of the Tribunal in similar case O.A.185/90 in its judgment dated 22.11.91 had taken the view that when a casual worker in the construction division continued in casual service without any break between 1972 to 1980 the prepondent presumption would be that he was a regular casual employee and not a project casual employee. The construction wing of the Railways is a regular establishment and it can have non-project casual employees also on its rolls even though these employees may be deputed to work on various projects. The service card also indicates that the applicant was transferred from I.O.W to Divisional Store Keeper and then again transferred to I.O.W between 1967 and 1975. This would not have been possible if he were a project casual labour.

6. Even if, for the sake of argument it is presumed that the applicant is a project casual labour the mere

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fact that that he was regularised before 1.1.81 and therefore he is not entitled to attain temporary status during the period of his casual service, should not be a valid ground to deny him the pensionary benefits in relation to the entire period of his casual service. More or less a similar case was considered by the Madras Bench of the Tribunal in its judgment dated 8.2.91 in K.G.Radhakrishna Panicker and others Vs. Union of India and others, ATR 1991(1) CAT 578. It was held therein that depriving the project labour who were regularised before 1.1.81, of the benefit of temporary status for counting half of temporary status casual service for retirement benefits, while allowing the same to other project casual labours regularised after 1.1.81 is discriminatory and violative of Article 14 of the Constitution of India. The following extracts from that judgment bring out the element of discrimination very effectively:

> "We have given grave consideration to the above contension of the learned counsel for the respondents. We are of the opinion that the contention referred to in the last para above in meretriciously attrative, but on deeper consideration, the problem is not so simple. It is true that, historically, the phenomenon of temporary status was extended to the Project Casual Labour only by the instructions of 1984 and 1986, but significantly, this was done retrospectively from 1.1.1981. It is not clear how or why this date was chosen. The Open Line Casual Labour had the system of temporary status of much earlier, but the benefit of 50% of "temporary status service" was given to the Open Line Casual Labour from 1980. Be that as it may, the issue before us in this case is whether there has been an undue discrimination against the applicants and other workmen in their situation in violation of Article 14 of the Constitution, by the denial of reckoning of any part of their casual labour service before their regular absorption in Railway Service as qualifying service for retiral benefits. Persons to be classified, in this dispute, are casual labourers of the Railways with continuous period of casual labour service culminating into absorption in regular Railway service. The object in this exercise is grant of retiral benefits based on qualifying service of the Railway servants. We will have to see whether, for the purpose

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of grant of retiral benefits, the present applicants and other in their situation could be reasonable set as a separate group, and a worse treatment meted out to them on the basis of such classification, vis-a-vis similar casual labourers with similar service and with similar absorption in the Open Line as well as in the Project Casual Labour area itself. After serious consideration, we are averse to differently grouping or classifying the applicants on the basis of grant of temporary status for a number of reasons; firstly, it is a well-known established fact that temporary status is merely a concept and it has no formal existence like promotion or confirmation. Temporary status is merely acquired and is not granted or conferred to individuals even according to the railway rules. It is evident that a casual labourer in the Railways acquires temporary status after a continuous period of service of the prescribed period. There can be no doubt that by mere efflux to time, a casual labourers in continous service in the Railways automatically acquires tempoary status. There is no formality of accord or selection or approval required for acquiring the status. Admittedly, nothing is done by the respondents or required to be done by the casual labourers in order to gain that status which rather comes to them if they but merely continue in service without a break for the prescribed period.

The acquiring of temporary status being of such a character, will it be justified and fair, it a section of the employees like the applicants are grouped together (to their disadvantage) apart from the others, merely because the concept to temporary status was not pronounced by the respondents before a particular date like 1984 or 1986? Further, if by the instructions issued in 1984 or 1986, persons who acquired temporary status in the past even in 1981 could be given such a status retrospectively, we do not see why the same conceptual benefits could not be given to the present applicants also, provided they satisfy the same requisite condition of continuous service. It has to be noted that the temporary status has a tangible result when it is followed by the privilege of adding 50% of the casual labour service for the purpose of grant of retiral benefits."

In the aforesaid judgment the project casual labourers who were regularised before 1.1.1981 were also granted the benefit of temporary status and consequential benefits of counting half of service after attaining temporary status for the purpose of pension in the following terms:

"The respondents are directed to issue appropriate order and instructions to the effect that 50% of the service of the applicants after completion of six months from the date of their initial appointment as Casual Labour, should be reckoned as qualifying service for pension and other retiral benefits, on their eventual absorption in regular employment."

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7. In the circumstances and facts of the case we allow the application to the extent of directing the respondents that the applicant should be deemed to have attained temporary status six months after the commencement of his continuous service from 20.7.1967 and therefore 50% of his casual service between 21.1.68 and 27.8.75 should be reckoned as qualifying service for pension and other retirement benefits. The revised pension should be sanctioned to the applicant and arrears paid from the date of his superannuation. Action on the above lines should be completed within a period of three months from the date of communication of this judgment. There will be no order as to costs.

30/4/92

(A.V.HARIDASAN)
JUDICIAL MEMBER

30.4.92

(S.P.MUKERJI)
VICE CHAIRMAN

30-4-92

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