

C.A.T.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 449 /2011

Thursday, this the 16th day of February, 2012.

CORAM

**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER**

P.Sukumaran,
S/o R Ponnumuthu Nadar,
Retd. Sr. Trackman/Southern Railway,
O/o the Section Engineer/
Permanent Way/Nagercoil,
Residing at: Mekkevattavila,
Kadayara Puthen Veedu,
Parassala, Trivandrum Dist: 695 502. - **Applicant**

(By Advocate Mr TC Govindaswamy))

v.

1. Union of India represented by the General Manager, Southern Railway, Headquarters Office, Park Town.P.O, Chennai-600 003.
2. The Chief Engineer(Construction), Southern Railway, Egmore, Chennai-600 008.
3. The Divisional Personnel Officer, Southern Railway, Trivandrum Division, Thrivuvananthapuram-695 014.**Respondents**

(By Advocate Mr Thomas Mathew Nellimootttil)

This application having been finally heard on 09.02.2012, the Tribunal on 16.02.2012 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The admitted facts of the case are as under:-

The applicant was initially engaged as a casual labourer of the Construction



Organization of the South Railway on 05-09-1978. He continued in the said capacity till 15-10-1984 where-after, he was not engaged for about four years and on 08-11-1988 he was re-engaged. His regularization took place on 31-12-1992 and he superannuated on 31-05-2010 as a Sr. Trackman. His claim is that on the basis of the decision of the Apex Court in the case of **Inder Pal Yadav vs Union of India (1985) 2 SCC 648**, his temporary status ought to have taken place w.e.f. 01-01-1983 and half the period of temporary service from 01-01-1983 till the date of his regularization as reduced by the period he was disengaged from October, 1984 to October, 1988 should be reckoned for the purpose of qualifying service and added to the period of regular service from 08-11-1988 till 31-05-2010. The applicant along with certain others filed OA No. 544 of 1993 which was disposed of vide order dated 08-11-1994 vide Annexure A-3, whereby the respondents were directed to consider the representation keeping in view of the decision in **Inder Pal Yadav and others vs Union of India**. Though initially there were some action taken ultimately no final decision took place and the applicant, before his retirement made a representation for counting the admissible period of temporary service for the purpose of working out the qualifying service for pension and other terminal benefits. It was to this representation that the respondents have vide impugned order dated 28-10-2010 stated that the case is not susceptible for verification at this distant point of time and the case is also hit by limitation. It is against the above impugned order that the applicant has moved this Tribunal seeking the following reliefs:-

- (i) Call for the records leading to the issue of A-7 and quash the same;
- (ii) Declare that the applicant is entitled to be treated as temporary with effect from 01.01.1983 with a scale of pay of Rs.200-250, with all its consequential benefits arising therefrom, including re-fixation of the applicant's pay and allowances, refixation of the applicant's pension and other retirement benefits with all its consequential benefits arising therefrom;
- (iii) Direct the respondents to grant the applicant the benefit of declaration



in para (ii) above with all its consequential benefits of arrears of pay and allowances, pension and other terminal benefits, with interest calculated @ 9% per annum from the date from which this Hon'ble Tribunal finds it just and proper upto the date of full and final settlement of the same.

2. Respondents have contested the O.A. According to them the OA has been pathetically time barred having been filed after 21 years. They have raised preliminary objections as to limitation. They have relied upon the decision of the Apex Court in the case of **Ratan Chandra Samantha & Ors v. Union of India and others** (AIR 1993 SC 2276) and also **Tridip Kumar Dingal and others v. State of West Bengal and others** (2009) 2 SCC 196. They have also extracted a portion of the judgment in W.P (C) No. 18504 of 2005 wherein the High Court has commented about the Tribunal entertaining stale claims. As regards the merit of the matter, save asserting that the records are not available for verification at this distance of time, nothing has been said about the entitlement of the applicant of his claim. They have referred to the filing of OA No. 544 of 1993 by the applicant and have only stated that the same is a matter of records.

3. The applicant has filed his rejoinder, reiterating his stand as in the O.A. and has also stated that the reason for non consideration of the case of the applicant, that the case is not susceptible for verification at this distant of time is incredible as the applicant had superannuated only on 31-05-2010.

4. Counsel for the applicant submitted that Inder Pal Yadav mandated the Respondents Railways to accord temporary status as on 01-01-1981 or 01-01-1982, or 01-01-1983 or 01-01-1984 depending upon the completion of five years/ three to five years/one to three years of service/360 days of service. As per this formula, the applicant having completed more than two years of service



his temporary status ought to have been w.e.f. 01-01-1983. Limitation does not apply in this case as the occasion for reckoning or calculation of qualifying service would arise only at the time of superannuation and the applicant had preferred his representation prior to his superannuation.

5. Counsel for the respondents referred to the limitation aspect and stated that the OA is to be summarily rejected being hopelessly time barred.

6. Arguments were heard and documents perused. First as to limitation. The contention of the respondents is that the applicant had been keeping silent from 01-01-1983. It is not so. For, he had approached the Tribunal along with certain others as early as in 1993 when he filed OA NO. 544 of 1993. And, the respondents did take action upto a certain extent as could be seen from Annexure A-4 to A-6 but thereafter nothing is known. The purpose of reckoning half the temporary service is to add to the qualifying service which is required to be considered at the time quantum of pension is fixed. That stage came only on the date of retirement of the applicant on 31-05-2010. Thus, cause of action could be said to have arisen as on the date of superannuation. In this regard, support could be had from the decision of the Apex Court in the case of **S.M. Munawali vs State of Karnataka (2002) 10 SCC 264** wherein the Apex Court has held as under:-

“3. Heard the learned counsel for the parties. It is apparent that the order dated 18-8-1995 passed by the Karnataka Administrative Tribunal (for short “the Tribunal”) dismissing the petition solely on the ground of limitation is erroneous because in the present matter the appellant claims that his pension should be fixed on the basis of his seniority after taking into consideration his past service in Agricultural Produce Market Committee, Ramadurga. The dispute with regard to the pension arose only on 28-2-1993. The application was filed before the Tribunal in 1995. Hence it cannot be said that it was barred by delay. In this view of the matter, the impugned order passed by the Tribunal is quashed and set aside. The Tribunal is directed to decide the matter afresh on merits and consider whether as per rules the previous services rendered by the appellant in other departments as contended by him can be taken into consideration for

determining the pension payable to him.

4. The appeal is disposed of accordingly. No order as to costs."

7. Where fixation of pension or quantum of terminal benefits is directly and proximately based on the total number of qualifying service, error committed by the respondents in working out the qualifying service would have an immediate impact on the quantum of pension or terminal benefits. The same would result in what is called recurring cause of action. Hence, keeping in view the decision of the Apex court in the case of Munawali (supra) and the fact that the applicant's terminal benefits would be affected if there be any mistake in working out the total period of qualifying service, we are of the considered view that limitation does not apply in this case.

8. Further, it is to be noted here that Inder Pal Yadav considered the Scheme prepared by the Railways regarding absorption etc., and it has also stated that it would not be appropriate to burden every affected person to rush to the Court. The Apex Court had thus stated as under:-

“5. The scheme envisages that it would be applicable to casual labour on projects who were in service as on January 1, 1984. The choice of this date does not commend to us, for it is likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary discrimination flowing from fortuitous court's order. To illustrate, in some matters, the court granted interim stay before the workmen could be retrenched while some others were not so fortunate. Those in respect of whom the court granted interim relief by stay/suspension of the order of retrenchment, they would be treated in service on January 1, 1984 while others who fail to obtain interim relief though similarly situated would be pushed down in the implementation of the scheme. There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation,

even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court. Burdened by all these relevant considerations and keeping in view all the aspects of the matter, we would modify Part 5.1(a)(i) by modifying the date from January 1, 1984 to January 1, 1981. With this modification and consequent rescheduling in absorption from that date onward, the scheme framed by Railway Ministry ~~as~~ is accepted and a direction is given that it must be implemented by recasting the stages consistent with the change in the date as herein directed.

6. To avoid violation of Article 14, the scientific and equitable way of implementing the scheme is for the Railway Administration to prepare a list of project casual labour with reference to each division of each railway and then start absorbing those with the longest service. If in the process any adjustments are necessary, the same must be done...."

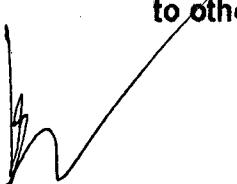
Thus, a duty had been cast upon the Railways to suo moto undertake the exercise of absorption process without any need for any individual to either remind them or to rush to the court. Yet, the applicant did approach the Tribunal and the Tribunal referred to Inder Pal Yadav's case and held that a fact adjudication must precede determination of eligibility and such adjudication must be made by the 5th respondent therein. All that the applicant had to do was to prepare a representation, which, admittedly he did as is evident from Annexure A-4 communication dated 15-05-1995 (Annexure A-4). Thus the respondents having not performed their part at the appropriate time, they cannot turn around and blame the applicant of having approached the Tribunal after 21 years. The respondents cannot take advantage of their own mistakes. (See A.K. Lakshmipathy vs Rai Saheb Pannalal H. Lahoti Charitable Trust (2010) 1 SCC 287 and Rekha Mukherjee vs Ashis Kumar Das (2005) 3 SCC 427.)

9. The claim of the applicant is reasonable and justifiable. The counsel submitted that from the total period from the beginning of casual labour service in 1978 till the date of regularization in 1992, the period of disengagement for

four years be excluded and the balance worked out half of which would be treated as qualifying service. We direct that the respondents shall work out the accordingly and revise the total qualifying services for the purpose of pension and other terminal benefits.

10. Now as to the relief. The applicant has claimed arrears of pay and allowance, pension and other terminal benefits with interest calculated @ 9% per annum. We make it clear that the application is not hit by limitation only as far as grant of temporary service for the purpose of working out qualifying service for purpose of terminal benefits. This cannot be extended to work out any arrears of pay and allowance since for claiming the arrears, the applicant need not have to wait till superannuation. Hence, re-working of qualifying service is limited only for the purpose of working out the terminal benefits.

11. The OA is thus, partly allowed. Respondents are directed to calculate the period of temporary service from 01-01-1983 till the date of regularization on 31-12-1992 and from the said period deduct the period of disengagement from 15-10-1984 to 07-11-1988 and half the balance period be added to the qualifying service from 01-01-1993 to 31-05-2010 (dates are subject to factual verification if so felt necessary either from the documents available with the respondents or the applicant). This would form the basis for working out the terminal benefits and if any amount is due to the applicant by virtue of recalculation, the same shall be paid to the applicant. It is to be pointed out that when the applicant meets the minimum period of service for pension, as per the latest formula of calculation of pension, the same does not depend upon the total qualifying service. Thus, the benefit available to the applicant would be only with reference to other terminal benefits, which are based on total qualifying service.



12. This drill shall be performed within a period of four months from the date of communication of this order.

No costs.



K.NOORJEHAN
ADMINISTRATIVE MEMBER



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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