

**Central Administrative Tribunal
Ernakulam Bench**

OA 452/13

Tuesday, this the 22nd day of March, 2016

CORAM

Hon'ble Mr.Justice Harun-Ul-Rashid, Judicial Member

K.Chekkutty
Senior Trackman (Retd)
Southern Railway, Palghat Division
Residing at Thenipalam
Malappuram.

Applicant

(By Advocate: Mr.Siby J. Monippally)

Versus

1. Union of India represented by
Senior Divisional Personnel Officer
Southern Railway
Palghat Division.
2. Divisional Railway Manager
Southern Railway
Palghat Division, Palghat.

Respondents

(By Advocate: Mr. Thomas Mathew Nellimootttil)

The OA having been heard on 22nd March, 2016, this Tribunal delivered the following order on the same day:-

ORDER (oral)

The OA is filed seeking the following relief:-

To declare that the applicant is deemed to have been granted temporary status with effect from 1.1.1985, grant him pension and other consequential benefits thereof.

2. Applicant submits that he was initially engaged in the Railways as "Mopila Khalasi" on casual basis on 21.01.1978 and that he continued as such till 05.04.1982. He was regularized on 25.11.1998 whereas his juniors

and persons similarly situated were granted regularization with effect from 14.10.1996. The order issued by the first respondent regularizing the applicant's service is produced and marked as Annexure A2 and a copy of the order regularizing other employees is produced and marked as Annexure A3. Applicant submitted a representation to first respondent requesting to grant him pension by taking into account his service with effect from 11.03.1996. Applicant retired from service on superannuation on 30.06.2007. Respondents did not grant any pensionary benefits to the applicant due to lack of qualifying service. The grievance of the applicant is that the service rendered by him on casual basis with effect from 21.01.1978 till the date of his retrenchment on 05.04.1982 has not been taken into account for the purpose of computing the qualifying service for grant of pensionary benefits. Applicant submits that the judgment of the Hon'ble Supreme Court in ***Inder Pal Yadav and others Vs. Union of India and others*** is squarely applicable to the facts of the present case and, therefore, he is entitled to regularization from 01.01.1985.

3. In the reply statement filed by the respondents, it is inter-alia stated that the claim of the applicant that he should be deemed to have been regularized with effect from 11.3.1996 based on Annexure A1 is without any basis; that the applicant was engaged as a casual labourer "Mopila Khalasi" on 21.4.1978 under Bridge Inspector/Re-girdering/Mangalore and retrenched on 5.4.1982; that in terms of the Scheme formulated by the Railway and further directions of the Hon'ble Supreme Court in ***Inderpal***

Yadav's case as also consequential orders issued by the Raiplay Board, a Liver Register of retrenched casual labourers was prepared and published for the purpose of further re-engagement. Separate lists were originally published for casual labourers retrenched prior to 1.1.1981 and after 1.1.1981. It is also pointed out that a single list was published on 17.9.1996 and the name of the applicant was placed at Sl.No.113 of the Live Register. It is further submitted by the respondents that having found eligible in the screening, the applicant was given an offer of appointment as Temporary Gangman vide Annexure A2 letter dated 18.11.1998 and he joined the post of Trackman on 25.11.1998. Later he was promoted as Senior Trackman in scale Rs.2600-4000 with effect from 1.11.2003. While so, he retired from service on superannuation on 30.6.2007. It is also pointed out that the service of the applicant from 25.11.98 to 30.06.2007 worked out to 8 1/2 years. Since the applicant did not have the minimum qualifying service of 10 years in order to become eligible for pension, he was not granted pension.

4. During the course of arguments, learned counsel for the applicant brought to the notice of this Tribunal an order dated 16.03.2016 passed in OA No.418/13 by this Bench.

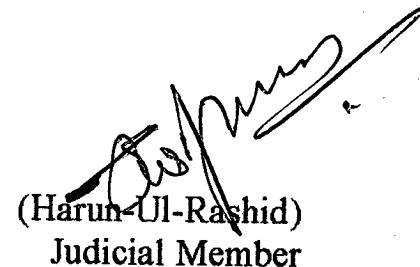
5. A similar issue has been decided by the Principal Bench of CAT by order dated 26th May, 2014 passed in OA No. 2639 of 2013. In that case, after considering various orders of the Tribunal and judgements of the High Court and Apex Court, the Principal Bench directed the respondents to

count half of the service rendered by the applicant therein from 8.11.1979 to 31.12.1982 and entire service rendered by him from 01.01.1983 till retirement for determining his qualifying service for the purpose of grant of 2nd ACP and MACP benefits from the due dates and for determination of the qualifying service for computation of his pension and other retiral benefits. It was further ordered that applicant shall also be paid up-to-date arrears arising out of such counting of the casual service and temporary status service periods. The Applicant shall also be paid interest at GPF rate for the arrears of pension and other retirement benefits.

6. Counsel for the applicant submits that the order passed by the Principal Bench was confirmed and challenge against that order failed and Writ Petitions and Civil Appeals filed before the High Court and Apex Court have been dismissed. The learned counsel submits that since the issue raised in this OA is covered by the decison in OA 418/13, the Apex Court judgment in **Inder Pal Yadav & others** and the decision in OA 2639/13, the respondents are duty bound to count half of the service rendered by the present applicant from 21.01.1978 to 05.04.1982 for the purpose of determination of the qualifying service for computation of his pension and other retiral benefits.

7. In the light of the foregoing discussion and the materials placed before me, there will be a direction to the the first respondent to consider the case of the applicant and pass a reasoned and speaking order within a period

of three months from the date of receipt of a copy of this order. Applicant shall furnish a copy of this order to the first respondent with a copy of the order passed in OA 418/13 as well as in OA 2639/13 within 15 days from today. The OA is disposed of as above.



(Harun-Ul-Rashid)
Judicial Member

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