

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.466/2002

This the 11th April 2005

CORAM

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

S.Ebenezer, S/o Stephen
Shunting Jamedar (Retired) Southern Railway,
Puthuvasseril Vadakkethil Puthenveedu
Thalavoor P.O., Aringada, Kollam District.

Applicant

(By Advocate Mrs Chincy Gopakumar)

Vs.

1. Union of India represented by General Manager
Southern Railway, Madras.
2. Senior Divisional Personnel Officer
Southern Railway, Divisional Officer
Personnel Branch, Trivandrum.
3. Senior Divisional Personnel Officer
Divisional Office, Southern Railway, Madurai.

Respondents

(By Advocates Mr.P.Haridas)

The application having been heard on 22.3.2005 and the Tribunal on 11.4.2005 delivered the following:

ORDER

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant engaged as a Casual Labourer at Karunagappally on 29.10.1964 and according to him it was regular and continuous appointment in the permanent vacancy. He has produced Annxs.A1 to A5 pertains to his transfer, promotion, relieving, etc to establish his service conditions but subsequently he came to know that his date of appointment was wrongly shown as 15.12.1972/23.1.71 in his service record. He submitted representation A6 on 11.12.94 through proper channel to get it corrected and he was under the impression that the same had been rectified. Subsequently he retired on 31.1.2002. When the settlement dues were effected on 4.2.02 it was informed that his

date of appointment was taken as 23.1.71 and not as 29.10.64 (Annx.A7). Aggrieved by the said inaction he has filed the OA seeking for the following relief:

"Issue appropriate directions to the respondents to see that the date of appointment of the applicant is shown as 29.10.64 in the service records/registers and give the applicant all benefits arising out of therefrom in the matter of promotions, pay fixations and payment of pension and other retirement benefits."

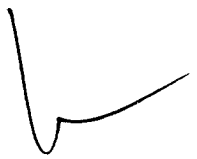
2. The respondents have filed reply statement contending that the claim of the applicant's entry into regular service in Railways as 29.10.64 is neither made on the basis of any documentary evidence nor on facts. The documents produced by the applicant are not sufficient proof to determine his actual date of appointment. The claim of the applicant that he was engaged from 29.10.64 as casual labourer is a delayed one and is barred by limitation. Moreover the application is hit by constructive resjudicata. The seniority list of the employees were published on many occasions and the date of appointment of the applicant was shown as 15.12.72 and the applicant neither pointed out any anomalies with regard to the seniority assigned in the seniority lists nor made any representation before any authority. He was granted temporary status w.e.f. 23.1.1971 and he was having 6 months service commencing from 23.7.70. Casual Labourers/Substitutes appointment against a post is possible only after empanelment. He was empanelled w.e.f. 15.12.72, after granting temporary status on 23.1.71. His claim for regular appointment w.e.f. 29.10.1964 is from a date much earlier to the date of grant of temporary status on 23.1.1971. He should have impleaded the employees who would be affected while claiming the benefit from 29.10.64. The applicant was engaged as a substitute w.e.f. 23.3.70 as per Service Register. The applicant's settlement benefits have been worked out as applicable for a period of 30 years of qualifying service, i.e service counting 50% for the period from 23.1.71 to 14.12.72 and full for the period from 15.12.72 to 31.1.2002. The station Master is not the competent official to certify the applicant's date of appointment in the Railways therefore the O.A does not have any merit and to be dismissed.

3. We have heard Mrs Chincy Gopakumar, the learned counsel for the applicant and

Mr.P.Haridas and Ms Deepa G Pal, the learned counsel for the respondents. The learned counsel for the applicant submitted that the applicant was appointed as Casual Labourer on 29.10.1964 and when he came on transfer in Trivandrum Division it was wrongly shown the date of appointment as 15.12.1972. Documents Annxs.A3 to A5 and A8 will show that the date of appointment as recorded by the respondents as 29.10.64, therefore, the benefits should have been given to the applicant from that date. The learned counsel for the respondents on the other hand persuasively argued that these documents are not genuine and even if it is recorded by the Railway authorities it was on the declaration of the applicant and cannot be taken as a gospel truth and the genuine document that has to be relied as A7, the payment of settlement dues statement, in which it is recorded his date of engagement as 23.1.1971. The applicant has no case.

4. We have given due consideration to the arguments advanced by the counsel, material and evidence placed on record.

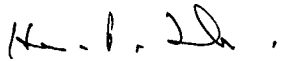
5 When the learned counsel for the respondents confirmed the plea that the date of engagement shown by the applicant as 29.10.64 is false and in correct, we have directed to produce the registers/records pertaining to the engagement of the applicant at Mysore Division since the respondents' counsel expressed his inability we summoned the 3rd respondent and directed to produce those documents. On a perusal of the documents we are convinced that the engagement of the applicant by the Railways in Mysore Division initially was 29.10.64 as Casual Labourer. The respondents in order to cover up the lacuna have filed an additional reply statement contending that as per the register the applicant was initially engaged on 24.10.64 and he joined the Provident Fund on 10.12.67 and no recovery towards PF had been effected from May 1968 to May 1969 showing that he was on EXL (Extraordinary Leave) during the period. It is also submitted that as per Note 2 under Rule 732 of IREC Vol.1 1973 Edition, an employee who is on EXL beyond the maximum permissible period will be deemed to have resigned from service and the applicant should have presumed to be resigned/left from service and his re-engagement subsequently was from 23.7.1970 onwards. So he was not in continuous service from



29.10.64 therefore he cannot claim the benefit from that date. We have also perused the Leave Rule produced by the respondents along with additional reply statement in which there is a provision for grant of EXL without allowance upto a maximum period of 18 months. On evaluating the pleadings in the additional reply statement it is quite clear that the contentions taken by the respondents is an after thought. The consistent plea of the respondents in the original reply statement that the applicant was never engaged from 1964 and they were reluctant to produce the relevant documents before the Tribunal and only on compulsion they did so. We are quite unhappy over such act of the respondents and when we found that the engagement of the applicant was from 24.10.64 the respondents are now trying to patch up the lacuna. On a perusal of the document (Register) we find that the applicant was on EXL from May 1968 to May 1969 and from 1969 to 1970 he was serving with the respondents. If the Extra Ordinary Leave has not been regularised the applicant cannot continue his engagement from 1969-1970. Moreover, from the record it is very categorical that the date of engagement of the applicant is 24.10.64. The argument that he joined the Provident Fund on 10.12.67 and no recovery was made towards PF will not disprove the case of the applicant. On the other hand it reiterates the evidence/plea that only a casual labourer who has been put in more than 180 days of continuous service are eligible to be a member of the Provident Fund. This stand can be taken as a concrete proof to establish that the applicant was engaged from 24.10.64 and the break up period from May 1968 to May 1969 on EXL has also been regularised by the conduct of the respondents to permit the applicant to continue in service. Therefore, we are of the view that the applicant was in continuous service from 24.10.1964 onwards. If that be so, the prayer of the applicant that he was working from 29.10.1964 (24.10.1964 as per records) is to be accepted and to be reckoned for the purpose of service benefits. However, considering the fact that the applicant had not claimed the benefit while in service and he had already retired the full service benefits such as promotion, etc. cannot be granted to him. Therefore, we restrict the benefit only for notional fixation of his pay for pensionary benefits.



6. In the conspectus of facts and circumstances, we declare that the applicant is entitled to get refixation of his pensionary benefits taking into consideration of 50% casual service rendered by him from 24.10.64 till 23.1.1971 and grant the revised pensionary benefits to the applicant in terms of this order within a period of 3 months from the date of receipt of a copy of this order. The O.A is allowed as above. In the circumstances no order as to costs.



(H.P.Das)
Administrative Member



(K.V.Sachidanandan)
Judicial Member.

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