

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 473/99

Tuesday, this the 14th day of December, 1999.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

G. Vasu Pillai (Retired Senior Gangman,
Sasthamkottah), S/o Govinda Pillai,
residing at Nilakkalayathu,
Pallisserikkal P.O.,
Sasthamkottah, Kollam.

...Applicant

By Advocate Mr M.P. Varkey.

Vs.

1. The Divisional Railway Manager,
Southern Railway,
Trivandrum- 695014.
2. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum -695 014.
3. The Senior Divisional Accounts Officer,
Southern Railway,
Trivandrum- 695 014.
4. Union of India represented by
the General Manager,
Southern Railway,
Chennai - 600 003.

...Respondents

By Advocate Mr Thomas Mathew Nellimootttil.

The application having been heard on 14.12.99, the
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks the following reliefs:

- "(a) Call for the records leading to the issue of Annexure A7 letter and quash the same.
- (b) call for the records leading to the issue of Annexures A4 and A5 orders and set aside the same in so far as they restrict the pensionary benefits of the applicant for a qualifying service of 20½ years only, instead of 27 years.
- (c) declare that the applicant acquired temporary status on 21.9.1963 and retained the same throughout his casual labour service, that he was appointed as substitute Gangman against a vacancy as on 31.12.77 and; as such he is entitled to count 50% of his service from 21.9.63 to 30.12.77 and full service from 31.12.77 to 30.11.97 aggregating to 27 years as qualifying service for pensionary benefits including leave encashment.

- (d) declare that A7 letter is illegal, contrary to facts and law, arbitrary and opposed to the principles of natural justice.
- (e) declare that A4 and A5 orders are incorrect, illegal and not maintainable in so far as they restrict pensionary benefits of the applicant for a qualifying service of 20½ years only, instead of 27 years.
- (f) direct the respondents to revise the pensionary benefits (including leave salary) of the applicant for 27 years of qualifying service; to issue the revised pension payment advice and with effect from 1.12.97 and to pay consequential arrears within a reasonable time, and
- (g) to pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of this case".

/calculation sheet accordingly

2. The applicant while working as Senior Gangman retired on 30.11.97. He was initially engaged as Casual Labour Khalasi in the Open Line from 21.3.63. He continued as such till 20.11.72. He was then transferred to Quilon to work under the Permanent Way Inspector. There he worked from 27.11.72 to 31.5.74. He was thereafter transferred back to Mavelikara and he worked there from 1.6.74 to 20.7.78. He continued to work as casual labour khalasi in the Open Line without break after 20.7.78 also. He was granted temporary status with effect from 21.3.75. Thereafter, as per order dated 28.3.79 he was appointed as substitute Gangman with effect from 21.10.78 and was later promoted as Senior Gate Keeper. He is entitled to be treated as temporary on completion of 6 months' continuous casual labour service and 50% of such temporary service thereafter should be counted for pensionary benefits. He has got 27 years of service and is entitled to receive pensionary benefits accordingly. As per A7, his request to revise A4 and A5 orders were turned down.
3. Respondents contend that the applicant is not entitled for full service from 31.12.77. He has not stated any provision in his favour. A2 order dated 28.3.79 is denoting



immediate effect and it has no retrospective application. Respondents have accounted applicant's service from 21.10.78 in full which is the date of his engagement as Substitute Gangman. From the entries in the Labour Card subsequent to the period 1964, even if the services are taken to have been rendered, are seen intercepted with absence. The rules applicable in 1973 stipulate that even a single days absence will make the applicant forfeit the past service for the purpose of grant of temporary status. The applicant was seen engaged in Projects for subsequent period and hence he is entitled to temporary status prior to 1.1.81. The applicant was not regularised with effect from 28.10.78. He was granted temporary status with effect from 21.3.75. It is on completion of the required number of days continuous engagement. The applicant's appointment as substitute is from 21.10.78 and not from any earlier date. Hence, his service prior to 21.10.78 cannot be reckoned as qualifying service.

4. According to applicant, he was initially engaged on 21.3.63 in the Open Line as casual labour khalasi as borne out by A1. He says that he has acquired temporary status with effect from 21.9.63 after completion of 6 months continuous service. Respondents only say that as regards A1, casual labour card, entries subsequent to the period of 1964, even if the services are taken to have been rendered, are seen intercepted with absence. There is no case for the respondents that the service of the applicant from 21.3.63 to 21.9.63 was not continuous.

5. In para 6 of the reply statement respondents say that the applicant is not eligible for temporary status prior to 1.1.81 for the reason that he was engaged in project also during the subsequent period. But at the same time in para 10 of the reply statement respondents admit that the applicant



was granted temporary status with effect from 21.3.75. There is no case for the respondents that temporary status was granted to the applicant with effect from 21.3.75 wrongly and that has been corrected. The stand of the respondents that the applicant has subsequently worked in projects for certain periods dis-entitle him to get temporary status prior to 1.1.81 cannot be accepted in the light of Note 2 of Rule 2501 (b) (iii) of Indian Railway Establishment Manual (Second Edition) (1968).

6. It is not really the question of granting temporary status. It is a matter of obtaining by operation of law. So, the applicant has obtained temporary status on 21.9.63. From A2 it is seen that the applicant was temporarily appointed as Substitute Gangman with immediate effect against the vacancy as on 31.12.77. A2 is dated 28.3.79. Respondents in the reply statement say that A2 dated 28.3.79 is denoting immediate effect and has no retrospective effect. If that is so, appointment of the applicant as Substitute Gangman as per A2 would only be with effect from 28.3.79 and not from any earlier date. At the same time, respondents admit that they have counted applicant's service from 21.10.78 in full i.e., the date of his engagement as Substitute Gangman. How both these will go together is not known. If A2 has no retrospective application, how the respondents can take the service of the applicant as Substitute Gangman from 21.10.78 is not known. When I asked the counsel appearing for the respondents what is the relevancy or sanctity of the date 21.10.78 it was submitted that in A7 it is so stated. It is true that in A7, one of the impugned orders, it is so stated. To my further question to the learned counsel appearing for the respondents what is the basis of showing the date 21.10.78 in A7, I was not enlightened.



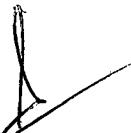
There is absolutely no material placed before me as to the relevancy of the date 21.10.78. It is not known on what basis the respondents say that the applicant became a Substitute Gangman with effect from 21.10.78. One thing is clear when the respondents say that they have counted the applicant's service prior to the date of issue of A2, A2 is not denoting him immediate effect, but has granted appointment to the applicant as Substitute Gangman retrospectively. If that is so, it could only be with effect from 31.12.77. From a perusal of the pleadings and the documents made available in this O.A. it is seen that the respondents have issued orders to the applicant with retrospective effect on various occasions.

7. In para 7 of the reply statement it is contended that:

"The contention of the applicant that he was regularised with effect from 28.10.78 is not correct as he was engaged as a substitute gangman only from that date."

This contention appears to be very strange. First of all, there is no case for the applicant that he was regularised with effect from 28.10.78. The stand of the respondents that the contention of the applicant that he was regularly appointed with effect from 28.10.78 is not correct as he was engaged as a substitute gangman only from that date, cannot be accepted for a moment for the specific case put forward by the respondents in the earlier paragraph is that the applicant was engaged as Substitute Gangman with effect from 21.10.78. As per A2 it is to be understood that it was with effect from 31.12.77.

8. Learned counsel appearing for the respondents invited my attention to para 9 of the reply statement submitted that the applicant has accepted that the temporary status



in his case is with effect from 21.3.75 and accordingly, he is estopped from claiming temporary status from a different date. There is no such acceptance as per the O.A., but what is stated in the O.A. is that as per O.M. dated 22.1.79 issued by the Divisional Personnel Officer, Madurai, the applicant was granted temporary status retrospectively with effect from 21.3.75. There is no necessity for granting temporary status. Temporary status is acquired by operation of law.

9. In para 6 of the reply statement it is stated that:

"The rules applicable in 1973 stipulate that even a single day's absence will make the applicant forfeit the past service for the purpose of grant of temporary status."

What is the rule only the respondents know. When a plea is raised, it should be specific. The rules the respondent intend, they could have produced. For the reasons best known to the respondents they have not produced the rules they intend, applicable in the year 1973. Even at the time of argument, learned counsel appearing for the respondents did not bring to my notice 'the rules applicable in 1973'.

10. A4 and A5 say that the applicant has got only qualifying service of 20½ years. As per A7 also, the respondents say that the applicant has got only 20½ years of qualifying service.

11. When the applicant has attained temporary status on 21.9.63 and continued as temporary status attained casual labourer till 30.12.77, he is entitled to get reckoned 50% of that service for the purpose of his pensionary benefits. His subsequent service till retirement is to be counted in full.

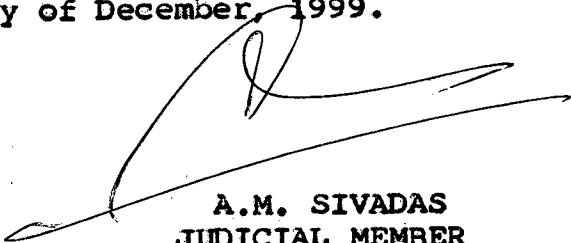
12. Accordingly A4, A5 and A7 are quashed to the extent those restrict the pensionary benefits to the applicant for a qualifying service of only 20½ years. It is declared



that the applicant has acquired temporary status from 21.9.63 and retained the same till 30.12.77 and as such he is entitled to get reckoned 50% of his service from 21.9.63 to 30.12.77 and full service from 31.12.77 to 30.11.97 the date on which he retired, as qualifying service for pensionary benefits. Respondents are directed to revise the Pension Payment Advice and Calculation Sheet accordingly within three months from the date of receipt of a copy of this order.

13. The Original Application is disposed of as above. No costs.

Dated the 14th day of December, 1999.



A.M. SIVADAS
JUDICIAL MEMBER

P/151299

LIST OF ANNEXURES REFERRED TO IN THE ORDER.

A1, True copies of casual labour service cards issued in favour of the applicant.

A2, True extract of Office order No.AEN/QLN/384 dated 28.3.79 issued by the Assistant Engineer, Quilon.

A4, True copy of Pension Payment Advice No.P.500.TVC/P/0604203946 dated 1.12.97 issued by the 3rd respondent.

A5, True copy of Calculation sheet No.Ni. dated 1.12.97 issued by the 2nd respondent.

A7, True copy of letter No.V/P.626/I/251/97 dated 31.12.98 issued by the 1st respondent.