

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 474 of 2008

Thursday, this the 3rd day of December, 2009

CORAM:

Hon'ble Mr. George Parackal, Judicial Member

C.G. Thomas, aged 63 years,
S/o. Mathai, (Retd. Senior Gate Keeper,
Office of the Section Engineer/P.Way/
Nagercoil/Southern Railway), Residing
at: Bethany, No. TC 19/1205, Thamalam,
Pujapura P.O., Trivandrum-695 012.

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Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the
General Manager, Southern Railway,
Head Quarters Office, Park Town P.O.,
Chennai-3.
2. The Divisional Personnel Officer, Southern
Railway, Trivandrum Divisional Office,
Trivandrum-14.
3. The Senior Divisional Finance Manager,
Southern Railway, Trivandrum Division,
Trivandrum-14.

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Respondents

(By Advocate – Mr. P. Haridas)

The application having been heard on 03.12.2009, the Tribunal on the same day delivered the following:

ORDER


The applicant, a retired Senior Gate Keeper of Southern Railway, Trivandrum Division in the scale of Rs. 2750-4400/- is aggrieved by the refusal on the part of the respondents to reckon a substantial part of his



service for the purpose of pension and other retirement benefits.

2. According to Annexure A-1 casual labour service card he was in continuous service as a casual labour with effect from 1.9.1972. By Annexure A-3 letter dated 25.9.1980, on his temporary empanelment as Sub Gangman, he was directed to report for duty to PWI/I/CN/NCJ on 26.9.1980. According to him, his service was regularized in the aforesaid post with effect from 1.10.1980. He retired from service on 30.9.2005. At the time of his settlement of pension he was granted pensionary benefits only for the period from 1.10.1980 to 30.9.2005 i.e. only for a qualifying service of 25 years. No part of his service prior to 1.10.1980 was reckoned for the purpose of calculation of pension and other retirement benefits. He has produced a copy of the Pension Payment Order bearing No. 0604206006, dated 3.10.2005 issued by the third respondent, annexed to this OA.

3. According to him in terms of paragraph 2501 on Indian Railway Establishment Manual read with the decision of the Hon'ble Supreme Court in Robert D' Souza's case in 1982 SCC (L&S) 124, he deemed to have attained the status of temporary employee with effect from 1.3.1973 i.e. on completion of six months continuous service. As he was regularly absorbed from 1.10.1980 he is entitled to reckon 50% of his service from 1.3.1973 to 30.9.1980 for the purpose of pension and other retirement benefits on his superannuation on 30.9.2005. He has relied upon the order of this Tribunal in OA 238 of 2007 in the case of A. Paul Nadar Vs. Union of India,



decided on 14.9.2007. Shri Naddar was also appointed almost similarly and regularized in the same process.

4. The respondents in their reply has submitted that the applicant's service was under the Inspector of Works/Construction at Eraniel, Nagercoil etc. during 1972 and 1979. During the said period, there was no railways at Eraniel and Nagercoil. The new Railway line was laid from Trivandrum to Nagercoil via Eraniel and the line was opened for public transport in 1977 and handed over to the Open Line of Trivandrum Division in 1979 duly maintained by the Project until then. The work of laying the new track is a project service and the casual labourers therein were not entitled for temporary status prior to 1.1.1981. The casual labourers in project were granted temporary status for the first time only with effect from 1.1.1981 pursuant to the judgment of the Hon'ble Supreme Court in Inder Pal Yadav & Ors. Vs. Union of India & Ors. - 1985 (2) SCC 648. In the case of the applicant it is seen from the record that he was not granted temporary status at any point of time and while working as a casual labour without temporary status he was empaneled for Group-D post from 1.10.1980.

5. I have heard learned counsel for the parties. In my considered opinion the present case is fully covered by the order of this Tribunal in A. Paul Nadar's case decided on 14.9.2007 (supra). The operative part of the said order is as under:-

"4. The counsel for the applicant submitted that the services



rendered by the applicant to 27.9.80 cannot but be one qualifying for terminal benefits which is evident from the fact that, no gratuity was paid and that the regular appointment was much earlier on 1.1.1981, from which date only casual labourers of Project Wing were given temporary status etc. Again, the authentication of casual service had been endorsed by the Inspector of works (Construction), Nagarcoil, and the same also goes to prove that the applicant was serving only in Open Line. The counsel for applicant relied upon the decision of this Tribunal in OA 606/05 as well as 677/05 wherein it was held that, as per the decision of the Apex Court in Robert D'Souza (1982(1) SCC 645), not all the construction works can be treated as project work.

5. Counsel for the respondents had referred to the counter especially as contained in para 5,6 & 7 extracted above.

6. Arguments were heard and documents perused. The following points would go to show that the applicant's earlier services as Casual labourer cannot but were treated as one of Open Line, as qualifying for terminal benefit purposes at the proportionate ratio prescribed in the rules:

- a) Casual labour certificate was issued by the IOW (Construction) Southern Railway, Nagarcoil,
- b) The applicant was regularly appointed as Gate Keeper with effect from 27.9.80;
- c) There appeared to be no direct recruitment to the post of Gate Keeper and always the past services are taken into consideration;
- d) The fact that the applicant's regular appointment preceded implementation of Inder Pal Yadav's case shows that the applicant's past services were not for project work;
- e) as per the decision in the Apex Court's judgment in 'D' Sousa, all construction works do not come under project labour;
- f) The applicant's case comes under Rule 2501 of the IREM."

7. In view of the above, taking into account the two precedence relied upon by the counsel for applicant, the OA is allowed.

8. It is declared that, 50% of past service as casual labour qualifies for being treated as services to reckon for the purposes of terminal benefits. Accordingly, the applicant's services rendered from 11.4.73 to 27.9.80 shall be taken as casual labour service in the open line project for treating as qualifying services to the extent permissible under the rules and the same be added to the regular service with



effect from 27.9.80. Respondents are directed to recast the PPO and re-work out the extent of terminal benefits and pension admissible to the applicant. Revised PPO shall be prepared and sent to the authorities within a period of two months from the date of communication of this order. The difference in terminal benefits and the difference in pension till now, may be worked out and paid to the applicant within two months thereafter. In the circumstances, there is no order as to costs."

6. In view of the above this OA is allowed. It is declared that 50% of the past service as casual labourer rendered by the applicant from 1.3.1973 to 30.9.1980 shall be taken as casual labourer service rendered in the open line for treating it as qualifying services to the extent permissible under the rules and the same be added to the regular service with effect from 1.10.1980. The respondents are directed to recast the PPO and rework the pensionary benefits admissible to the applicant. The revised PPO shall be prepared and sent to the authorities within a period of two months from the date of receipt of a copy of this order. The difference in pension and other terminal benefits may be worked out and paid to the applicant by the respondents within a period of two months thereafter. In the circumstances there is no order as to costs.


(GEORGE PARACKEN)
JUDICIAL MEMBER

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