

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA NO.506/2006
Thursday this the 1st day of February, 2007.

CORAM:HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

M.P.Kunjely
Puthuparambil House,
Mulankuzhi,
Kottayam Collectorate,
Kottayam. ... Applicant

By Advocate Mr.C.S.Ajith Prakash

V/s.

1. Union of India,
represented by the General Manager,
Southern Railway,
Office of the Southern Railway,
Chennai.
2. The Senior Divisional Personnel Manager,
Southern Railway,
Trivandrum Division,
Trivandrum. ... Respondents

By Advocate Mr.K.M.Anthru

The application having been heard on 18.1.2007 the Tribunal delivered the following on 1-2-2007.

Hon'ble Dr.K.B.S.Rajan, Judicial Member

(ORDER)

The service particulars are as under:-

a)	Casual Labour Service	November 75 to February 80 (4 years and 3 months)
b)	Temporary status	March 80 to September 91 (11 years & 6 months)
c)	Regular service	October 91 to February 98 (6 years & 4 months)



2. Initially the applicant approached the Controlling authority under the Payment of Gratuity Act 1972 and obtained an order for payment of Rs.12,000/- as gratuity under the Payment of Gratuity Act 1972 for a period of 13 years. This amount was however reduced when the Railways filed an appeal before the Appellate Authority as the period for gratuity worked to be less than 12 years. The Railways have not made the payment of Rs.9000/- but filed an Original Petition No.16123/2000. This petition was decided by the High Court vide order dated 3/2/2006 and the operative portion is as under:-

"In view of the above, the employees are entitled to get the entire payment of pensionary benefits and retirement benefits on the basis of the Service Rules or Payment of Gratuity Act whichever is beneficial and they are not entitled to gratuity at the time when their status of casual labourers is changed into regular service.

XXXXXXXXXXXX

The writ petition is accordingly allowed in terms of the above judgment."

3. The applicant filed a representation before the Railway Authority claiming gratuity under the Payment of Gratuity Act 1972 which according to her is beneficial. The calculation worked out by the applicant is as under:-

"Now therefore in view of the judgment I am making the following claim after having found that the payment of gratuity is more beneficial for me and opting the same, you are bound to pay gratuity in the following manner:

The amount of gratuity paid at the time of retirement (service counted for such calculation is only 6 ½ years ie., my regular service only.)

Rs.11881.00



Total number of years for gratuity under the Payment of Gratuity Act 1972 by taking into 12 years service as temporary status attained casual labour service and 6 $\frac{1}{2}$ years regular service. 18 $\frac{1}{2}$ years

Last pay drawn Rs. 3655.55

Therefore total amount of gratuity payable under the Payment of Gratuity Act $\frac{Rs.3655.55 \times 15 \times 18 \frac{1}{2}}{26}$

Rs.39015.96

Hence the balance due to the respondent Total amount due under the Payment of Gratuity Act 1972 – the amount already paid.
Rs.39015.96-Rs.11881
=Rs.27134.96
(Twenty seven thousand one hundred and thirty four and ninety six paise.)

4. The respondents however have not so far decided the representation.

The applicant therefore has sought the following reliefs:-

- i) To issue a direction to the 2nd respondent to recalculate the gratuity amount taking into the entire period of service including 12 years service as temporary status along with the regular service of 6 years and the last pay drawn as Rs.3655.55 and disburse the same within a time limit fixed by this Hon'ble Tribunal.
- ii) To issue a direction to the respondent to disburse the balance amount of gratuity of Rs.27134.96 as shown in Annexure A3 representation within a time limit fixed by this Hon'ble Court, with interest at the rate of 12% per annum.
- iii) To issue such other order or direction as Hon'ble Tribunal may deem fit and proper in the interest of justice.



5,
under:-

Respondents have contested the OA and their contention is as

"14. The averments in paragraph 4(i) are not accepted to allow the prayer. The alleged Annexure A5 and A6 are not proving the case of the applicant. As explained already in the above paragraphs the casual labour service from the date of initial engagement to the date of temporary status is liable to be accounted for the Gratuity as per the Payment of Gratuity Act 1972 and the casual labour service from the date of temporary status to the date of regular absorption is entitled to be accounted for Retirement Gratuity as per the Railway Services (Pension) Rules 1993. It is humbly submitted that two types of Gratuity are not liable to be granted for the very same service. The applicant herein is claiming two types of Gratuity for the very same period i.e. the period from temporary status to regular absorption is required to be accounted for the benefits both under the Act and the Rules, which is not permissible in any statute. The methodology of working out the benefits shown in Annexure A5 is not accepted as it is not maintainable both in law and rules. In this connection, Railway Board had advised as per letter No.E(LL) 86/AT/GRA/1-2 dated 30/6/2000 that such of the casual labourers who continued to be in service and were/are absorbed against regular vacancies shall be allowed to exercise an option as under:-

i) payment of Gratuity under the provisions of the Payment of Gratuity Act, 1972 for the period of service upto the date preceding the date of absorption and for payment of gratuity and pension for the period of regular service under the provisions of the Railway Services (Pension) Rules, 1993.

OR

ii) to payment of gratuity and pension counting half of the service rendered in temporary status and full service rendered on regular basis under the provisions of the Railway Services (Pension) Rules, 1993, besides gratuity under PG Act for the period preceding the attaining of temporary status.

It is not revealed by the applicant that she had opted for either of these two.



6. The applicant filed a rejoinder in which it has been stated as under:

Even if the argument of the Railway is accepted to the effect that the regular service cannot be counted for payment of Gratuity Act 1972 the applicant is definitely entitled to get gratuity at least for 12 years casual service. Then also the applicant is entitled to gratuity in the following manner.

Total period of casual labour servive : 1.3.1980 to 7.10.1991
= 12 years.

Last pay drawn and the salary taken from the gratuity by the Railway : 3655.55

Therefore the gratuity due under Payment of Gratuity Act 1972 :
$$\frac{12 \times 3655.55 \times 15}{26}$$

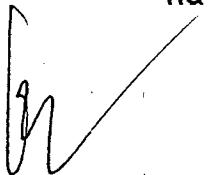
Total gratuity due for the casual Labour period : Rs.25303.84

7. The respondents have reacted to the rejoinder and filed their additional reply statement referring to the decision of the apex Court in the case of Union of India v/s. Manik Lal Banerjee 2006 SCC (L&S) 1959.

8. The counsel for the applicant submitted that applicant is a poor aged lady and she has not derived any benefits so far. The respondents have stated that the applicant has not given proper option.

9. Arguments were heard and documents perused.

10. The stand taken by the respondents vide paragraph 14 of the reply statement appears correct. The applicant has to choose either of the options given therein. Choice is hers depending upon as to which option was beneficial to her. If temporary status is taken into account for working of regular service, the applicant is a beneficiary of pension as she would have completed 10 years plus as worked out by the respondents vide



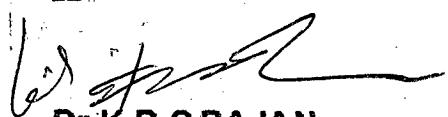
Annexure A-2 calculation. The Gratuity under the Railway Service Pension Rules may also be admissible to the applicant in respect of regular service. Instead, the applicant may be entitled to payment of Gratuity under the Gratuity Act of 1972 for the period up to regularisation i.e. 1991 and thereafter she would be eligible for pension subject to fulfilling minimum qualifying service. In the instant case since the regular service is only for 6 ½ years, she may not be eligible for pension.

11. The respondent could have easily worked out, the entitlement of the applicant to the terminal benefits under two different options and make available to the applicant so that she would be in a position to choose the better out of the two. As the calculations were based on different pay, though both of them agreed as to the entitlement of the applicant, difference occurs in working out the amount payable to the applicant.

12. In view of the above the OA is disposed of with a direction to the respondents to work out the extent of terminal benefits available under the two options as contained in para-14 of the Reply statement and make available the details to the applicant so that the same would facilitate her in choosing any one of the option subject to the calculations being found correct by the applicant. This drill of calculating and making available the details of two different options shall be completed by the respondents within a period of two months from the date of communication of this order and within four weeks from the date of response of the applicant to the above, the respondents shall make available the terminal benefits on the

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basis of the option furnished by the applicant. In the above circumstances,
there shall be no order as to costs.



**Dr.K.B.S.RAJAN
JUDICIAL MEMBER**

abp