

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 528/ 2010

Thursday, this the 7th day of April, 2011.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms K.NOORJEHAN, ADMINISTRATIVE MEMBER

C.Chelladurai,
Retired Senior Gate Keeper,
Southern Railway, Trivandrum Division
Residing at: Melparai,
Kandanvilai.P.O.
(via) Neyyoor, Kanayakumari Dist.Applicant

(By Advocate Mr Mr TC Govindaswamy)

v.

1. Union of India represented by
the General Manager,
Southern Railway,
Headquarters Office,
Park Town, Chennai-3.
2. The Senior Divisional Personnel officer,
Southern Railway,
Trivandrum Division,
Trivandrum-14.
3. The Divisional Finance Manager,
Southern Railway,
Trivandrum Division,
Trivandrum-14.Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC)

This application having been finally heard on 24.3.2011, the Tribunal on the
7.4.2011 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant who was a retired Senior Gate Keeper under the Southern



Railway has sought the following reliefs in this Original Application:

- i) Declare that the applicant is entitled to reckon 50% of the service rendered between 29.1.1973 and 3.6.1981 for the purpose of pension and other retirement benefits and direct the respondents to grant the said benefit accordingly;
- ii) Direct the respondents to recalculate and re-fix the applicant's pension and other retirement benefits in the light of the declaration in para 8(i) and direct further to grant all the consequential benefits arising thereof within a time frame as may be found just and proper by this Tribunal.

2. The brief facts are that: the applicant was initially appointed as a Casual Labourer on 29.7.1972 and continued with minor break until he was regularised as a Gangman under the Inspector of Works, Double Line, Podanur, with effect from 3.6.1981, vide Annexure A-1 service card. During this period, he was being transferred from time to time to different locations but he did not work in any project, though he was engaged as a casual labourer under construction organization. His contention is that since he had completed six months of continuous service as on 29.1.1973, he has acquired the status of a temporary employee by operation of law with effect from 29.1.1973 and as per the judgments of Hon'ble Supreme Court he was entitled to be treated as a casual labourer with temporary status with effect from the said date. As he has superannuated on 31.5.2008, he further contented that while computing the qualifying service for pension, the respondents should have reckoned the service between 29.1.1973 to 3.6.1981. He has, therefore, submitted a representation dated 5.12.2008 to the 2nd respondent requesting that in terms of the existing orders on the subject, 50% of the service rendered after attaining

2

the status of temporary employee is liable to be reckoned as qualifying for pension with all consequential benefits arising therefrom. However, according to the applicant, the respondents have not yet taken any decision on his aforesaid Annexure A-2 representation,

3. The applicant's counsel has produced an order of this Tribunal in O.A.541/2009 dated 1.7.2010 wherein the similarly situated persons like the applicant have been considered and decided as under:

"9. We have heard the learned counsel for both the parties and perused the documents.

10. The issue to be settled is whether the casual service rendered by the applicant prior to 05.05.1979 is liable to be treated as qualifying service for pension and other retirement benefits. The applicant relies on Para 2501 of IREM, which is reproduced as under :

"2501 . Definition :- CASUAL LABOUR

(a) Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour.

(b) The casual labour on railways should be employed only in the following types of cases, namely :-

(i) Staff paid from contingencies except those retained for more than six months continuously : Such of those persons who continue to do same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of six months of continuous employment.

(ii) Labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment.

(iii) Seasonal labour who are sanctioned for specific works of less than six months duration. If such labour is shifted from one work to another of the same type, e.g. Relaying and the total continuous period of such work at any one time is more than six months' duration, they should be

L

treated as temporary after the expiry of six months of continuous employment. For the purpose of determining the eligibility of labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers."

Rule 2501 (b)(i) clearly states that even where staff is paid from contingencies, they would acquire the status of temporary Railway servants after expiry of 6 months of continuous employment. The casual labour service card produced at Annexure A-1(2) , A-1 (6) and A-1(8), the following particulars are shown:

"SOUTHERN RAILWAY
CASUAL LABOUR CARD
OFFICE / DEPARTMENT : ENGINEERING /
CONSTRUCTION"

The casual labour card shows that the applicant was a casual labour of Southern Railway in the Engineering/Construction wing. It does not describe him as a casual labour employee in a project. There is no reference to project at all in the casual labour card. The construction unit is a regular unit all over Indian Railways. Construction unit being a permanent unit, it cannot be equated to a project. If the applicant was a project casual labour, his service could have been dispensed with on completion of the project in which he was engaged. Therefore, the applicant is not a project casual labourer but a casual labourer of the Railway covered by Para 2501(b)(i).

11. Contrary to the provisions of para 2501 that the person belonging to casual labour cannot be transferred, the applicant was transferred on a number of occasions. The very fact that he was transferred from place to place shows that he, like a Railway servant was being transferred. In Writ Petition No.33412 of 2005, the Hon'ble High Court of Kerala affirming the decision of this Tribunal in OA No. 253/2004 held as under :

"7. We considered the rival contentions. We notice that the applicant was transferred from Quilon to Mavelikkara. If he was a Project Casual Labourer there will normally be no such transfer. Project Casual Labourers are locally recruited and once the Project Construction Work is over, they will be retrenched. They have no right to absorption and they were not liable to be transferred also. In this case, we also notice that the applicant has been transferred to the control of the Permanent Way Inspector, Open Line, Mavelikkara, Southern Railways as evidenced

✓

from Annexure A-1 Service Card of the applicant produced alongwith the Original Application which gives the details of engagement of the applicant. If the applicant was a Project Casual Labourer, he would have continued as such and could aspire for temporary status or absorption only in the light of the judgment in Inder Pal Yadav v. Union of India [(1985) 2 SCC 648]. The construction work is available under the Construction Wing of the Railways and also in Projects. Engagement of the Casual Labourers for the construction work in projects will not be engagement under the Construction Wing. Going by the special facts of this case like the transfer of the applicant to the open line in 1975 and thereafter, absorption, we feel that the claim of the applicant that he was working in the construction wing and not employed in the construction work in the Project Wing, has to be upheld. Learned counsel for the Railways took us through the decision of the Apex Court in Union of India v. K.G. Radhakrishna Panickar [(1998) 5 SCC 111]. Learned counsel pointed out that the casual labourers employed in construction work on Projects shall also be treated as Project Casual Labourer. But engagement of casual labourers under the Construction Wing are distinct and different. So, the above decision of the Apex Court cannot have any application to the facts of the present case. Further, the distinction between the facts of this case and the facts of Robert D'souza's case which the learned counsel for the Railways has brought to our notice is not of much consequence. In Ext. P1, though the applicant is described as a Project Casual Labourer working in a Project, the earlier actions of the Railways transferring the applicant to the open line Wing in Mavelikkara and thereafter his absorption, would belie the contentions of the Railways. The nomenclature given to the applicant in an order cannot take away the rights admissible to him on engagement under the Construction Wing of the Railways and later, in the Open Line. Therefore, we are of the view that on the facts of this case, the decision of the Central Administrative Tribunal has to be upheld.

8. In the result, the Writ Petition fails and it is dismissed."

Earlier decision of this Tribunal in OA No. 808/1997 was also affirmed by the Hon'ble High Court in O.P. No. 20772/1999.

12. The present O.A. is identical to the O.A. Nos. 12/2008, 23/2008, 269/2004, 606/2005, 273/2007 and 238/2007 besides O.A. Nos. 808/1997 and 253/2004. The O.A. Nos. 280/2006 and 730/2007 cited by the respondents are not identical to the present case. In O.A. No. 280/2006, the controversy is regarding the date of temporary status granted to the applicant and there were a number of discrepancies in the entries made in the labour card. In

6

O.A.No.730/2007, the grievance is that 50% of the casual labour service of the applicant therein after acquiring temporary status till the regularisation of his service in Group D post was not counted for determining his qualifying service for the purpose of pension and the applicant was guilty of suppressing a material fact. The applicant in the present O.A has continuous service from 21.07.1971 to 04.05.1979. The entries in his labour card is above dispute. He is similarly placed as the applicant in identical case aforementioned. Mere admission of SLPs in the Apex Court does unsettle the orders of lower courts. Therefore, judicial propriety demands that the present O.A should be allowed as per the decisions in identical cases.

13. In view of the above, we hold that the service rendered by the applicant prior to 05.05.1979 is liable to be treated as qualifying service for pension and other retirement benefits. Accordingly, it is ordered as under:

14. The respondents are directed to revise and pay the applicant pension and other retirement benefits duly reckoning 50% of casual labour service rendered by the applicant between 21.01.1972 to 04.05.1979 and further to grant arrears of retirement gratuity and other allowances on that basis within a period of 60 days from the date of receipt of a copy of this.

15. The O.A is allowed as above with no order as to costs."

4. The respondents have filed a reply statement. According to them, this O,A is time barred and therefore, it has to be dismissed on that ground alone. They have further submitted that under Section 21(2) of the Administrative Tribunals Act, if the cause of action which has arisen prior to three years of the Tribunal's establishment (1.11.1985) no delay can be condoned and the applicants claim pertains to the period from 29.7.1972. According to them, as per their records, he joined the railway service as a temporary Gangman on pay Rs.200/- in scale Rs.200-250 only from 3.6.1981 and not on 29.07.1972. If at all he had put in any casual labour service as claimed in Annexure A-1, it must have been in Project and not in any of the Open Line establishments and it does not qualify to be accounted for pensionary purposes. Moreover, the applicant has not impleaded the authorities under whom he served as per Annexure A-1 and there are no entries in his service register regarding his alleged casual



labour service as per Annexure A-1. They further submitted that they did not receive the Annexure A-2 representation dated 5.12.2008.

5. We have heard the learned counsel on both sides. The applicant's case is squarely covered by the order of this Tribunal in **P.G.Manoharan v. Union of India & others** O.A.541/2009, the operative part of which has been extracted earlier. We, therefore, allow this O.A and direct the respondents to treat the period from 29.1.1973 as qualifying service for pension and other retirement benefits. The respondents shall, therefore, revise the pension and other retirement benefit of the applicant after reckoning 50% of the service rendered by him from 29.1.1973 to 3.6.1981 and grant the consequential benefits to him within a period of four months form the date of receipt of a copy of this order. There shall be no order as to cost.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKÉN
JUDICIAL MEMBER

trs