

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.537/2006

Monday this the 9th day of July, 2007.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

1. T.C.Janaki,
W/o Gopalakrishna Pillai,
Retired Sr. Col. Gang Woman,
S.Railway, Kottayam, residing at:
Mylakuttuparambu House, Valanchira,
Kaduthuruthy P.O., Kottayam.

2. P.T.Joseph,
S/o Thomas,
Retired Watchman, BRI/O/QLN,
S.Railway, residing at
Payyambadathil House,
Appanchira, Poozhikol P.O.,
Kaduthuruthy, Kottayam.

Applicants

(By Advocate Shri P.C.Sebastian)

Vs.

1. The Senior Divisional Personnel Officer,
Southern Railway,
Thiruvananthapuram-695 014.
2. The General Manager, Southern Railway,
Chennai.
3. The Union of India, represented by
Chairman Railway Board,
New Delhi.

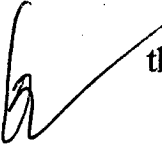
Respondents

(By Advocate Shri P.Haridas)

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The question involved in this case is as to when from the period of Casual labour Service should be treated as temporary status by virtue of which 50% thereof would qualify for pension purposes.




2. The brief facts of the case as per the applicant are as under:

(a) The applicants 1 and 2 retired on superannuation on 31.8.2005 and 30.11.2005. They were initially appointed as casual labourers in the open line under the Permanent Way Inspector (PWI), Kottayam. The 1st applicant was engaged with effect from 21.02.61 and the 2nd applicant from 21.3.1967. They were continuously engaged till their regular absorption in the permanent establishment as regular employees with intermittent short breaks for want of work.. They were supplied with casual labour service cards vide Annexure A-1(a) as required as per extant rules.

(b) The applicants were given the promotions due to them in the normal course and rendered unblemished service till their retirement. The 2nd applicant unfortunately met with a train accident resulting in the amputation of his right leg and was provided a alternate appointment as Watchman with effect from 1997.

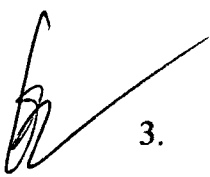
(c) On superannuation applicants were granted pensionary benefits (Annexure A-2 and A2(a)). The first applicant was drawing basic pay of Rs.3605/- and the 2nd applicant Rs.3490/- in the pay scale of Rs.2610-3540/-. The 1st applicant has been granted pensionary benefits based on qualifying service of 25 years which comprise of the regular service from 10.10.86 to 31.8.05 and half of the period of casual labour service from 21.11.73 to 10.10.86. Her casual labour service from 21.2.61 onwards has been totally ignored. The 2nd applicant has been granted pensionary benefits reckoning his service from 21.4.79 to 30.11.05 only totally ignoring his past service from 21.3.67.

 (d) Under Rule 2001 of the Indian Railway Establishment Manual (IREM for short) casual labour in the open line are engaged to supplement the

regular staff in work of seasonal or sporadic nature which arise in the day to day working of the railway traffic. It is now settled by the decision of the Hon'ble Supreme Court in the case of L.Robert D' Souza Vs. Executive Engineer, that casual labour in Railways on completion of the prescribed period of continuous work attains temporary status by operation of statutory rules, irrespective of their being declared as such. Ist and IInd applicants have therefore attained temporary status as early as in the month of July, 1961 and August 1967. As per Rule 2005 of IREM casual labourers shall be eligible and entitled to count half of the period of their casual labour service after attaining temporary status, as qualifying service for the purpose of pensionary benefits. This beneficial provision has been incorporated in Rule 31 of the Railway Services (Pension) Rules which are applicable to the applicants.

(e) By the decision of this Hon'ble Tribunal in similar cases, employees like the applicants are entitled to have their retirement benefits computed taking into account half of the casual labour service after attaining temporary status and the respondents have already complied with the decision of this Hon'ble Tribunal on the matter in the case of similarly placed persons vide order dated 23.2.2005 in O.A.403/04 (Annexure A5).

(f) As soon as the applicants came to know about the decision of this Hon'ble Tribunal they submitted representations dated 2.10.095 and 10.12.05 respectively to the Ist respondent requesting to recompute their pensionary benefits reckoning half the period of their casual labour service immediately on completion of 120 days of continuous work from the initial appointment as casual labour and prior to their regularisation vide Annexures A6, A6(a) & A-7. No positive action is forthcoming on their representation.

 3. The respondents have contested the O.A. and their contentions are in brief as

under:

(a) For counting 50% of the service for pensionary benefits the applicants should have got temporary status and without temporary status the 50% of the service is not liable to be accounted for pensionary benefits. Cards do not contain any of the designation seals or office seals. Accordingly, the services shown therein are not accepted so as to count 50% of service for pensionary benefits.

(b) First of all, it is pointed out that the 1st applicant is stated to have been engaged from 21.2.1961 as per Annexure A1, on which date she was only 15 years and 7 months old, her date of birth being 21.8.1945. The minimum age for entry into service is 18 years and she was grossly under-aged as on 21.2.1961 for engagement as casual labourer. The services shown in Annexure A1 and in Annexure A-1(a) in respect of the 2nd applicant are not entitled for temporary status, on account of the fact that they are not without breaks of even a single day. The said eligibility was to have been examined and verified at the appropriate time itself, by appropriate authorities. It is in this context that the Hon'ble High Court of Kerala as per their judgment dated 21st June 2005 in the WP(C) Nop.18;504 of 2005, the appeal filed challenging the Annexure A-45 order of the Hon'ble Tribunal, have made the observation. "Normally entertainment of an application well after the retirement would have been impermissible" The prayer for a declaration for attainment of temporary status on completion of 120 days of casual labour service is barred by limitation, estoppel, acquiescence and not covered by any rules.

(c) The averments in paragraph 4.1 of the O.A. are accepted as facts. The averments in paragraph 4.2 of the O.A. are not accepted to allow the prayer. It is submitted that the services in Annexure A-1 and Annexure A-1(a) are

not free from interruptions. It is to be explained by her as to why she did not challenge the temporary status granted with effect from 21.11.1973 and why she did not seek temporary status from an earlier date at the appropriate time itself, if she was of the view that she was due for the same.

(d) In respect of the 1st applicant, 50% of the service for the period from 21.11.73 to 9.10.86 and full service from 10.10.86 to 31.8.2005 have been accounted and after deducting the non-qualifying service of 1 month and 23 days therefrom, the qualifying service in her case was assessed as 25 years. In respect of the 2nd applicant, full service on completion of four months from 21.4.79 to 30.11.2005 have been accounted and deducting 39 days of non-qualifying service therefrom, the qualifying service in his case was assessed as 26 years.

(e) The instructions in paragraph 2001 of the Indian Railway Establishment Manual, relied upon by the applicants are not applicable to their cases as they are in the 1989 Edition of the Indian Railway Establishment Manual. The provisions in the 1968 Edition are to be applied to the applicants' cases as they are relevant to the appropriate period. The relevant paragraph No.2501 of the Indian Railway Establishment Manual, 1968 Edition stipulates uninterrupted service for six months for the grant of temporary status. For better appreciation of the facts, paragraphs 2501 & 2504 of the Indian Railway Establishment Manual, 1968 Edition are reproduced below.

"2501 Definition:-

(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 the 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 the six months of continuous employment.

(f) It is submitted that the decision in Robert D' Souza case is not applicable in the case of the applicants in the light of the subsequent decision in Inder Pal Yadav case. The Annexure A-5 order does not give a general ruling to be applicable to all the cases.

4. The applicant has filed a rejoinder in which in regard to the limitation he has stated that only after retirement it could be revealed to the applicants that 50% of casual labour service have been taken into account ignoring certain period of the past. As such, according to the applicants, there is no delay in their approaching the authorities or the Tribunal.

5. Additional reply has been filed by the respondents reiterating their contentions raised in the counter.

6. Counsel for the applicant argued that as per the decision of the Apex court in Robert D' Souza, temporary status is acquired by any Casual Labourer after completion of 120 days of service. By passing a specific order all that has done by the department is only to authenticate the temporary status service and as such, any delay in such authentication of temporary status and service cannot act against the applicants while limiting their temporary status service.

7. Counsel for the respondents submitted that, after Inder Pal Yadav's decision the situation is different and as such, the applicants' temporary status counts from the date of passing an order of temporary status.

8. Arguments were heard and documents perused. In para 4.2 the applicants had contended that they were engaged as Casual Labourers in open line. This specific averment has not been refuted in the counter by the respondents. Their contention in the counter that para 4.2 is not admitted as correct relates only to the claim of uninterrupted service and not in respect of open line. As such, admittedly the applicants were engaged in open line.

9. Robert D' Souza specifically dealt with non-project casual labourers and the decision of Robert D' Souza applies in this case. Inder Pal Yadav on the contrary deals with temporary status in respect of project casual labourers which is not admittedly the case in the present O.A.

10. In an earlier order dated 13.6.07 in O.A.221/06 this Tribunal dealt with identical issue and the following is the observation in the said case:

“What D' Souza has stated is that a person inducted into casual labour service under Rule 2501 'acquires' temporary status w.e.f. the completion of 120 days of continuous service as a casual labour. If so, it is obligatory on the part of the respondents to have afforded temporary status after completion of minimum period of casual labour service in which event, the delay in grant of temporary status cannot be attributable to the applicant. That they have been granted temporary status in 1978 or 1979 and they have not agitated against the delay at that time cannot be the reason to deny them of the legitimate dues. **If a benefit has to be obtained only on application by the individuals, and if they are indolent, perhaps they may be denied the benefit.** And, the benefit of the observations of the Hon'ble High Court as extracted in the counter would have certainly been pressed into service in such a case. If, instead, the law demands the authorities to afford them the benefits and the authorities fail to afford the same, then expecting the

individuals to point out the mistake of the authorities itself is not appropriate, much less contending that any delay in so pointing out the same would disentitle them to the benefit. Here, by virtue of completing the minimum period the applicants have crystallized their rights to be conferred temporary status and the rules stipulate that they "acquire" the temporary status. Reference to the note appended to Rule 2505 is appropriate in this regard. The rule states, "Note. In the case of a casual labourer who is to be treated as temporary after completion of six months' continuous service, the period of notice will be determined by the rules applicable to temporary railway servants." (emphasis supplied). Thus, by an order reflecting the temporary status acquired by the casual labourers after completion of the requisite period, all that is done is that the already acquired status is only authenticated by the authorities and not newly conferred."

11. In view of the above, the O.A.succeeds. It is declared that the applicants are entitled to count their past services to the extent of 50% of their casual labour service after the expiry of six months of their entry. In so far as the applicant No.1 is concerned, since she had joined the service prior to her attaining 18 years of age (boy-service), in her case the temporary status shall be considered after the applicant's completion of six months of casual labour service from the date she attained 18 years. Respondents are directed to work out accordingly and add the same to the qualifying service and rework out to extent of pension admissible and pay the same to the applicants. This order shall be complied with within a period of six months from the date of communication of this order.

Dated the 9 th July, 2007.


DR.K.B.S.RAJAN
JUDICIAL MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

C.P.(C) No.95/08 IN O.A.No.537/06

Wednesday this the 11th day of March 2009

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.NOORJEHAN, ADMINISTRATIVE MEMBER**

T.C.Janaki,
Retired Sr.Col.Gang Woman,
Southern Railway, Kottayam.
Residing at Mylakuttuparambu House,
Valanchira, Kaduthurthy P.O., Kottayam.

...Petitioner

(By Advocate Mr.P.C.Sebastian)

Versus

Shri.Rakesh Chopra,
General Manager,
Southern Railway,
Park Town P.O., Chennai – 3.

...Respondent

(By Advocate Mr.P.Haridas)

This application having been heard on 11th March 2009 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

This Contempt Petition has been filed by the petitioner for the alleged non implementation of the order of this Tribunal dated 9.7.2007 in O.A.537/06. The operative part of the aforesaid order is as under :-

"11 In view of the above, the OA succeeds. It is declared that the applicants are entitled to count their past service to the extent of 50% of their casual labour service after the expiry of six months of their entry. In so far as the applicant No.1 is concerned, since she had joined the service prior to her attaining 18 years of age (boy-service), in her case the temporary status shall be considered after the applicant's completion of six months of casual labour service from the date she attain 18 years. Respondents are directed to work out accordingly and add the same to the qualifying service and rework out to extent of pension admissible and pay the same to the applicants. This order shall be complied with within a period of six months from the date of communication of this order."

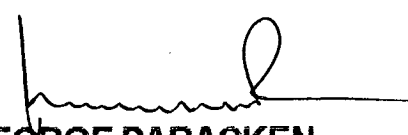


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2. Counsel for the respondents has produced a copy of the order dated 10.3.2009 showing the revised pension which has been sanctioned to the petitioner. Counsel for the petitioner has also agreed that with the aforesaid order, the respondents have fully complied with the aforesaid directions of this Tribunal dated 9.7.2007. In view of the above position, the Contempt Petition is closed.

(Dated this the 11th day of March 2009)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**MA-612/09 and MA 771/09 in
CP(C) 95/2008 in OA No.537/06,
Dated the 7th day of October, 2009**

CORAM :

**HON'BLE Mr GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms K.NOORJEHAN, ADMINISTRATIVE MEMBER**

P.T.Joseph
Retired Watchman BRI/O/QLN
S.Railway, Residing at Payyambhadathil House,
Appanchira, Poozhikol P.O.,
Kaduthuruthy

... Miscellaneous Applicant
(in both the MAs)

By Advocate Mr P C Sebastian

V/s

Shri Rakesh Chopra
General Manager, Southern Railway,
Park Town P.O, Chennai.

... Respondents
(in both the MAs)

By Advocate Mr P Haridas

These Miscellaneous Applications having been heard together on 07.10.2009
the Tribunal on the same day delivered the following

(ORDER)

HON'BLE Mr GEORGE PARACKEN, JUDICIAL MEMBER

This MA 612/09 in CPC 95/2008 in OA 537/06 has been filed
seeking a direction to the Respondents to implement the order of this Tribunal
dated 9.7.2007 in OA 537/06.

The Respondents have filed the Status Report by way of MA
771/2009.

Today, when the matter was taken up for hearing, learned counsel
for applicant has submitted that the order of this Tribunal dated 9.7.2007 has
already been fully complied with. Accordingly, both the MAs stand disposed.


K NOORJEHAN
ADMINISTRATIVE MEMBER

abp


GEORGE PARACKEN
JUDICIAL MEMBER