

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 541 of 2009

THURSDAY, this the 01st day of July, 2010

CORAM:

HON'BLE Mr. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

P.G. Manoharan,
S/o. Gopalan,
(Retired Progress Man Gr.I,
IOW/QLN, SE/W/QLN),
Residing at Karthika,
North Kochumuri, Govindamuttom P.O.,
Kayamkulam, Kollam District.

... Applicant.

(By Advocate Mr. Mohana Kumar for Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai – 3.
2. The Senior Divisional Finance Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
3. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
4. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
5. The Secretary,
Railway Board, Rail Bhavan,
New Delhi. ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

The Original Application having been heard on 15.06.2010, this Tribunal
on 01.07.2010, delivered the following:



O R D E R
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant joined the stores wing of the construction organization of Southern Railway on 21.12.1968. He was transferred from place to place and was empanelled and regularized with effect from 05.05.1979. He retired as Progressman on 30.11.2005. For the purpose of pension and other retirement benefits, the service rendered by him prior to 05.05.1979 had not been reckoned resulting in substantial reduction in pension and other retirement benefits. His representation for taking into account the service prior to 05.05.1979 for the purpose of pension and other retirement benefits was rejected vide Annexure A-5 order on the ground that he was working in the construction organization; granting of temporary status is effective earliest from 01.01.1981 whereas the applicant was absorbed in the open line of Railway service in 1979 itself and, therefore, the question of counting casual labour service in construction (i.e., project) does not arise. The applicant challenges the said A-5 order in this O.A. and prays for a direction to the respondents to revise and pay the applicant pension and other retirement benefits duly reckoning 50% of casual labour service rendered by him between 21.01.1972 to 04.05.1979 as qualifying service for pension and other retirement benefits.

2. The applicant submits that the construction organization is a permanent organization of the Southern Railway and stores wing is its permanent wing. He was not part of any project, therefore, he is entitled to be treated as temporary with effect from 20.01.1972 in terms of para 2501 of the Indian Railway Establishment Manual (IREM). Consequently, 50% of service rendered by him from 21.01.1972 to 04.05.1979 should be reckoned as qualifying service for the purpose of pension and other retirement benefits. He



further submitted that this Tribunal has decided a number of identical cases holding that 50% of casual labour service rendered as in the case of the applicant is to be treated as qualifying service for pension and other retirement benefits. Almost all the decisions from this Tribunal have been upheld by the Hon'ble High Court and the same is also implemented by the Railways. The applicant is, therefore, entitled to get similar treatment. The applicant relies on the decision rendered by Hon'ble Supreme Court in **Robert D'Souza's** [(1982) 1 SCC (L&S) 124] case.

3. The applicant had filed M.A. No. 639 of 2009 for condonation of delay of 131 days in filing the O.A. on the ground that he had approached the concerned authorities for redressal of his grievance time and again, he had been overburdened by his family and health problems and that he has a recurring cause of action as he is getting reduced pension every month.
4. The respondents submitted that the ground cited by the applicant is not maintainable for condonation of delay. Further, it was submitted that Annexure A-3 pension payment order dated 05.01.2006 should be dated for counting delay in seeking revision of qualifying service and not from the date of issue of the order Annexure A-5, which is only a disposal letter. Annexure A-3 order is not challenged so far. It was further submitted by the respondents in the reply that this Tribunal does not have jurisdiction for a matter pertaining to beyond 3 years before the enactment of the Administrative Tribunals Act, 1985.
5. Having considered the rival arguments, we are of the view that the M.A. can be allowed on the grounds mentioned therein. Accordingly, we allow the M.A. We also hold that this OA falls within the jurisdiction of this Tribunal on the ground of recurring cause of action.

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, is located at the bottom right of the page.

6. The respondents in their reply and additional reply statements maintained that casual labour service rendered by the applicant was in project and that being so, such service is not entitled to be accounted as qualifying service for pensionary benefits. The applicant was empanelled on 05.05.1979 only. His services from that date onwards alone are to be accounted towards qualifying service. The casual labour card shows that he had been working as casual labour in the project organization. The casual labour service in project can be counted towards qualifying service only with effect from 01.01.1981. The applicant's service from 05.05.1979 to 30.11.2005 have been accounted as qualifying service for pensionary benefits. The project casual labourers are entitled to temporary status only from 01.01.1981 or from a subsequent dates pursuant to the judgement of Hon'ble Apex Court in Inder Pal Yadav's case. The construction organization is not a permanent organization and the works executed thereunder are in projects. Simply because there were transfers, it cannot be argued that the applicant's service was in the open line. On completion of one work, the casual labour was transferred to another work instead of retrenchment. The reliance placed on Robert D'Souza's case is not correct as the said judgement has lost precedent status on account of subsequent judgements in Inder Pal Yadav [(1985) 2 SCC 648], K. Ramkumar [1988 SCC (L&S) 329], K.G. Radhakrishna Panicker [(1998) 5 SCC 111] and Uma Devi [2006 SCC (L&S) 753] cases. Further the applicant has no case that he had sought temporary status from 21.01.1972 at any point of time throughout his career. Without temporary status, the services therefrom are not to be accounted as qualifying service for pensionary benefits. In the present O.A. also he has not made out a prayer for temporary status. The respondents relied on the orders of this Tribunal in O.A. Nos. 280/2006 and 730/2007.



7. In the rejoinder, the applicant submitted that there is no need to implead the construction organization in the party array because the service rendered by the applicant as casual labour is to be reckoned for pensionary benefits by the respondents No. 2, 3 and 4. But for the service records available in the office of the respondent No.3, the said authority would not have empanelled and absorbed the applicant as a regular Trackman. The claim for reckoning 50% of casual labour service is settled by a series of decisions and also provided for in the Railway Pension Rules as also in the orders of the Railway Board. The applicant was empanelled by the respondents 2 and 3 based on the service particulars shown in Annexure A-1 card and after verification of the same and also by calling for the relevant materials from the construction organization. The fact that the applicant was transferred from place to place as admitted by the respondents show that he was a part and parcel of the construction organization of the Southern Railway which is a permanent organization of the Southern Railway. His further contention was that the reference to Uma Devi's case is misplaced and the decisions in O.As 280/2006 and 730/2007 are not applicable to his case. The issues involved in the case of Robert D'Souza and the issues involved in other cited cases are totally without substance and merit.

8. In the additional reply, the respondents cited the definition of project and project casual labour in reiterating their averment already made. They further submitted that the orders in the earlier cases decided by this Tribunal and Hon'ble High Court of Kerala have been appealed before the Apex Court where SLPs have been admitted. They also produced copies of orders in O.A. Nos. 280/2006 and 730/2007 of this Tribunal.

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

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, is positioned at the bottom of the page.

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 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 judgement 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 Panicker [(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 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 not 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.

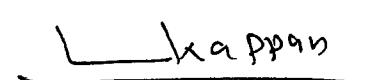
13. In view of the above, we hold that the service rendered by the applicant prior to 05.05.1979 is liable to be treated as qualifying service for pension and other retirement benefits. Accordingly, it is ordered as under :

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 order.

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

(Dated, the 1st July, 2010)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE K THANKAPPAN
JUDICIAL MEMBER