

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAMM BENCH

O.A. No. 542/97

Wednesday, this the 18th day of November, 1998.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

C.K. Damayandi, W/o Late C.K. Imbachan,
(Retired Highly Skilled Serang, Grade II),
Office of the Bridge Inspector (Regirdering),
Birupa, Cuttack, South Eastern Railway.
Residing at Cholakkal House, Puthucode P.O.,
Ramanattukara (Via), Malapuram District,
Kerala State - 673 633.

... Applicant

By Advocate Mr V.R. Ramachandran Nair.

Vs

1. Union of India represented by
the General Manager, South Eastern Railway,
Garden Reach, Calcutta-43, West Bengal.
2. The Chief Project Manager,
Bhubaneswar at Qrs. No.45/'F',
B.D.A. Rental Colony,
Chandrasekharpur Railway Complex,
Bhubaneswar -16, Orissa.
3. The Chief Personnel Officer (I.R.),
South Eastern Railway, Garden Reach,
Calcutta -43, West Bengal.
4. The Deputy Chief Personnel Officer (Construction),
Office of the Chief Administrative Officer(Projects),
South Eastern Railway,
Chandrasekharpur, Bhubaneswar.
5. The District Project Manager (Regirdering),
South Eastern Railway, Cuttack.
6. The District Engineer (Regirdering),
South Eastern Railway,
Cuttack Railway Station, Cuttack.
7. The Senior Project Manager,(Doubling-II),
Bhubaneswar, South Eastern Railway, Orissa.
8. The Senior Divisional Personnel Officer,
South Eastern Railway, Kurda Road.
9. The Senior Divisional Accounts Officer,
South Eastern Railway, Kurda Road.
10. The Divisional Railway Manager,
South Eastern Railway, Kurda Road.

... Respondents

By Advocate Mr K. Karthikeya Panicker.

The application having been heard on 12.11.1998,
the Tribunal delivered the following on 18.11.98.

O R D E R

Applicant seeks the following reliefs:

"(i) To direct the respondents to issue orders regularising the service of the applicant's husband with effect from 1.4.1988 that is with effect from the date from which the other applicants in O.A. 446/90 have been regularised.

(ii) To issue a direction to the respondents that 50% of the casual service of the applicant's husband on completion of 6 months service from 26.2.1973 that is the date of initial appointment of the applicant also to be reckoned as qualifying service for pension, gratuity and all other retiral benefits due to applicant's husband.

(iii) To direct the respondents to grant and pay the arrears of pension, death-cum-retirement gratuity, family pension and all other terminal and consequential benefits to the applicant with arrears.

(iv) To issue a direction to the respondents to grant and pay 24% penal interest for the inordinate delay in making payment of gratuity from the date of retirement till the payment is made."

2. Applicant is the widow of C.K. Imbachan retired from service on superannuation on 28.2.91 as Casual Highly Skilled Serang. He was engaged as a Casual Highly Skilled Serang with effect from 26.2.73. According to the applicant, her husband attained temporary status on 26.8.73. While the applicant's husband Imbachan was alive and as his retirement benefits were not granted, he filed O.A. 569/95 before this Bench of the Tribunal. During the pendency of the said O.A., Imbachan expired and the applicant

got impleaded. The said O.A. was disposed of permitting the applicant to make a representation to the third respondent therein, the Chief Personnel Officer, South Eastern Railway, and directing the third respondent to pass a speaking order within four months of the date of receipt of the representation. In pursuance of the same, A-4 order dated 17.9.96 was passed by the Chief Personnel Officer, South Eastern Railway. As per A-4, the late Imbachan was only eligible for Provident Fund and service gratuity, that Provident Fund dues have already been paid and only service gratuity is to be paid. It was also ordered as per A-4 to ensure payment of service gratuity of late Imbachan to the applicant within the next four months for which the applicant should promptly submit all relevant papers. Inspite of the applicant having submitted all the necessary papers, she has not been granted the benefit.

3. Respondents in the reply statement inter alia contend that the applicant's husband Imbachan though initially engaged as a casual labourer from 26.2.73, he attained temporary status only with effect from 1.1.81, that Imbachan retired on superannuation on 28.2.91, that he was not entitled for pension and other benefits excepting gratuity, and that the Senior Divisional Accounts Officer, South Eastern Railway has certified the gratuity amount payable to the applicant as Rs. 8,135/- as per letter dated 3.4.97, that the applicant was advised to submit the necessary papers for releasing the gratuity amount and that the said amount has been paid as per Pay Order dated 4.4.97.

4. A-4 order dated 17.9.96 was issued by the third respondent, the Chief Personnel Officer, Southern Eastern Railway, in pursuance to the direction in O.A. 569/95. In A-4 it is clearly stated that the applicant's husband was eligible only for Provident Fund and service gratuity and Provident dues have already been paid. In A-4 it is also stated that the applicant's husband Imbachan attained

temporary status with effect from 1.1.81 and he was not regularised in service till his retirement on 28.2.91.

5. A-4 is not under challenge. The applicant seeks to direct the respondents to issue orders regularising the service of her husband's with effect from 1.4.88, to direct the respondents that 50% of the casual service of the applicant's husband on completion of 6 months service from 26.2.73 also to be reckoned as qualifying service for pension, gratuity and all other retiral benefits and to grant pension, gratuity, family pension and other retiral benefits to her with interest.

6. The learned counsel appearing for the applicant on 21.8.98 submitted that the relief in this application is confined only to gratuity amount due to the applicant on the death of her husband and after filing of this application, the respondents have paid an amount of Rs. 8,135/- to the applicant being the gratuity amount and that the correctness of the said amount is disputed. In the light of the said submission made by the learned counsel for the applicant, the only question to be considered is what is the correct amount the applicant is entitled as gratuity due to her late husband.

7. For the purpose of ascertaining how the figure of Rs. 8,135/- has been arrived at, the respondents were directed to file a statement. Respondents have filed the statement stating that using the formula of last pay divided by $26 \times 15 \times$ number of qualifying years of service the said figure was arrived at. According to respondents, the last pay drawn was Rs. 1,410/- and his qualifying service was 10 years, 1 month and 28 days which is to be taken as 10 completed years. Thus, the respondents have made the calculation using the formula and has arrived at the figure of Rs. 8,135/- (1410 divided by $26 \times 15 \times 10$).



8. Learned counsel appearing for the applicant disputed only the qualifying service in the formula and nothing else. According to the learned counsel for the applicant, applicant's husband had 18 years of service and therefore, instead of taking qualifying service as 10 years, 18 years should have been taken.

9. Nowhere in the O.A. it stated whether applicant's husband was a casual labourer in the open line or in the project line. Respondents in their reply statement have stated that the applicant's husband was a project casual labourer. Though a rejoinder has been filed, the averment in the reply statement that the applicant's husband was a project casual labourer is not denied. So, it is to be considered how this qualifying service is to be reckoned in the case of project casual labourer for the purpose of gratuity. In A-4 it is specifically stated that what the applicant's husband was entitled to is only service gratuity. As already stated that there is no challenge against A-4, it is to be taken that what the applicant is entitled to is only the service gratuity that her late husband was entitled to. In Union of India and others Vs. K.G. Radhakrishna Panicker and others, JT 1998 (3) SC 680, it has been held that:

"Their service as Project Casual Labour prior to 1.1.1981 could not be treated as qualifying service for the purpose of retiral benefits because under the scheme they could not be treated to have attained temporary status prior to 1.1.1981."

10. It is further held in the same judgment thus:

"We are, therefore, unable to uphold the judgment of the Tribunal dated February 8, 1991 when it holds that service rendered as Project Casual Labour by employees who were absorbed on regular permanent/temporary posts prior to 1.1.1981

should be counted for the purpose of retiral benefits and the said jusgments as well as the judgment in which the said judgment has been followed have to be set aside."

11. In the light of the said ruling qualifying service for the purpose of retiral benefits as far a project casual labourer is concerned, is only with effect from 1.1.1981. Retirement benefits include not only pension, but service gratuity also. Since what the applicant is entitled to is only the service gratuity to her deceased husband, the qualifying service of the applicant's husband could only be taken with effect from 1.1.1981 and as the applicant's husband admittedly retired on 28.2.91, the qualifying service taken as 10 years by the respondents is correct. That being so, the amount of Rs. 8,135/- arrived at by the respondents as gratuity is also correct.

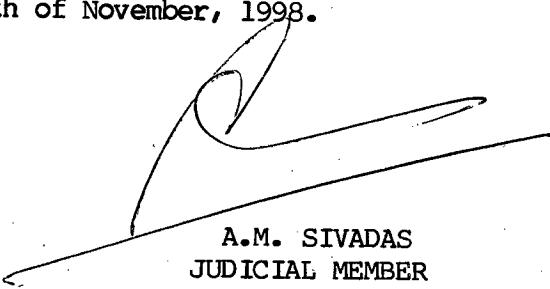
12. Learned counsel appearing for the applicant submitted that as per the provison of Payment of Gratuity Act, 18 years service should have been taken as qualifying service by the respondents while calculating the amount due as gratuity. As per the provision of the Payment of Gratuity Act 1972, every eligible employee is entitled to gratuity at the rate of 15 days' wages for every completed year of service which has to be calculated on the basis of wages paid to an employee for the month divided by 26 days and multiplied by 15 days. In the light of Radhakrishna Panickers's case, the eligibility of a project casual labourer for retiral benefits which include service gratuity, every completed year of service is to be counted only with effect from 1.1.1981 and not prior to that. Therefore, there is no substance in the argument advanced by the learned counsel for the aplicant.



13. The applicant has sought to direct the respondents to pay 24% interest on account of delay in making the payment of gratuity. In A-4, it has been stated that the delay occurred in arranging payment of service gratuity due to non-vetting the number of working days statement by the Associated Finance, that previously, FA & CAO(Con)/GRC was looking into the bill passing and other matters of erstwhile CE(Com)/Cuttack Unit, that on opening of a FA & CAO(Con)/BBS's office at Bhubaneswar with effect from 1.4.1992, the old records pertaining to the erstwhile unit of CE(Con) CTC were either properly not handed over by FA (Con)/GRC or are not available with them properly. The said authorities are not brought in the party array. As apparently it is seen that the delay has occurred due to the reason mentioned in A-4 and the authorities stated in A-4 are not in a position to explain how delay has occurred since they are not in the party array, it is not possible to ascertain how delay has occurred and who is responsible for the delay. That being so, I do not think that the circumstances justify awarding interest.

14. Accordingly, the Original Application is dismissed. No costs.

Dated the 18th of November, 1998.



A.M. SIVADAS
JUDICIAL MEMBER

LIST OF ANNEXURE

Annexure A4: True copy of the order No.P/L/9/CC/Damayandi
dated 17.9.1996 issued by the third
respondent regarding payment of gratuity.

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