

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No. 543/2002

Friday, this the 24th day of January, 2003

C O R A M

HON'BLE MR T.N.T. NAYAR, ADMINISTRATIVE MEMBER  
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

K. Ayyappan, aged 62 years,  
S/o. Shri Narayanan,  
Retired Loco Khalasi,  
Southern Railway, Shoranur,  
Residing at : Kanichackathodi,  
Mundaya, Ganeshagiri P.O.,  
Shoranur.

..Applicant

[By Advocate Mr. T.C. Govindaswamy.]

v e r s u s

1. The Union of India represented by  
the General Manager,  
Southern Railway,  
Headquarters Office,  
Park Town P.O.,  
Chennai - 3.
2. The Chief Personnel Officer,  
Southern Railway,  
Headquarters Office,  
Park Town P.O.,  
Chennai - 3.
3. The Divisional Personnel Officer,  
Southern Railway,  
Palghat Division,  
Palghat.
4. The Senior Divisional Accounts Officer,  
Southern Railway,  
Palghat Division,  
Palghat.

Respondents

[By Advocate Mrs. Rajeswari Krishnan.]

The application having been heard on 14.01.2003, the  
Tribunal on 24.01.2003 delivered the following.



O R D E R

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

....

Applicant K. Ayyappan, who retired as Loco Khalasi of Southern Railway, Palghat Division, was initially engaged as a substitute Khalasi in the Mechanical Department of Southern Railway, Palghat Division. It is averred that on completion of six months continuous service, the applicant was given temporary status with effect from 20.05.1968. Subsequently, he was illegally terminated from service with effect from 16.01.1970. Applicant and 19 other similarly situated persons challenged their termination in O.P. No. 945/1970 and the orders of termination were set aside by Hon'ble High Court of Kerala vide judgement dated 26.05.1972. The applicant and others were taken back on duty and granted arrears of pay and allowances for the period from 16.01.1970. Later, his services were regularised according to rules and finally he superannuated from service on 30.04.1998. According to the applicant, he had total qualifying service of 29 years 11 months and 10 days (to be rounded to 30 years) at the time of superannuation. It is, therefore, stated that his pension and other retiral benefits ought to have been calculated on that basis. But to his surprise, he came to know later on that his pension was calculated only on the total qualifying service of 25 years and six months. He was also granted a service certificate dated 30.04.98 (Annexure A/1) indicating his date of appointment as 22.08.72 instead of 20.05.1968. Applicant submitted various representations before the concerned authorities and finally vide Annexure A/2 dated 26.9.2001/1.10.2001, the order of the Chief Personnel Officer (respondent No.2) was communicated to the applicant stating that his entire service from 20.05.68 to 21.08.72 will be reckoned for the purpose of pension and other retiral benefits. The name of

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the applicant is shown at serial No. 1 in the list Annexure A/2. The other persons shown in Annexure A/2 are the co-petitioners mentioned in the aforesaid O.P. As per Annexure A/2, the retiral benefits should have been determined on the total qualifying service of 30 years. But vide Annexure A/3, the 4th respondent calculated the pension only on the total qualifying service 27 years and six months and not 30 years as required. It is averred that had it been properly counted, he would have 30 years of qualifying service for the purpose of pension and the applicant had suffered on account of wrong calculation. As against this, applicant represented vide Annexure A/4 dated 23.12.2001 to the 3rd respondent, but no response from his side. Hence, the applicant preferred the present O.A. seeking following relief:-

- (i) Call for the records leading to the issue of Annexure A/3 and quash the same to the extent it calculates the applicant's pension on a total qualifying service of 27 years and 6 months and fixes the same as Rs. 1,373/- per month;
- (ii) declare that the applicant is entitled to have his pension and other retiral benefits calculated on a total qualifying service of 30 years and direct the respondents to fix and pay the applicant's pension and other retiral benefits accordingly, within a time limit as may be found just and proper by this Hon'ble Tribunal;
- (iii) direct the respondents to pay interest to the applicant on the difference on pension and other retiral benefits arising out of the erroneous calculation of his qualifying service @ 12% per annum to be calculated with effect from 1.5.98 upto the date of full and final settlement of the same;
- (iv) award costs of and incidental to this application;
- (v) grant such other further reliefs as may deem just, fit and proper by this Hon'ble Tribunal in the facts and circumstances of the case."

2. The respondents have filed reply statement contending that the benefit as per Annexure A/2 has already been extended to the applicant vide Annexure A/3. The claim of the applicant is not based on any rule/order or facts. He was engaged as casual

Labour under Loco Foreman, Shoranur, from 20.11.67. He was granted temporary status and brought to the authorised scale of pay with effect from 20.05.66. Thereafter, his services were discontinued from 27.01.70. But on account of the direction of Hon'ble High Court in O.P. No. 945/1970, he was reengaged as substitute Khalasi with effect from 22.08.72, alongwith 19 other similarly situated employees. Applicant retired from service as Loco Khalasi Helper on 30.04.1998. The pensionary benefits of the applicant were calculated taking into account his date of appointment as 22.08.72, the date he was reengaged as substitute Khalasi, determining the net qualifying service of 25 years and eight months. He made a representation to count the period of service rendered by him as temporary casual labour and on consideration of his request, his qualifying service was revised duly counting 50% of the service from 20.05.68 to 21.08.72. Accordingly, the net qualifying service was calculated as 27 years 5 months and 23 days as against 25 years 8 months and 8 days. He was granted pensionary benefits taking into account the revised qualifying service, vide Annexure A/3. Nothing more is due to be paid to the applicant. It is further stated that the contention of the applicant that he joined Railways as substitute Khalasi is incorrect. Applicant was initially engaged as a daily rated casual labour and only after completion of the requisite number of days of continuous service, he was granted temporary status with effect from 20.05.68. In support of this contention, the respondents relied on Annexure R/1, the relevant page of the service book and submitted that there is no merit in the O.A. and it deserves to be dismissed.

3. Applicant filed a rejoinder contending that he was one of the petitioners in O.P. No. 945/1970 before Hon'ble High Court of Kerala, which was decided on 26th May, 1972, and all other copetitioners, who were similarly and identically situated, were

granted entire benefits as per direction of this Tribunal in O.A. Nos. 1453/98 and 1626/98. It is alleged that Annexure R/1 is not the true copy of any page of the applicant's service book. The entries therein are fabricated and are made in one stretch by the same person, using the same pen and ink. All the entries are seen to have been attested by APO/III in the recent past, probably for defeating the case.

4. The respondents have also filed additional reply statement stating that the applicant was engaged as a casual labour on daily wage basis from 20.11.67. It is averred that the contention of the applicant that he was initially engaged as a substitute is totally incorrect. The rules do not provide for counting the entire service rendered by an employee as casual labour for pensionary benefits, but only 50% of such service is reckoned for the purpose. The applicant has not produced any document to show that he was engaged as a substitute. Respondents contended that Annexure R/1 is a true copy of the relevant page of the service register of the applicant, which is a permanent record and not a manipulated one as stated by the applicant. There cannot be any assumption or presumption as contended by the applicant in the maintenance of service record as this is the prime record in respect of an employee. They submitted that the O.A. has no force and deserves to be dismissed.

5. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mrs. Rajeswari Krishnan (represented by Mrs. Seema), learned counsel for the respondents and have perused the material, pleadings and documents placed on record.

6. We have given due consideration to the arguments advanced by both the parties.

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7. Since the entries made in the service register are disputed by the applicant, we directed the respondents to produce the original service register of the applicant, which was also perused by us. On a perusal of the said register, we found that Annexure R/1 is the true photostat copy of page 3 of the service book. It is true that the entire entries have been attested by APO/III and almost all those entries were made by the same person using the same pen and ink. It is admitted by the respondents that all those entries were made at one stretch only after the services of the applicant were regularised. This page has, therefore, been incorporated in the service book only after giving effect to the orders of Hon'ble High Court dated 26.5.72 in O.P. No. 945/1970 and the entries were made as such. In these circumstances, it cannot be said that the documents in question is a fabricated one and the same cannot be found fault with. On perusal of the service register, we find that an entry was made in the middle portion at page 3 stating that "Reinstated on 20.02.75 (as per Court Orders No. 3473/74) - granted back wages from 29.05.74." It was not stated anything except saying that 'reinstated as per the Court orders'. Therefore, it would be in the fitness of things if the relevant portion of the order of Hon'ble High Court in O.P. No. 945/1970 is reproduced. The operative portion of the order in the said O.P. is as follows:-

" 13. We have already indicated earlier that the case here is one of termination of services of surplus staff. We have also indicated that the mere fact that such termination is in accordance with any rule such as R.149(1) of the Railway Establishment Code, will not make it any the less a retrenchment within the scope of S.26F. We may also notice here that R.149(1) is subject to R.149(6) which provides -

"6. Notwithstanding anything contained in clause (1) (2) and (4) of this Rule, if a Railway servant or apprentice is one to whom the provisions of the Industrial Disputes Act, 1947 apply he shall be entitled to notice or wages in lieu thereof in accordance with the provisions of the Act."

It is apparent from this provision that even a termination under R.149(1) requires compliance with S.26F of the Act. For this reason too the contention of the respondents is unacceptable.

In the result, we find that the termination of the services of the petitioners have not been validly made. We, therefore, issue a direction to reinstate the petitioners in service. Parties are directed to suffer costs."

8. In that case also, the respondents vehemently contended that the petitioners therein, including the applicant, were not a permanent employee and therefore, they were terminated. But quoting various decisions of Hon'ble Supreme Court and the provisions of Industrial Disputes Act, Hon'ble High Court has held that the termination of the petitioners therein was not validly made and a direction was given to reinstate them in service. Based on this decision, the Tribunal by following the order passed in O.A. No. 1453/98, P. Kuttinarayanan vs. The Senior Divisional Personnel Officer and Others (decided on 04.04.2001), had held in O.A. 1626/98, M. Balasubramanian vs. The Senior Divisional Personnel Officer and Another (decided on 05.06.2001), that " the recording of the applicant's date of entry in the service register as 22.8.72 is unjust and arbitrary and the applicant is entitled to have his date of entry in the service register as substitute Khalasi shown as 13.4.69."

9. It is pertinent to note that all the applicants in the aforesaid OAs and the applicant in this OA were the petitioners in O.P. No. 945/1970 wherein the respondents had specifically taken a plea that the petitioners are casual labourers and not substitutes. It is an admitted fact that when the applicant was reinstated as per the orders of Hon'ble High Court in the said O.P., he was taken as a substitute Khalasi and not as casual labour. The direction of Hon'ble High Court in the said O.P. was to reinstate the applicant and had the applicant been a mere casual labour, the respondents would not have reinstated him as a

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substitute Khalasi. Therefore, the contention of the respondents that the applicant was only a casual labour at the time of his original engagement will not stand good. Learned counsel for the applicant submitted that in Mechanical Department (Loco Division) skilled labour service is required and, therefore, substitute Khalasi is being posted and not the casual labour. It is true that the casual labourers generally do not occupy a post. But it is evident that the applicant in this case who was one of the petitioners before the Hon'ble High Court in O.P. No. 945/1970, was occupying a post and while implementing the judgement of the High Court, the applicant was reinstated in service. In a similar matter in OA No. 1453/98, the Tribunal made the following observation:

"We have heard learned counsel on either side and have perused the pleadings and other material placed on record. The grievance of the applicant is that, the respondents have in his service record, entered 22.8.72 as the date of which he commenced substitute service, which according to the applicant is an incorrect statement, as he has been granted temporary status as substitute with effect from 13.4.69. The sole question, therefore, is whether the applicant was a temporary status attained substitute on 13.4.69 or was only a temporary status casual labourer with effect from that date. An answer to this question can be gathered from the judgement of the Hon'ble High Court and the action of the respondents pursuant to the above judgement in O.P. No. 945/70. It has been stated in the opening sentence of the judgement itself that the petitioners were employed as Khalasi in the Olavakkode Division of Southern Railway. In page 6 of the judgement, it has been observed by the High Court as follows:

".. I have already referred to the relevant contention. It is the case of the respondents that when permanent staff from other Divisions had to be employed in the posts occupied by the petitioners necessarily they had to be thrown out.."

The casual labourers generally, do not occupy a post.. It is evident that the applicants in this case who was one of the petitioner before the High Court in O.P. No. 945/1970, was occupying a post. It is the admitted case of the respondents that in implementation of the judgement of the High Court, the applicant was reinstated in service on 22.8.72 and that this reinstatement was as Substitute Khalasi. If the applicant was only a Substitute Casual Labourer, respondents would not have reinstated the applicant on 22.08.72 as a substitute Khalasi, but as a

casual labourer. The contention of the respondents, therefore, that the applicant was only a casual labourer on 30.4.69, has to be rejected."

10. The respondents have no case that the facts in this O.A. and the other OAs mentioned above are different. In these circumstances, the present OA also has to be decided in tune with the decision in O.A. Nos. 1453/98 and 1626/98 (supra) as the applicants therein are identically and similarly situated persons in O.P. No. 945/1970. The operative portion of the order in O.A. No. 1626/98 is reproduced as under:

"4. In the result, the contention of the respondents are rejected. The application is allowed declaring that the recording of the applicant's date of entry in the service register as 22.08.72 is unjust and arbitrary and that the applicant is entitled to have his date of entry in the service register as Substitute Khalasi shown as 13.04.69. We direct the respondents to change the date of entry of the applicant as Substitute Khalasi to 13.04.69 deleting the date 21.08.72. This shall be done and intimation of it given to the applicant within a month from the date of receipt of a copy of this order. There will be no order as to costs."

11. Apart from the above, we find from the records that applicant's service from 20.05.68 till date of his superannuation on 30.04.98 was never treated as non-qualifying service for the purpose of pension and other retiral benefits. Vide Annexure A/2, it appears that the benefit claimed has already been granted to the applicant. The Senior DPO in terms of CPO/Madras letter No. P(S)443/N/OL O.A.No.945/70 dated 26.07.01 giving effect to the order in OA No. 945/70, has allowed reckoning the services rendered by the applicant from 20.05.68 to 21.08.72 for the purpose of pensionary benefits. Annexure A/2 never mentioned that 50% of the service period could only be reckoned for the purpose of pensionary benefits, as contended by the respondents in the reply statement. So also, Annexure A/3 did not specifically speak about the calculation made in respect of fixation of pension of the applicant. Only from the reply statement one could gather that the pension has been calculated taking into account 50% as qualifying service from 20.05.68 to

21.08.72 and benefits were granted to the applicant. According to the applicant, this is not in consonance either with Annexure A/2 or the findings of Hon'ble High Court in O.P. No. 945/1970. Since similarly situated persons were granted entire benefits by the orders of this Tribunal referred to above, Annexure A/3 is discriminatory to the extent it calculates applicant's pension on a total qualifying service of 27 years and 6 months and deserves to be quashed.

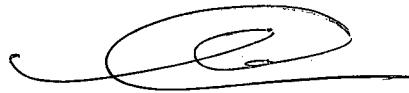
12. Taking into consideration the entire aspect, we are of the considered view that the applicant is entitled to get pensionary benefits on total qualifying service of 29 years 11 months and 10 days (to be rounded to 30 years) by reckoning his past service (before reinstatement) as Substitute Khalasi and the entry in the service register as casual labourer before his reinstatement is to be changed accordingly. This is more so, since identically placed employees in other OAs were granted entire benefits and already implemented the same.

13. In the result, the contention of the respondents are rejected. The application is allowed declaring that the applicant is entitled to have his date of entry in service register as Substitute Khalasi on 20.05.68. He is entitled to pensionary benefits counting the full period with effect from 20.05.68. Accordingly, we set aside and quash Annexure A/3 dated 12.11.2001 to the extent it calculates applicant's pension on a total qualifying service of 27 years and 6 months and direct the respondents to treat the applicant as Substitute Khalasi from the date of initial engagement and grant him full pension having completed 30 years of service, as observed above. However, we do not find any reason to grant any consequential benefits or any interest as claimed by the applicant. We make it clear that the benefit of reckoning such period will only be given for the

pension purpose alone. The arrears, if any, on account of revision of pension flowing out of this order shall also be paid to the applicant. This exercise shall be done within three months from the date of receipt of a copy of this order and an intimation to this effect be given to the applicant within fifteen days thereafter.

14. There will be no order as to costs.

(Dated, 24th January, 2003)



K.V. SACHIDANANDAN  
JUDICIAL MEMBER



T.N.T. NAYAR  
ADMINISTRATIVE MEMBER

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