

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 566 of 2004

w i t h

Original Application No. 594 of 2004

Thursday, this the 28th day of September, 2006

C O R A M :

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

1. O.A. No. 566 of 2004

M. Chellakkannu,
S/o. Marimuthupillai,
Retired Master Craftsman/Carpenter,
Signal & Telecommunication Workshop, Podanur,
Residing at : No. 1/14, Manangorai Post,
Pasupathy Koil (via), Thanjavur (T.K & District)

... Applicant.

(By Advocate 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 Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai - 3.
3. The Divisional Signal & Telecommunication
Engineer (Works), Poddanur,
Coimbatore District, Tamil Nadu.
4. The Chief Workshop Manager,
Signal & Telecommunication Workshop,
Southern Railway, Poddanur,
Coimbatore District, Tamil Nadu.

... Respondents.

(By Advocate Mr. Sunil Jose)



2. O.A. No. 594 of 2004

V. Muthusamy,
S/o. Velayudhan Pillai,
Retired Master Craftsman/Machine Shop,
Signal & Telecommunication Workshop, Poddanur.
Residing at : 10/99, Cheran Nagar, Poddanur,
Coimbatore District.

... Applicant.

(By Advocate Mr. T.C.Govindaswamy)

versus

1. 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 Signal & Telecommunication
Engineer (Works), Poddanur,
Coimbatore District, Tamil Nadu.
4. The Chief Workshop Manager,
Signal & Telecommunication Workshop,
Southern Railway, Poddanur,
Coimbatore District, Tamil Nadu.

... Respondents.

(By Advocate Mrs. Sumathi Dandapani)

The Original Applications having been heard on 28.9.06, this Tribunal on the same day delivered the following:

ORDER

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

The issue involved in the two O.As being identical and arguments having been heard together, these O.As are dealt with by this common order.



2. Facts of the case being admitted, the same obviate debate. The applicants were initially appointed as Khalasi in S & T Workshop, Poddanur in May, 1973. In terms of circular dated 4/6-5-1965, all works carried out by the Construction Units are treated as projects for the purpose of engagement and payment of wages of Casual Labourers at Daily rate. DSTE/Works/PTJ is a project. According to the applicants they had at their credit past services from 1962-1972 (in respect of applicant in OA 594/04) and 1963 to 1973 (in respect of applicant in OA 566/04) to substantiate which the applicants produced certain service cards but the bonafides of the same are doubted as the said service cards did not contain the L.T.I. Reference. Considering the whole issue in totality and in absence of any records regarding the casual labour engagement, requests of the applicant for grant of Temporary Status and consequential benefit of counting 50% of the said services towards pensionary benefits could not be agreed to.

3. The Respondents have rejected the claim of the applicant on two scores – (a) that DSTE/Works/PTJ was a project and hence there is no question of counting of service of temporary status for the purpose of working out the terminal benefits as such a benefit is not available to the project work casual labourers and (b) the service card had not been produced to substantiate that the applicants were engaged as casual labourers.

4. As regards (a) above, it is now settled that DSTE/Works/PTJ is not a project, as held by this Tribunal vide order dated 27-01-1992 in OA 849/90 followed by the decision in OA No. 322 of 1998 (order dated 2-8-99) and OA No. 727/99 (order dated 8-3-2000, which has been upheld by the Hon'ble High Court of Kerala vide order dated 19-09-2003 in OP No. 19763/2000 S).

5. As regards grant of temporary status, if a casual labour completes six months of service in that capacity, as per Rule 2501(b)(i) of IREM, he acquires the status of temporary railway servants, vide the decision of the Apex Court in the case of L. Robert D'Souza v. Executive Engineer, S. Rly., (1982) 1 SCC 645, wherein the Apex Court has held as under:-

"21. Rule 2501(b)(i) clearly provides that even where staff is paid from contingencies, they would acquire the status of temporary railway servants after expiry of six months of continuous employment."

6. Now what is required to be ascertained is whether the applicants had actually served as casual labourers from 1962-63 onwards as they claim. For this purpose they have relied upon the service cards which were in their possession but the respondents have rejected their case holding that the records not being available and the service particulars not containing the full details for verification, the genuineness of the service cards is doubted. This is totally unacceptable. The respondents are the repository of the service documents. When acquiring of the status of temporary railway servant is

automatic after completion of six months of casual labour service, such records are required to be retained till the superannuation of the employees as the same would have to be relied upon for working out the qualifying service. Holding that casual labour records have a retention time schedule of ten years cannot be ^{applicable where} ~~accepted that~~ it is not the casual labour service but casual labour service countable for pensionary benefits. Thus, if the respondents have not retained the records, then all that they could do is to believe the details furnished by the applicants. Instead, rejecting the details furnished by the applicants would mean deprivation of the right of the applicants to treat the service as one entitled to be counted for pensionary benefits, and the same affects the fundamental rights of the applicants under Art. 14 and 16 of the Constitution. In fact, Annexure A-1 particulars fully furnish the minimum details for working out the period which is to be counted for pensionable purpose. Nothing more is required.

7. A feeble attempt was made to hold that the OA is time barred. It is not so as the refusal to treat the period for pension purposes is only after superannuation which is very recent. Hence, the contention of limitation raised by the respondents is rejected.

8. Thus in the conspectus of the case, the DSTE/Works/PTJ being a non project work, the particulars being available with the respondents on the basis of the details furnished by the applicants, ~~it~~ it is declared that the applicants are

22

entitled to count their service rendered from 1962-63 to 1972-73 as the case may be for working out the qualifying service for pensionary benefits as per the extant rules and the OAs are, therefore, allowed.

9. Respondents are directed to take into account the service rendered by the applicants prior to their regularization as detailed in para 8 of the respective OA and work out that period which would be counted for pension purposes and revise their pensionary benefits. This drill shall be performed within a period of five months from the date of communication of this order.

10. No costs.

(Dated, the 28th September, 2006)



K B S RAJAN
JUDICIAL MEMBER

cvr.