

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. No. 569/97

Wednesday, this the 22nd day of September, 1999.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR JL NEGI, ADMINISTRATIVE MEMBER

A. Abdul Rasheed,  
S/o. Ahmed Pillai,  
Retired Mill Wright Fitter,  
Grade II, Southern Railway,  
Ernakulam Diesel Shed,  
Residing at: Thavalikonathu  
Malayil Puthen Veedu,  
Vilavoorkonam Post,  
Kalluvadickal Via.,  
Quilon District,  
PIN 691 578.

...Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

1. Union of India through  
The General Manager,  
Southern Railway,  
Headquarters Office,  
Park Town P.O.,  
Madras - 3.
2. The Senior Divisional Personnel Officer,  
Southern Railway, Trivandrum Division,  
Trivandrum - 14.
3. The Chief Personnel Officer,  
Southern Railway,  
Headquarters Office,  
Park Town P.O.,  
Madras - 3.
4. The Divisional Personnel Officer,  
Southern Railway, Madurai Division,  
Madurai.

...Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

The application having been heard on 22.9.99, the  
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

The applicant seeks to declare that whole of his service  
from 21.10.62 to 1.2.72 is liable to be reckoned as qualifying

for pensionary benefits and to direct the respondents to reckon the whole of his substitute service from 21.10.62 to 1.2.72 as qualifying for pensionary benefits and to revise and grant him pension and other retiral benefits accordingly.

2. There is no dispute as to the fact that the applicant joined in the Railway Service as a Mechanical Khalasi on 21.6.62, that he was granted temporary status with effect from 21.12.62 followed by absorption on 1.2.72 and retired on superannuation on 30.11.96. The applicant has been granted pension only treating his period of service prior to 1.2.72 as casual service. According to the applicant, since he was a substitute, he is entitled to get reckoned the whole of his service as substitute from 21.10.62 to 1.2.72. According to the respondents, the applicant was only a Casual Labourer Mechanical Khalasi and therefore, he is not entitled to get his whole service prior to 1.2.72 reckoned for the purpose of pension.

3. The only question to be considered is whether the applicant was a substitute till 1.2.72 or was only a casual labourer.

4. The applicant filed M.A. 924/97 for the purpose of production of the personal file of the applicant by the respondents for the period from 1962-1972. Respondents were directed to produce the personal file of the applicant for the said period. So far, the said file is not produced. That being so, an adverse inference is to be drawn.

5. Respondents are relying on R-1 in support of their case that the applicant was only a Casual Labourer Mechanical Khalasi. According to the respondents, R-1 is the service

particulars of the applicant. In R-1, on the right side top, the signature of the applicant is obtained with date. The date shown is 31.1.64. Almost in the bottom of the right hand side of R-1, there is the signature of the attesting officer which is dated 12.1.72. How the attesting officer happened to sign it only after a lapse of about 8 years is remaining as a mystery. The date of birth of the applicant is shown both in words and figures. In figures, it is shown as "19.3.114 ME". In words, it is shown as "Eighteen-Three-One hundred and fourteen". How this discrepancy has arisen is kept as a top secret by the respondents. On the left hand side top of R-1, thumb impression of the applicant is obtained and below that there is the signature of the witness. The witness has signed on 31.1.64. The signature of the accepting officer with date is also there. The accepting officer has signed on 21.11.75. It is not known how 11 years and a few months, the accepting officer took for signing. In the second page of R-1, the first entry says that the applicant was engaged as a casual labourer on market rate of pay from 21.6.62. The next entry says temporary status was given from 21.12.62. The third entry says certified medically fit for B-1 on 20.6.62. These three entries will clearly show that the entries were not made in the regular course. If entries were made in the regular course, it can never be in this fashion. Against the entry that the applicant was certified fit medically for B-1 on 20.6.62, it is also shown that it was in authorised scale. If he was engaged on authorised scale, it is not known how he could be on market rate of pay. Both entries cannot be correct. There is no attestation of the first two entries in the second page of R-1. Every entry is to be attested by the concerned authority. From a perusal of R-1, it is clearly seen that it is not kept in accordance with

the rules relating to the maintenance of Service Register contained in rules 1227-1235 of the Indian Railway Administration & Finance. Maintaining service particulars is not an empty formality. It is a permanent record. For the reasons stated above, no reliance can be placed on R-1.

When no reliance can be placed on R-1, the contention of the respondents that the applicant was engaged as a Casual Labourer Mechanical Khalasi is without any foundation. If one is engaged as a casual labourer, the designation will only be casual labourer and not Casual Labourer Mechanical Khalasi. The specific case put forward by the respondents in paragraph 2 of the reply statement is that the applicant was initially engaged as a Casual Labourer Mechanical Khalasi. If that is the case, R-1 instead of simply showing casual labourer should show that the applicant was a Casual Labourer Mechanical Khalasi. Since, no reliance can be placed on R-1 and R-1 is the sole document relied upon by the respondents, we have to fall back on A-1. A-1 is relied upon by the applicant in support of his case that he was engaged from the very beginning as a substitute Mechanical Khalasi. In A-1, issued by the Divisional Personnel Branch of Madurai Division, the designation of the applicant is shown as substitute Mechanical Khalasi, Quilon. What is stated by the respondents in the reply statement with regard to A-1 is that it is only a letter calling the applicant for an interview and cannot be relied on as a document proving the claim of the applicant that he was a substitute. There is absolutely no plea raised by the respondents that the designation of the applicant shown in A-1 was due to some mistake. In the absence of any denial as to the designation of the applicant shown in A-1, and no reliance can be placed on R-1 and the respondents have felt shy of producing the personal file of the applicant for the relevant period and this Tribunal was forced to draw an

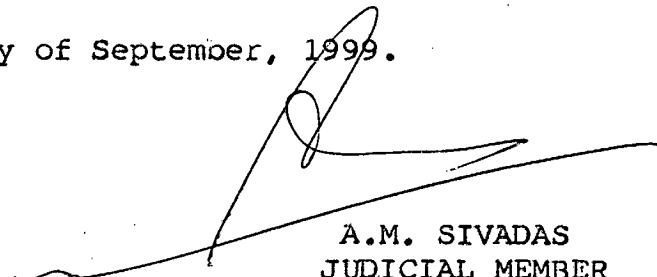
adverse inference, reliance is to be placed on A-1 in order to arrive at a conclusion as to the question whether the applicant was engaged as a substitute or as a casual labourer. From A-1, it is only to be taken that the applicant was a substitute Mechanical Khalasi.

6. It is an undisputed fact that the applicant joined the Railway Service on 21.6.62. As per Rule 32 of the Railway Service (Pension) Rules, the applicant will be entitled to count his substitute service only from 21.10.62.

7. Accordingly, the O.A. is allowed declaring that the applicant's service as a substitute from 21.10.62 to 1.2.72 is liable to be reckoned as qualifying for pensionary benefits and respondents are directed to reckon the said period as qualifying for pensionary benefits and to revise and grant the applicant pension and other retiral benefits accordingly. This exercise shall be done by the respondents within three months from the date of receipt of a copy of this order. No costs.

Dated this the 22nd day of September, 1999.

  
J.L. NEGI  
ADMINISTRATIVE MEMBER

  
A.M. SIVADAS  
JUDICIAL MEMBER

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LIST OF ANNEXURES REFERRED TO IN THIS ORDER

1. Annexure A-1:

A true copy of the Letter No.U/P.564/IV/MK dated 15.6.70/31.7.70 issued by the Division Superintendent, Southern Railway, Madurai Division.

2. Annexure R-1:

True copy of the relevant pages of service register of the applicant.