

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 58 of 2008

Thursday., this the 19th day of June, 2008

C O R A M :

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

K.H. Johny,
S/o. K.J. Henry,
[Retd. Painter Gr.I (Adhoc,
Signal & Telecommunication Department,
Palghat Division]
Permanent Address : No. 17/288,
Aroor, Cherthala Taluk, Alleppey Dist.

... 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 Senior Divisional personnel Officer,
Southern Railway, Palakkad Division,
Palghat.
3. The Senior Divisional Signal &
Telecommunications Engineer,
Works / Southern Railway, Podanur,
Coimbatore District.

... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

O R D E R

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

The applicant initially joined the railway service on 29.03.1971 as a casual labourer (Painter Khalasi) under the Senior Divisional Signal and



Telecommunication Engineer, Podanur. He was regularised as a Flag man with effect from 19.05.1980 and superannuated on 30.11.2007 as a painter. In O.A. No. 849 of 1990 a legal issue was decided that the Divisional Signal and Telecommunications Engineer/works/Podanur is a non-project permanent establishment and hence casual labourers therein were entitled to be treated as temporary on completion of six months of continuous service. This decision was upheld by the Apex Court. In a recent case in O.A. No. 594 of 2004 decided on 28.09.2006 on the strength of the decision by the Apex Court in L. Robert D'souza vs. Executive Engineer Southern Railway, (1982) 1 SCC 645 wherein the Apex Court has interpreted the provisions of Rule 2501 (b) (1), this Tribunal held that the DSTE/Works/PTJ is ^{not} a project work and as such casual labourers with six months service are entitled to temporary status. This order of the Tribunal was later on upheld by the Hon'ble High Court also and the same was implemented by the railways in respect of the Applicants therein. When the applicant retired, the respondents had taken into account his qualifying service from 19.05.1980 without giving credit to 50% casual service rendered prior to his regularisation. Accordingly a representation was penned vide Annexure A-3 letter dated 15.11.2007. There was however no response to the said representation. Hence this application praying for a declaration that the applicant is entitled to count 50 % of the service rendered between 29.09.1971 and 19.05.1980.

2. Respondents have resisted the O.A. According to them 50 % of casual labour service would have been taken into consideration if only the applicant had attained temporary status on 29.09.1971 followed by regularisation on a later date.

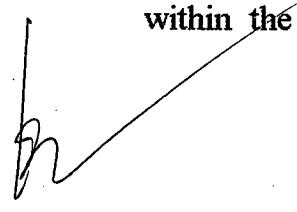
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The applicant was not issued with any temporary status in 1971 and if he was aggrieved that despite his eligibility he was not issued temporary status, he should have agitated against it at the relevant point of time. The respondents further contend vide para 5 of the counter that the establishment of Senior DSTE/Works/Podanur is a project organisation and according to a scheme framed and approved by the Apex Court in Inderpal's case, the project casual labourers were entitled to temporary status only after 01.01.1981. As such the applicant not being entitled to temporary status there is no question of 50 % of the service rendered prior to regularisation to be taken into account. The respondents have also relied upon railway boards letter dated 14.10.1980 wherein it was provided that daily rated casual labourer employed on projects will not be brought under the purview of the orders relating to grant of temporary status after 120 days.

3. Counsel for the applicant argued that the case is identical to that of O.A. No. 566 of 2004 and 594 of 2004 referred to above. In those cases the applicants were given the benefit of 50 % of the temporary status to be reckoned as qualifying service.

4. Respondents have reiterated their contentions in the counter.

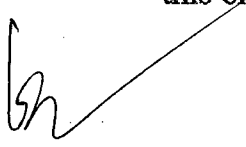
5. Arguments were heard and documents were perused. The scheme formulated in Inderpal to grant temporary status with effect from 01.01.1981 in respect of project casual labourers is from a date posterior to the date of regularisation in 1980. This itself confirms that the applicants' case does not fall within the category of the scheme framed in Inderpal case. As held by the



Tribunal in O.A. No. 849 of 1990 and also subsequent O.A. Nos. 566/2004 and 594/2004, the establishment where the applicant had been functioning having been declared as a non project organization, it cannot lie in the mouth of the respondents that the same is a project organization. They cannot sit in appeal over the decision by this Tribunal, which has been upheld by the High Court/Apex Court.

6. Thus, once the finding is that the applicant belongs to a non project organization, all that is to be seen is as to the continuous service as a casual labourer for grant of temporary status. In the instant case, since the applicant's date of initial appointment is 29-03-1971, after six months thereof, i.e. w.e.f. 29-09-1971 he was entitled to be treated as a temporary status casual labourer and consequently, 50% of the period from 29-09-1971 till his regularization as on 19-05-1980 should be counted as qualifying service. It is ordered accordingly. Of course, it is for the respondents to verify the continuity in service from September 1971 to May 1980 either with reference to the records or with reference to the records that the applicant has submitted vide Annexure A-1.

7. Thus, the O.A. succeeds. Respondents are directed to verify the service of the applicant from 29-09-1971 to 18-05-1980 and on being satisfied that the entire period was to be taken as temporary status, half the service be added to the qualifying service of the applicant and the revised pensionary benefits worked out. The difference in the terminal benefits and the revised pension would be paid to the applicant within a period of five months from the date of communication of this order.



8. No costs.

(Dated, the 19th June, 2008)



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.