

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 576/97

THURSDAY, THIS THE 13TH DAY OF NOVEMBER, 1997.

C O R A M:

HON'BLE MR. A. V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. S. K. GHOSAL, ADMINISTRATIVE MEMBER

G. Gopinathan S/o Govindan
Retired Shunter,
Southern Railway,
Ernakulam Marshalling Yard,
residing at:
"Gothandavilasam"
Naduvathussery,
Chavara South,
Quilon.

..Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

1. Union of India through the
General Manager,
Southern Railway,
Headquarters Officer,
Park Town P.O.
Madras-3.

2. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town P.O.,
Madras-3.

3. The Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum-14.

..Respondents

By Advocate Mr. James Kurian, ACGSC

The application having been heard on 24.10.97, the
Tribunal on 13.11.97 delivered the following:

O R D E R

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

The applicant retired as a 'Shunter' of the Southern
Railways in the Trivandrum Division on 31.3.96. His main
grievance is that though he was appointed as a 'substitute'



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Mechanical Khalasi w.e.f. 18.6.62, the period of service from 18.10.62 (i.e., on completion of four months from the date of his initial engagement) to 1.2.72 has not been fully reckoned for the purpose of pensionary benefits. He has alleged that the failure to do so is against the express provision of Rule 32 of the Railway Service (Pension) Rules, 1993 under which in the case of a person who is engaged as a substitute on a regular scale of pay and allowances applicable to the post and who has been absorbed without any break in service subsequently, the entire period of service on completion of 4 months from the date of initial engagement should be counted fully for the purpose of calculating the pensionary benefits.

2. The applicant had approached this Bench earlier in O.A. No. 475/96 praying for a declaration that he was eligible to have the entire service from 18.10.62 to 31.3.96 treated fully as qualifying service for calculation of pensionary benefits. That O.A. was disposed of in the judgment dated 17.4.96 directing the third respondent to consider the representation of the applicant, which had already been submitted, on merits and to pass a speaking order. However, the third respondent rejected that representation during the pendency of the Contempt Petition, filed by the applicant in CPC NO. 59/96 for non-compliance with the order of this Bench. The applicant approached this Bench again in O.A. 1357/96 impugning that order of rejection passed by the third respondent. When that O.A. came up for hearing, the applicant brought to the notice of the Bench that in a similar case involving one Shri Sathyaseelan, the second respondent had held him (Shri Sathyaseelan) to be an employee engaged as a substitute and that he had been granted the benefit of treatment of the



entire period of his employment for pensionary benefits, on the same lines as prayed for by the applicant. That O.A. 1357/96 was disposed of by the order dated 17.6.96 with the direction to the second respondent to pass appropriate orders on the representation already made by the applicant, where the case of Shri Sathyaseelan, reportedly a precedent case, had also been stated.

3. The order at Annexure A7 of the present application dated 24/25.2.1997, which has been impugned, is the order which the second respondent has finally passed in compliance with the direction of this Bench in O.A. 1357/96. The applicant has sought the reliefs of quashing that order, of declaring his earlier service from 18.10.62, i.e. from the date of completion of four months after his initial appointment, fully for the purpose of reckoning the pensionary benefits and of recalculating, ^{4d And paying him 4d} the pensionary benefits accordingly.

4. In Annexure A7 order, the second respondent, on the other hand, has held that the applicant was engaged on 18.6.62, only as a casual labourer at the market rate of pay at Quilon, that he was granted temporary status on 18.12.62 on completion of six months of continuous service and that only thereafter his pay was fixed in the attached scale of pay of Rs. 70-1-85 i.e., w.e.f. 18.12.62. The impugned order further states that the applicant was granted subsequent increments on completion of 12 months of qualifying service thereafter, i.e. after 18.12.1962. The impugned order also states that the applicant was considered for empanelment against vacancies existing as on 13.12.69 and he was then offered appointment as a temporary mechanical Khalasi w.e.f. 1.2.72. The second respondent in

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the impugned order has concluded that at no point of time the applicant was appointed as a substitute and thus is not eligible for getting his entire service between 18.10.62 and 31.3.96, and in particular the service during the period from 18.10.62 to 31.1.72 i.e. till he was regularly appointed as a temporary mechanical Khalasi, treated as service fully qualifying for the purpose of pensionary benefits.

5. Dealing further with the case of Shri Sathyaseelan, the impugned order says that the service entry pertaining to the latter's case reveals that Shri Sathyaseelan was engaged in the attached and authorised scale of pay of Rs. 70-1-85 from 29.4.62, ^{ie 49} right from the date he was engaged. Since he was appointed on a regular scale of pay right from the beginning of his engagement, the second respondent has come to the conclusion that the engagement of Shri Sathyaseelan could only be as a substitute and therefore he was granted the benefit of the service for calculating the pensionary benefits. Finally, the impugned order has rejected the representation filed by the applicant pointing out once again that unlike in the case of Shri Sathyaseelan, the applicant was actually appointed only as a casual worker on the market rate of pay initially.

6. The essence of the case of the applicant briefly is that he was appointed on a regular scale of pay as is evidenced by Annexure R1 when he was first appointed on 18.6.1962.

7. We observe that there is an entry to that effect in R1, which is called the "Particulars of Service" pertaining to the applicant. This evident fact has not been denied by



the respondent Department during the proceedings in the present O.A. The only explanation which has been furnished on behalf of the respondent Department in this behalf is that the scale of pay mentioned there could not have been Rs. 30-1/2-35, but it should have been Rs. 70-1-85. Hence, that entry is apparently erroneous, it has been averred.

However, we also observe that there is a mention in Annexure R1 i.e. the same document that the applicant was a casual labourer. But the fact remains that he was appointed on the pre-revised scale of pay of Rs. 30-1/2-35, admittedly revised later on to Rs. 70-1-85 as per the Second Pay Commission Recommendations.

8. According to the applicant since he was appointed on a regular scale of pay, he could have been appointed only as a 'substitute' and not as a casual labourer. Therefore, he has contended that the benefit given in Sri Sathyaseelan's case where the only factor operating in his (Sri Sathyaseelan's) favour was found to be the appointment right at the beginning on the scale of pay of Rs. 70-1-85, cannot be denied to him. The same logic as adopted by the respondent Department in Shri Sathyaseelan's case should also be applied in his case, he has contended.

9. The applicant has also stated in his rejoinder that the mere fact that his increments were granted only on completion of one year from 18.12.62 i.e. from 18.12.63 onwards, as evidenced by R2, does not constitute a conclusive proof that he was initially appointed as a casual labourer only and not as a substitute. For, the applicant has averred, even in the case of substitute employees they are regularised only on completion of six months of their initial engagement. Since he was



initially engaged on 18.6.62, in his case also the regularisation took place w.e.f. 18.12.62.

10. On behalf of the respondent Department, the claim of the ~~Applicant~~ has been contested on the main ground that according to the records maintained by the respondent i.e. R1 and R2, the applicant was engaged only as a casual mazdoor on 18.6.62 and he was offered regular employment against an existing vacancy in the mechanical department only on 1.2.72. Therefore, it has been contended on behalf of the respondent Department, the service, between 18.12.62 on which date he attained temporary status and 31.1.72 i.e. the date immediately preceding his date of regularisation, has been properly counted at 50%. However, from 1.2.72 to 31.2.96 i.e. the date of his retirement, the benefit of fully counting his service has been granted to the applicant, after deducting 33 days of non qualifying service from the total service so arrived.

We observe that this latter part has not been denied or challenged by the applicant.

11. In support of these contentions, the learned counsel for the respondent Department has drawn our attention to the relevant entry made in Annexure R1. It is observed that against the relevant column, the capacity in which the applicant was originally engaged has been indicated as casual labourer. Similarly, the learned counsel for respondent Department has drawn our attention to the entries made in Annexure R2, which is a part of the service records pertaining to the applicant. It is observed there that the applicant's initial date of engagement has been shown as 18.6.62 and that from 18.12.62 he has been considered as a temporary employee and from



18.12.63 onwards upto 18.12.72 he has regularly been given increments every year.

12. The learned counsel for respondent has therefore urged that the rejection of the representation of the applicant, for treating the service between 18.10.62 and 30.1.72 as qualifying fully for the purpose of pensionary benefits, has been ~~made by~~ rightly by the respondent Department and that there is no case for judicial intervention in the matter. In parenthesis, we note that these essentially are the main grounds ~~stated by~~ in the impugned order, which we have mentioned above.

13. We have given careful consideration to the pleadings and the material placed before us in this case and to the arguments advanced on behalf of the applicant as well as the respondent Department.

14. Though the applicant has challenged the authenticity of certain entries made both in R1 and R2, which are records pertaining to the service of the applicant, we do not consider it relevant for the purpose of an adequate disposal of the present application to dwell upon those objections at great length. Suffice it to say that the document R1 on which the respondent Department has relied to assert the nature of initial engagement of the applicant, and which is a document maintained by them for the employee Shri G. Gopinathan i.e., the applicant, clearly and categorically states that he was appointed initially on the pay scale of Rs. 30-1/2-35 and that his initial pay was fixed at Rs. 30/-.

We notice from Annexure A8 titled "provisional seniority list of Diesel Assistants in scale of Rs. 950-1500-TVC Division on 1.3.90", that the entry relating

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to the applicant clearly shows his date of appointment as 18.6.62. This entry is of considerable significance. The document at A8 thus further corroborates the claim of the applicant that he was appointed not as a casual worker on ¹⁹ 18.6.1962, but as a substitute whose initial appointment has been properly recognised in the seniority list.

15. In the additional reply, the respondent Department has sought to explain this entry by saying that this was the result of a clerical error. However, the respondent Department has not come up with any convincing argument as to how in the face of a specific entry in the R1, where the applicant was declared to have been appointed to the scale of pay of Rs. 30-1/2-35 drawing the initial pay at Rs. 30/- in the same scale of pay, he can nevertheless be claimed by the respondent Department to have been paid at the same time at the market rate from the date of the same appointment, i.e., 18.6.62. Nor has the theory of clerical error been advanced on this score. Further, the respondent Department has not rebutted the statement made on behalf of the applicant in the rejoinder that even in the case of a substitute, an initial period of six months of continuous engagement is insisted upon and only thereafter their service is counted in the scale of pay for the purpose of granting subsequent increments.

16. While discussing the effect of the documentary evidence relied upon by the respondent Department in this context, it may be necessary for us to refer to the entries in R2, which is a document dealing with confirmations, promotions, increments, reductions and transfers, etc. i.e., certain service particulars, pertaining to the

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applicant. As pointed out on behalf of the applicant, the entries in these documents are specifically required under the rules to be acknowledged by the concerned employee as a token of his acceptance of the correctness of those entries periodically. It has not been denied by the respondent Department that no such acknowledgement of the entries made in R2 on the part of the applicant was obtained. Further, we notice that the top two entries made in the same document R2 on the lefthand side, appear to be latter day interpositions. It is also significant that one of those two entries describes the applicant as a Casual Mazdoor Mechanical Khalasi at the time of his initial appointment on 18.6.1962. It is doubtful whether the designation of a casual mazdoor, if he had actually been engaged only as a casual mazdoor, would have been described as a Casual Mazdoor Mechanical Khalasi. For, a casual mazdoor belongs to a general and unspecified category and is not engaged with a specific designation like Casual Mazdoor Mechanical Khalasi.

17. In the face of such documentary evidence and in the light of the clarifications furnished in respect of a few ambiguities, which are apparent on the face of these records and discussed above, we are of the considered view that it is not open to the respondent Department to treat the initial appointment of the applicant, made admittedly on a scale of pay, only as a casual labourer and then proceed to consider his service, between 18.6.62 to 31.1.72, only on that basis. We are clearly of the opinion that between the two entries with opposite effects in R1, i.e., the particulars of service concerning the applicant



and maintained by the respondent Department, namely, the one mentioning that the applicant was appointed on a scale of pay with a very specific and further mention of the scale of pay and the initial pay in that scale, and the other one mentioning that he was appointed as a casual labourer, it is the former entry which, in the totality of circumstances discussed above, has to be treated as more authentic.

18. We also find it difficult to understand how in the case of Shri Sathyaseelan the fact that he was engaged initially on a scale of pay could be considered as conclusively determining his status as a 'substitute', irrespective of the existence of all other entries including that of his status as a casual labourer and absence of any entry evidencing his appointment as a substitute, ^{and yet} in the face of the same fact, as evidenced by the document R1, similar benefits could be withheld from the applicant. In our opinion, the respondent Department is not competent to apply such patently discriminatory and inequitable standards to cases which are similar in this crucial aspect.

19. In the result, we are unable to agree with the respondent Department that the applicant was initially engaged only as a casual worker, even though his engagement was admittedly against a specific scale of pay and even though his date of appointment has admittedly been shown in the seniority list as 18.6.1962. We also hold that in the light of this finding by us, the period of service rendered by him from 18.10.62 to 31.1.72 could not be legally and



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validly treated at only 50% for the purpose of calculating the pensionary benefits by the respondent Department.

20. In the event, we quash the impugned order at Annexure A7 and allow the application with the direction that the respondent Department must treat the initial appointment⁴² of the applicant as a 'substitute' and that further on completion of four months after that initial appointment i.e. w.e.f. 18.10.62, his entire service should be treated as qualifying for pensionary benefits in terms of the existing rules. We direct that the pensionary benefits of the applicant shall be so calculated and paid to the applicant with arrears within three months from the date of receipt of a copy of this order by the respondent Department.

There will be no order as to costs.

Dated the 13th November, 1997.



S. K. GHOSAL
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES

1. Annexure A7: Letter No.P(S)673/II/Court Cases dated 24.2.97/25.2.97 issued by the second respondent.
2. Annexure A8: Extract of the seniority list of Diesel Assistants, communicated under letter No.V/P 621/VI/Rg. dated 8.3.90 issued by the third respondent.
3. Annexure R1: Page No.2 of the Service Register of the Applicant.
4. Annexure R2: Page No.3 of the Service Register of the Applicant.

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