CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 578 of 2006

Friday, this the 13th day of April, 2007

C O R A M :

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

U.V. Ramachandran,
Watchman (Retd.), Umikadan Veettil,
Parappanangadi,
Section Engineer's Office, Southern Railway,
Palghat Division, Calicut. ... Applicant.

(By Advocate Mr. Siby J. Monippally)

v e r s u s

1. Union of India represented by
Chief Personnel Officer,
Southern Railway, Chennai.

2. Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat. ... Respondents.

(By Advocate Mr. K.M. Anthru)

The Original Application having been heard on 4.4.07, this Tribunal on 13.4.07 delivered the following:

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Engaged as a casual labourer in 1967, afforded Temporary status in 1971, suffered termination in 1974, obtained a Court order in his favour to the effect that the order of termination is 'non est' in the eyes of law, reinstated in the wake of the High Court's order in 1978, regularized in 1985, retired in 2005, the applicant now complains that while reinstating the applicant, the

respondents have not considered regularization at par with the juniors to the applicant consequent to which 50% of the services from 1971 to 1985 was to be ignored in calculating the 'qualifying service'. Hence this O.A.

2. Respondents contest the OA mainly on the ground of limitation and on merits, their contention is that the so called junior to the applicant would have longer service as a casual labourer at the time of screening and hence, the applicant cannot compare him with such juniors.

3. The question is whether the applicant is entitled to any relief as sought for vide para 8 of the OA which is reproduced below:-

"(i) To set aside Anenxure A/3;

(ii) To declare that the applicant is legally entitled to get his services counted with effect from 1975 for the purpose of qualifying service for pension and other retiral benefits."

Admitted facts obviating debate, the question is purely one of technical (as to limitation) and legal (as to affording regularization).

4. Learned counsel for the applicant submitted that when the Hon'ble High Court has held that the order of termination as "non est" the net result of it is that the applicant was to put back to duty as if no such termination order was ever passed and all the attendant benefits should have accrued to him. In other words, if the applicant would have been considered for screening along with

others but for the illegal termination, he should have been so considered. That he had not as such been considered could be known to him when the respondents have reckoned only 50% of his casual service as qualifying service on the applicant's superannuating whereas, his colleague who had also been engaged almost by the same time in 1971 has been afforded longer qualifying service. Thus, neither the question of limitation would apply nor can the respondents' action in truncating the period of qualifying service held legal.

5. Per contra, counsel for the respondents argued, that (a) when in 1978 order of reinstatement was passed, the applicant did not stake his claim for screening and regularization, (b) when in 1985 his services were, after screening, regularized, he did not raise any protest over late regularization compared to his colleagues who had joined almost at the same time as the applicant joined the services as a casual labourer; and (c) when his pay fixation was made vide order at Annexure A-6 dated 15-01-1990 then also he did not make any representation as to advancing his regularization; hence, the applicant cannot at this distance of time be permitted to raise the issue of regularization at this distance of time, as limitation is staring at his face. Counsel for the respondents rely upon the decision of this Bench in OA No. 363/04 decided on 26th October, 2006.

6. Arguments were heard and documents perused. The question is what is the effect of declaring a particular order as non est and whether the respondents had correctly acted in not considering the applicant for

regularization at a time when his colleagues were considered and if they had not acted correctly, whether the question of limitation comes in the way of the applicant.

7. When an order has been declared as non est, it means that the said order is a void order **(State of Orissa vs Brundaban Sharma (1995) 3 SCC 249).** As such, when the Hon'ble High Court had held the order of termination as non est, the logical consequence is that the applicant ought to have been put back in that position, had such an order not been passed. Such a position would include, his seniority, pay, increments if any and promotion/regularization at par with his juniors. Thus, he was reinstated in service on 31-10-1978 and paid his arrears in 1983. The respondents by issue of a formal order dated 15-01-1990 at Annexure A-6 restored the pay and allowances due to the applicant. At the time of reinstatement, the respondents seem to have omitted to ascertain whether the applicant's services could have been regularized but for the termination of service. Of course, there was no chance for the applicant to know about regularization of any of his colleagues during the period he was out of job. When in compliance with the order of the Hon'ble High Court, the applicant was reinstated, he must have been under the genuine impression that the respondents would have, as expected by them, taken due action in respect of every item, such as payment of pay and allowances etc., Arrears of Pay and allowances followed reinstatement; formal order of fixation of pay passed in 1990 and thus, the applicant seems to be under the bonafide impression that all actions as expected have been taken by the respondents. That his junior or

colleague Shri M.T. Chandran whose regularization took place in 1975 would not have been known to the applicant. It must have been very much latter that the applicant would have come to know of the fact that those whose temporary status was posterior to that of the applicant were regularized much earlier than the applicant. For such orders, even had the applicant been actually working, would not be to his knowledge. Thus, as to regularization, the cause of action could be taken to have arisen, not only at the time when regularization ought to have been made as contended by the respondents, but also from the date when discrimination is known to the applicant. From the latter point of view, there is no limitation.

8. Next on merit. The High Court's order is clear. It reads as under:-

> ".. 3. In the circumstances as there has not been a legal termination of the petitioner's services as casual labourer who has attained temporary status, his ouster from service has to be considered to be non est in law. It is declared that the termination of the petitioner's service as a casual labourer who has attained temporary status was illegal. He will be entitled to all consequential benefits based on such declaration.
>
> 4. There is a contention raised on behalf of the petitioner that the termination of the services are illegal as it is violative of Section 25-F of the Industrial Disputes Act. I need not examine that question here in view of the fact that the termination of service was illegal. As the petitioner is now out of service the respondents will see to it that he is given all consequential benefits of this judgement as expeditiously as possible, in any view of the matter, within a period of three months from today."

The term "consequential benefits" to the knowledge of the respondents also include regularization at par with the juniors or those whose date of

temporary status is posterior to that of the applicant. Apparently, when the order of the High Court was implemented, the respondents, who had consciously passed order for reinstatement, who had equally consciously passed formal orders for fixation of pay and allowances, clean forgot to consider this aspect of grant of regularization. They themselves ought to have considered without any prompting from the applicant. For, they are to comply with the order of the High Court. Again, it is not expected of an illiterate or a semi literate and a low paid employee to keep track of various consequential benefits. It was fairly expected of the Railways to afford all the consequential benefits of their own. The responsibility of the employer in discharging its functions gets more rigourous when the beneficiary is from the lower strata. In this regard, it is appropriate the observations of the Apex Court in the case of ***S.K. Mastan Bee v. G.M., South Central Rly.,(2003) 1 SCC 184*** , wherein the Apex Court has stated as under:-

> ***"6.*** *We notice that the appellant's husband was working as a Gangman who died while in service. It is on record that the appellant is an illiterate who at that time did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husbands employer viz. the Railways, in this case to have computed the family pension payable to the appellant and offered the same to her without her having to make a claim or without driving her to a litigation."*

Thus, the respondents try to take advantage of the so called limitation aspect, when they had failed in their responsibility.

9. As to the dismissal of OA No. 363/2004, which the counsel for the

respondents rely upon, the same is distinguishable from the present case. There, the applicant therein was aware of his junior having been regularized even as early as in 1998 whereby he had preferred a representation and it was only in 2004 that he had agitated against it. (Of course, respondents denied the receipt of the copy of representation). Again, in that case the claim of the applicant was one of rescheduling of seniority, which if allowed, would have resulted in unsettling the settled aspect of seniority and the question of non joinder of the necessary parties had also been considered. Compared to the said decision, in respect of the case in hand, all that the applicant seeks is regularization from 1975 without any benefit for seniority, but only for the purpose of working out qualifying services. Thus, there is no question of unsettling the settled affair, nor is there any question of non-joinder of any necessary private parties. Thus, the decision relied upon by the counsel for the respondents is not applicable to the facts of this case.

10. Though the respondents have contended that in so far as regularization is concerned, it has nothing to do with the date of temporary status and such regularization depends upon the total number of days of casual service, on the basis of which seniority list is drawn, it is not their case that those whose services were regularized in 1975 (M.T. Chandran for that matter) had larger number of days of casual labour service. No statistics have been reflected in the pleadings in this regard. What transpires from the pleadings is that while the applicant's temporary status is from September, 1971, the said M.T. Chandran got his temporary status from May 1971. But this cannot mean that

Chandran had longer casual labour service. It is to be remembered that the applicant's casual labour service commenced as early as in 1967. Perusal of order dated 10-09-1974 (Annexure A-5) coupled with contention at ground 5 (b) and (d) indicates that persons who were in continuous service from 1972 were all regularized in 1980, much earlier than the applicant. This has not been denied by the respondents. From the available pleadings, concretely it could be held that regularisation of the applicant could have been along with those whose date of continuous service was 1972. Hence, though not from 1975 as claimed by the applicant, at least from 1980 the applicant ought to have been considered for regularization. The applicant cannot get a better benefit as he could not substantiate his claim for being made regular from 1975. He has to pocket this loss for his own fault in not providing adequate information in this regard. As such, the applicant's qualifying service would work out as under:-

(a) Temporary status: From 1971 to 1980 = 10 years. Qual. Service: 5 years.
(b) Regular service from 1980 to 2005: 25 years.
Total: 30 years.

Affording 2 more years of qualifying services would not in any way affect any one's seniority etc..

11. Thus, the **OA is allowed** to the extent that instead of 28 years, the respondents shall reckon the qualifying service of the applicant as 30 years and work out the terminal benefits as well as monthly pension and afford the same to the applicant. This drill has to be performed within a period of six months

from the date of communication of this order. No costs.

(Dated, the 13th April, 2007)

Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.