

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.596/2006

Thursday this the 25th day of October, 2007

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.Gopinathan Nair, aged 62 years
S/o K.Balakrishna Pillai,
retired Technician Grade II
Carriage & Wagon, Southern Railway,
Trivandrum Division,
residing at Chandrikavilasom,
Vivekananda Nagar,
Pannanamcode, Trivandrum.

....Applicant

(By Advocate Mr.T.C.Govindaswamy)

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1 Union of India, represented by the
General Manager,
Southern Railway, Headquarters Office,
Park Town PO, Chennai.3.

2 Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum.14.

....Respondents

(By Advocate Mrs.Sumati Dandapani (Senior Counsel) with Ms.P.k.Nandini)

The application having been finally heard on 10.10.2007, the Tribunal on 25.10.2007 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant in this O.A is a retired employee of the Trivandrum Division of Southern Railway. At the time of his superannuation on 30.9.2004 he working as a Technician Grade-II (Carriage & Wagon Wing) at Trivandrum,. He was initially engaged as a

Causal Labourer Mate from 28.2.72 under the Executive Engineer (Construction), Southern Railway, Trivandrum and from 1.7.1978 to 6.4.79 under the Head Clerk, Stores of the Trivandrum Central Cape Project, Neyyattinkara at Trivandrum. Thereafter, he was transferred to the control of Train Head Examiner, Nagercoil Division. While working there, his services were regularized as Substitute Mechanical Khalasi with effect from 7.8.79. The applicant has produced Annexure.A1 copy of the causal labour service card covering the entire period from 28.2.72 to 6.4.79. His claim is that in terms of Para 2501 of IREM, 1968 and also on the basis of the judgment of the Apex Court in *Robert D'Souza case (AIR 1982 SC 854)* he deemed to have attained temporary status on the expiry of one year from his initial engagement as a causal labourer ie., w.e.f 28.2.73 and therefore, he is entitled to count 50% of the period from that date till his date of regularization in service with effect from 7.8.79 towards determining his total period of qualifying service for the purpose of pensionary benefits. However, when the applicant superannuated from service, the respondents reckoned only that part of his service from 7.8.79 to 30.4.2004 ignoring the entire service prior to 7.8.79. He made Annexures A2 and A3 representations dated 2.1.05 and 6.7.05 respectively before filing the present O.A, but without any success.

2. On the other hand the contention of the respondents is that the applicant was engaged only as a Project Casual Labour till 6.4.79 and only w.e.f 7.4.79 he was appointed as a Subtitle Mechanical Kahalsi and under Rule 32 of the Railway Services (Pension) Rules, 1973, the services in full on expiry of four months of the date of substitute service were counted as qualifying service for pensionary benefits. They have also



regularization and the regular appointment was made much earlier on 1.1.81 from which date only the casual labourers on project were given temporary status etc. After having considered arguments on both sides, the coordinate Bench held that the period of engagement as casual labour by the applicant therein was to be treated as open line as qualifying service for terminal benefits as the casual labour service card was issued by the IOW/Construction, Southern Railway, Nagercoil and he was regularly appointed as a Gate Keeper on 27.9.80 and the applicant's case is covered by the Apex Court judgment in *Robert D'Souza case (supra)* that all construction workers do not come under the project labour and therefore his case is to be treated as covered under Rule 2505 of the IREM.

4 I have heard Shri T.C. Govindaswamy for the applicant and Mrs. Sumati Dandapani Senior Counsel for the respondents. The applicant has not produced any order/documentary evidence to show that he was granted temporary status after completion of six months casual labour service after 28.2.72. His contention is that he should have been deemed to have attained the status of a temporary employee with effect from 27.8.72 having completed six months of continuous service as on that date by operation of law settled by the Hon'ble Supreme Court in *Robert D'Zouza case (supra)*. On the other hand, the respondents have produced Annexure.R.2 photocopy of the service book of the applicant which shows that he was actually granted temporary status with effect from 7.8.79 on completion of four months from the date of his absorption as a Substitute Mechanical Khalasi and prior to the said date he was a Project Casual Labour. In terms of Rule 32 of the Railway Service (Pension) Rules, 1993 the service in full on expiry of four months from the date of substitute



regularization and the regular appointment was made much earlier on 1.1.81 from which date only the casual labourers on project were given temporary status etc. After having considered arguments on both sides, the coordinate Bench held that the period of engagement as casual labour by the applicant therein was to be treated as open line as qualifying service for terminal benefits as the casual labour service card was issued by the IOW/Construction, Southern Railway, Nagercoil and he was regularly appointed as a Gate Keeper on 27.9.80 and the applicant's case is covered by the Apex Court judgment in *Robert D'Souza case (supra)* that all construction workers do not come under the project labour and therefore his case is to be treated as covered under Rule 2505 of the IREM.

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service has been counted as qualifying service for pensionary benefits. In my considered opinion grant of temporary status cannot be treated as automatic on completion of six months. The applicant, therefore, is to first of all establish that he was entitled to have the temporary status with effect from 28.8.72 i.e., six months after the engagement as casual labour on 28.2.72 in terms of Para 2501 of IREM, 1968 and not from 7.8.1979, i.e., 4 months after the completion of his engagement as a Substitute Mechanical Khalasi under Rule 32 of the Railway Services (Pension) Rules, 1973. The Coordinate Bench of this Tribunal in OA 238/07 (supra) cannot be treated as a covered case. However, one thing is very clear. The respondents themselves have granted temporary status to the applicant prior to 1.1.1981 i.e., the date on which the Project Casual Labourers became entitled for grant of temporary status in terms of Inder Pal Yadav's case (supra). Unless the controversy regarding the date from which the applicant was entitled for grant of temporary status is settled, I am not inclined to straight away declare that the applicant is entitled to reckon 50% of his service rendered as Casual Labourer between 28.8.72 to 6.4.79 for the purpose of pension and other retirement benefits. In all fairness, the respondents should have informed the applicant well in advance of his date of superannuation about the details of his qualifying service so that he could take up any discrepancy in the matter at the appropriate time. The applicant is, therefore, granted liberty to make a detailed representation with all available documents with him to grant him temporary status with effect from 28.2.72 after completion of six months of continuous service as on that date. Since the applicant has already retired from service, if he makes such a representation, the respondents shall



consider the same within two months from the date of receipt of the same and pass a detailed and reasoned order thereon. In case the respondents find that the applicant was entitled to get temporary status for the casual service rendered by him prior to his absorption as Substitute Mechanical Khalasi with temporary status with effect from 7.8.79, they shall grant him all the consequential pensionary benefits accordingly, at the earliest. With the aforesaid directions, this O.A is disposed of. There shall be no order as to costs.

Dated this the 25th day of October, 2007



GEORGE PARACKEN
JUDICIAL MEMBER

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