

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.597/1999

Dated this the 30th day of March, 2000

CORAM:

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

R.Haridasan Pillai,
(Retired Jamadar Peon/Optg.
Southern Railway, Trivandrum)
son of N.Ramankutty Nair,
resident of Babu Nivas,
Manayilkulangara Post,
Kollam. ... Applicant

(By Advocate Shri M.P.Varkey)

vs.

1. The Divisional Railway Manager,
Southern Railway,
Trivandrum-695014.
2. The Senior Divisional Personnel
Officer, Southern Railway,
Trivandrum-695014.
3. The Senior Divisional Accounts Officer,
Southern Railway,
Trivandrum -695014.
4. Union of India represented by
General Manager, Southern
Railway, Chennai-600003. .. Respondents

(By Advocate Mr. K.Karthikeya Panicker)

The Application having been heard on 9.3.2000 the Tribunal
on 30.3.2000 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant who retired from service of the
Southern Railways on 31.10.97 as a Jamadar Peon has filed
this application challenging the order dated 31.12.98 of the
first respondent rejecting his claim made in his
representation dated 1.6.97 for taking into account half the

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period from 21.5.1966 to 20.6.1980 for the purpose of fixing his retiral benefits (Annexure A7) as also the Pension Payment Advice dated 1.11.97(Annexure A3), Calculation Sheet (Annexure A4) and the order regarding revised pension (Annexure A6). The applicant claims that he was initially engaged as casual labour khalasi(open line) under the Inspector of Works, Quilon from 22.11.1965 to 20.10.1972, that as his service upto 20.7.1967 was continuous, he was entitled to be treated as temporary with effect from 21.4.79, that from 27.11.72 to 22.10.78 he was working under the control of the Divisional Store Keeper, TVC-ERS Conversion, Quilon as transferred to that establishment, that thereafter having returned to the office of Inspector of Works, Quilon, he was empanelled for absorption as Gangman against the vacancy as on 31.12.78, that as he was found medically unfit to work as a Gangman he was granted temporary status with effect from 21.4.79 and absorbed as a Peon with effect from 21.6.1980; that he was promoted as a Jamedar Peon in the scale Rs.775-1025 from 7.6.1988 in which post he continued till superannuation on 31.10.97; that the failure on the part of the respondents to count half the service from 21.5.1966 on which date having worked continuously for six months he became eligible to be treated as temporary till the date of his absorption on the regular post of Peon on 21.6.1980, is arbitrary, irrational, opposed to the rules and wholly unjustified, that he had taken steps

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for getting the period included in computing the qualifying service for pension even prior to his retirement, that even after a representation was made pursuant to the directions of the Tribunal in the order in O.A.1494/98, the respondents have taken an unreasonable stand and that he is entitled to have the impugned order set aside and for a declaration that he is entitled to have half the period from 21.5.1966 to 20.6.1980 and full period from 21.6.1980 to 31.10.1997 reckoned as qualifying service for pension; for direction to respondents to compute his retiral benefits including leave salary etc. and to make available to him the consequential arrears within a reasonable time.

2. The respondents resist the claim of the applicant. On maintainability the respondents have contended that as the claim relates to grant of temporary status with effect from 21.5.1966, the application is barred by limitation. On merits regarding the claim of the applicant for counting the service from 21.5.1966, the respondents have contended as follows:

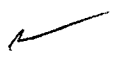
"In response to the averments contained in paragraph 4(a) it is submitted that the casual labour service card produced by the applicant cannot be accepted as the possibility of manipulation cannot be ruled out. One supervisory official cannot issue cards for a

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period of service alleged to have been rendered under another supervisory official. The entries for the period from 27.11.1972 to 22.10.1978 in Annexure-A1 are unjustifiable for the grant of temporary status since the said service is seen rendered in Projects which do not qualify for temporary status.

3. The respondents further contend that as the applicant was taken over by the open line when he was working in project he was granted temporary status with effect from 21.4.1979 and was absorbed on the post of Peon with effect from 21.8.1980 and later promoted as Jamedar Peon with effect from 7.6.1988. The applicant is not entitled to claim the period prior to 21.4.79 for the purpose of retiral benefits, contend the respondents.

4. The applicant has filed a rejoinder. In the rejoinder the applicant has stated that as the claim of counting half the period of service from 21.5.66 to 20.6.80 has arisen only at the time of the retirement of the applicant in the year 1997, the contention of the respondents that the application is barred by limitation has no force. On the other contentions raised in the reply statement, the applicant refutes them and reiterates the claim put forth in the application.



5. I have with meticulous care gone through the pleadings and all the records placed available and have heard Mr.M.P.Varkey, learned counsel of the applicant and Sri K.Karthikeya Panicker, learned counsel appearing for the respondents.

6. The plea of limitation raised by the respondents does not appear to have any force. Apparently it may appear that the applicant is claiming a benefit with effect from 21.5.66. As counting half the period of service after attainment of temporary status for computing the qualifying service for pension would arise only on the superannuation of the applicant which took place on 31.10.97, there is no force in the contention of the respondents that the claim in the O.A. is barred by limitation. If any monetary claim is made on the plea that the applicant had become eligible to such claim on attaining temporary status in 1966 it could be validly contended that the applicant having not agitated the issue for all these years, the claim is barred, but counting qualifying service for retiral benefits having arisen only on the retirement, the claim is within time.

7. To sustain the claim of the applicant that he commenced service in the open line as a casual labour khalasi under the Inspector of Works, Quilon from 22.11.65,

that he continued there upto 20.10.1972, was transferred to work under the Divisional Store Keeper, TVC-ERS Conversion, Quilon from 27.11.72 to 22.10.78, that he again came under the control of the Inspector of Works, Quilon, the applicant has produced the casual labour card(Annexure A1). The respondents have not categorically denied the allegation of the applicant that he had commenced his service in the open line as is seen from Annexure A1 casual labour card. What is stated in the reply statement in paragraph 5 is that the casual labour card produced by the applicant cannot be accepted as the possibility of manipulation cannot be ruled out. It is for the respondents to verify the genuineness of the entries made in the casual labour card with the LTI Register and other relevant materials which must be available with them. The contention of the respondents that the entries for the period from 27.11.72 to 22.10.78 in Annexure A1 are unjustifiable for the grant of temporary status as the said service was rendered in project which do not qualify for temporary status also, is not tenable in view of the provisions contained in the Indian Railway Establishment Manual which will be referred to later. The respondents have in the reply statement stated that as the Trivandrum Division was formed only in the year 1979, the applicant should have impleaded the authorities pertaining to the Division for the period prior to that. This argument of the respondents also has no force because on formation of

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the Trivandrum Division was by carving out areas from the former Division, the records relating to the area should have been taken over by the Trivandrum authorities.

8. According to the provisions contained in paragraph 2501 of the Indian Railway Establishment Manual(IREM) ,1968 Edition, on continuous service of 6 months, a casual labour would be entitled to be treated as temporary. Note 2 under paragraph 2501 reads as follows:-

"Once any individual acquires temporary status, after fulfilling the conditions indicated in (i) or (iii)above, he retains that status so long as he is in continuous employment on the railways. In other words, even if he is transferred by the administration to work of a different nature he does not lose his temporary status."

9. From the casual labour card(Annexure A1), it is seen that the service of the applicant from 22.11.65 is continuous and therefore on completion of a period of 6 months continuous service as casual labour khalasi in view of the provisions contained in paragraph 2501 of the IREM, the applicant has to be deemed to have become eligible to be treated as temporary, although the respondents granted him temporary status only later. Though the applicant was

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transferred to work under the Divisional Store Keeper TVS-ERS Conversion, Quilon during 27.11.72 to 22.10.78 in view of the Note 2 below paragraph 2501 of the IREM, the applicant has not lost the benefit of temporary status acquired by him with effect from 21.5.1966. Though the respondents have contended that the possibility of manipulation with the Annexure A1 could not be ruled out, it has not been shown that there has been any manipulation in the service card produced by the applicant. Further as the respondents were capable of verifying whether the entries made in the casual labour card(Annexure A1) are genuine or not by comparing the left thumb impression as that contained in LTI register, the evasive contention of the respondents that the manipulation could be ruled out, cannot be held out against the applicant's claim.

10. In the light of what is stated above, I am of the considered view that the applicant is entitled to have half the period from 21.5.66 to 20.6.1980 and full period from 21.6.1980 to 31.10.1997 counted as qualifying service for pension. The respondents are directed to recompute the retiral benefits including pension, leave salary, gratuity etc. of the applicant and to make available to him the monetary benefits flowing therefrom within a period of three months from the date of receipt of a copy of this order. There is no order as to costs.



(A.V. HARIDASAN)
VICE CHAIRMAN

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List of Annexures referred to in the Order:

1. Annexure A1 True copies of Casual Labour Service Card issued by Inspector of Works, Southern Railway, Quilon.
2. Annexure A3 True copy of Pension Payment Advice No.P.500.TVC/P/0604203938 dated 1.11.97 issued by the 3rd respondent.
3. Annexure A4 True copy of calculation sheet No.Nil dated 1.11.97 issued by the 2nd respondent.
4. Annexure A6 True copy of Revised Pension Payment Advice No.P.500/TVC/P/0604208938 dated 12.6.98 issued by the 3rd respondent.
5. Annexure A7 True copy of letter No.V/P.626/XII/245/97 dated 31.12.98 issued by the 1st respondent.