

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAULAM BENCH**

O.A.NO. 606/2005

WEDNESDAY THIS THE 28th DAY OF FEBRUARY, 2007

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

K. Rajan S/o M.Kunjukrishnan
Retd. Junior Engineer-II/Works,
Southern Railway, Office of the
Section Engineer/Works, Nagercoil Junction
Residing at Kasturi Bhavan, Near Railway
Over Bridge, Prabhachambalam, Nemom PO
Trivandrum.

..Applicant

By M /s T.C. Govindaswamy, D. Heera & Sumy P. Baby

Vs.

1 Union of India represented by
General Manager, Southern Railway
Head Quarters Office, Park Town P.O.
Chennai-3

2 The Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum-15

..Respondents

By Advocate Mr. Sunil Jose.

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is a retired Junior Engineer Grade-II (Works) of Southern Railway, Trivandrum Division. He retired from service w.e.f. 1.4.2005. He is aggrieved by the refusal on the part of the respondents to reckon a substantial part of his service for the

purpose of pension and other retiral benefits.

2 According to the facts submitted by him, the applicant initially joined the service of the respondents on 5.1.1970 as Casual Labour Khalasi. From 14.3.1970 he was engaged as a Technical Mate and the said engagement continued upto 4.6.1970 on which date his service was terminated. Again he was engaged as Special Mate on 6.7.1970 under the Inspector of Works (Construction), Olavakkot, and he continued upto 15.9.1972. He was re-engaged w.e.f. 14.10.72 and again as a Special Store Mate w.e.f. 27.11.1972 in which he continued without break upto 5.5.1977. He was then transferred to the office of the Depot Store Keeper/Construction/Trivandrum and thereafter regularised as a Gangman w.e.f. 16.4.1979 to 31.3.2005 has been reckoned for the purpose of pensionary purpose but the entire service rendered prior to 16.4.1979 and his service from that date was omitted. In terms of Para 2501 of the Indian Railway Establishment Manual read with the decision of the Hon'ble Supreme Court in Robert D'Souza's case (1982 (1) SCC 645), the applicant avers that he was entitled to be treated as temporary by operation of law w.e.f. 6.1.1971 and in terms of various Railway Board's instructions on the subject he was entitled to reckon 50% of the service rendered between 6.1.1971 15.4.1979 for the purpose of pension and other retirement benefits.

The following reliefs are sought:

- (i) Declare that the Applicant is entitled to have 50% of the service rendered by the Applicant between 6.1.1971 and 15.4.1979 reckoned as qualifying service for the purpose of his pension and other retirement benefits and direct the

respondents accordingly.

(ii) Direct the respondents recalculate revise and grant the applicant's pension and other retirement benefits including arrears thereof in terms of declaration in para 8(a) above within a time limit as may be found just and proper by this Hon'ble Tribunal.

(iii) Award costs of and incidental to this application.

(iv) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

3. Per contra, the respondents have averred that the reliance placed on Para 2501 of the IREM and the decision in Robert D'Souza's case is wholly ill-founded. The assumption of the applicant that he is entitled to be treated as temporary w.e.f. 6.1.1971 is not maintainable. He has not quoted any rule provision as per which he is entitled for temporary status w.e.f. that date. As per the entries in the Service Records of the applicant he was appointed as a temporary substitute Gangman in the scale of Rs. 200-250 and posted as such w.e.f. 16.4.1979. He has accepted the position through out the long span of 25 years and the prayers now for entitlement of temporary status is badly time barred. It is also submitted that the alleged engagement shown in the record produced as Annexure A-1 of the Casual Labour service, the alleged service of the applicant in all the spells mentioned by him are in Projects. During the period mentioned by the applicant, the Trivandrum - Ernakulam Conversion work was being done by the Construction wing of Railways. The terms 'Project' and 'Project Casual Labour' have been defined in Para 2501 in Chapter XXV of

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the IREM. The General Manager Southern Railway has issued circular dated 4.6.1965 stating that all the works carried out by 'Construction Wing' shall be treated as 'Project' work for the purpose of engagement and payment of wages. Under the above circumstances, the Casual Labour under the Construction Wing are treated as Project Casual Labours. The Project Casual Labours are not entitled to be granted temporary status prior to 1.1.1981. The finding in Robert D'Sauza's case is on a different footing as the said D' Souza had served as Peon in the office of the Executive Engineer, Ernakulam in the Construction Wing of the Railway in 1974 and was subjected to number of transfers prior to that from 1954 onwards and his long list of transfers and the fact that persons who were working with him had been absorbed as regular employees had weighed with the Apex Court in granting him relief. The Apex Court has not given any general ruling that all construction casual labours cannot be treated as Project Casual Labours. The alleged Annexure A-2 representation it is stated, has not been received by the respondents.

4 In the rejoinder, the applicant has rebutted the averments of the respondents and stated that the Service Register has been opened only after his regular appointment and only the Service Card is the proof of casual service. It is also stated that like Robert D'Sauza, the applicant was also transferred from place to place and according to the facts explained by him in the Application it is not correct to say that Robert D' Souza's case is not applicable to him.

5 We have heard Shri T. C. Govindaswamy, the learned counsel for the applicant and Ms Viji on behalf of respondents. The learned counsel for the applicants submitted that the matter is already covered by the various judgments of this Tribunal and also by the pronouncement of the Apex Court in Robert D'Souza Vs. Executive Engineer, Southern Railway (1982 (1)SCC 645) and the judgment of the CAT in Mohinder Singh Vs. Union of India and the judgments of this Tribunal rendered in O.A. 269/04 and 364/04. The earlier decision of this Bench in O.A. 1534/97 on the same subject has also been confirmed by the Division Bench of the High Court of Kerala in OP 6066 of 1999. It was also submitted that the Railways have implemented the orders mentioned in all the above cases. The learned counsel for the respondents has also agreed with the submission of the learned counsel for the applicants.

6 The question of counting of Casual Labour service rendered by Project Casual Labour has come up before this Tribunal on a number of prior occasions and some of the cases were cited above. These cases have been allowed on the dictum of the Hon'ble Apex Court laid down in the cases of Robert D'Sauza Vs. Executive Engineer, Southern Railway (1982 1 SCC 645) holding that "Construction Wing is a unit of the Indian Railways. It is a permanent wing and cannot be equated with Project". The case of the applicant in the case on hand is also that he entered service as a Casual Labour Khalasi and rendered continuous service in the Construction organisation and was transferred from place to place in the Palghat Division as

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substantiated by Annexure A-1 document. The Railways cannot go on taking this plea that they are Project Casual Labour when the law has been already declared. We need not go into the same arguments now. Therefore the applicant is entitled to the 50% of the entire service as Casual Labour service treated as qualifying service for the purpose of terminal benefits in accordance with the extant rules and the Railway Board's notifications on the subject. This position is also confirmed by the Hon'ble High Court of Kerala in the case of similarly placed persons in OP Nos. 20772 of 1999 and 6066 of 1999. Therefore, following the above judgments, the OA is allowed.

7 The respondents are directed to work out the revised pensionary benefits after adding the 50% of the Casual Labours service as qualifying service with the regular service and the difference in the terminal benefits including the arrears of pension shall be paid to the applicant. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs.

Dated 28.2.2007


SATHI NAIR
VICE CHAIRMAN