CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.76/04

FRIDAY THIS THE 8TH DAY OF JULY, 2005

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

V.J.Joseph,Retired Goods Shed Porter,
Cochin Harbour Terminus,
residing at Valiyaveetil House,
Kumbalangi, Kochi.682007. ...Applicant

(By Advocate Mr. K.A.Abraham)

V.

1. Union of India represented by General Manager,
   Southern Railway, Madras.

2. The Divisional Railway Manager,
   Southern Railway, Thiruvananthapuram.

3. Senior Divisional Personnel Officer,
   Southern Railway, Thiruvananthapuram. ....Respsondents

(By Advocate Mr. P.Haridas)

The application having been heard on 29.6.05, the Tribunal on 8.7.2005, delivered the following:

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this O.A. is aggrieved by non-reckoning of his casual labour service as qualifying service for pensionary benefits. According to him he was engaged as a casual labour on 1.4.58, was absorbed in regular service on 1.5.75 and retired from service on 30.9.95. Since his casual service was not reckoned he filed OA 368/97, 1296/98 and 197/01 before this Tribunal and as per the directions of this Tribunal in its order in OA 197/01 (A1) 50 percent of the period from 11.7.63 to 10.2.69 was computed as qualifying service for pensionary benefits vide A2 order. The applicant now challenges A2 order on the ground that it has not taken the service prior to11.7.63 from 15.12.1958 for reckoning as qualifying service. It is submitted that he is also entitled for payment of gratuity for the period as per A4 orders. According to the applicant he had been continuously working from 15.8.58 till 28.10.67 and hence had acquired temporary status on completion of 120 days continuous employment as per rule 2001 and 2005 of the Indian Railway Establishment Manual Vol.II. As such he is entitled to be treated as a temporary Railway servant on completion of 120 days as on 15.12.58. The applicant will therefore have to get two years and three months additionally as qualifying service. The applicant is also entitled for payment of gratuity according to the orders issued dated 30.6.2000 and the respondents have denied payment of the same. It is also submitted that this Tribunal had considered earlier cases and there are many precedents wherein service rendered by casual labourers has been taken as qualifying service for pension as well as gratuity and has produced a copy of the order in OA

689/02 dated 17.7.03. The applicant therefore submits that he is eligible for the following reliefs:

(a) to quash Annexure.A.2 order to the extent it is rejected that the period prior to 11.7.1963 cannot be reckoned as qualifying service (as amended).

(b) to direct respondents to revise the retiral benefits of the applicant taking into account 50% of the service rendered by him as casual labour after he had acquired temporary status from 15.12.1958 to 10.7.1963 also for the purpose of calculation of qualifying service and work out the pensionary benefits.

© to direct the respondents to pay the gratuity of the applicant for the period of service rendered by the applicant as casual labour from 1.4.1958 till his absorption in regular service on 1.5.1975 with interest accrued thereon.

(d) to issue such other order or direction as this Hon'ble Tribunal may deem fit to grant in the circumstances of the case.

2. The respondents have pointed out in the reply statement that the applicant has not challenged A 2 letter and without challenging the revised Pension Payment Order the action of the applicant in praying for revision of pensionary benefits is bad in law and not maintainable According to them the applicant's prayer seems to be on a trial basis and his reliefs for pensionary benefits and gratuity are not consequential to each other. It is further submitted that the applicant has not produced any corroborating evidence in the form of documents to prove his continuous employment with effect from 1.4.58 nor has he submitted any document to prove that he had submitted option as required for payment of gratuity under the Payment of Gratuity Act 1972.Therefore the respondents are of the view

that the prayer of the applicant is very vague and not supported by any documentary evidence and hence is liable to be dismissed.

3. I have heard the learned counsel on both sides. According to the learned counsel for the applicant, the respondents have rejected the casual labour service of the applicant by stating that in the absence of any other proof in the personal file or from the employee to show that he was granted temporary status prior to 11.7.63 the service rendered prior to that period cannot be reckoned as qualifying service. But it is revealed from the impugned order that the applicant was in continuous service from 15.8.58 till he was granted temporary status on 11.7.63.Therefore the rejection of the claim only on the basis that there was no documents to show that he was granted temporary status is unsustainable. It was argued that the claim of the applicant is that since he had been continuously working from 15.8.58 till 28.10.67 as stated in the certificate by the CGC/CHTS, he acquired temporary status on completion of 120 days in continuous employment. As such he was entitled to be treated as a temporary Railway Servant from 15.12.58 but the benefit was given to him only from11.7.63. The counsel relied on a judgment of the Apex Court in **1998(5) SCC 111, Union of India an others V. K.U.Radhakrishna Panicker and others** to buttress his case that the benefit of counting of service prior to **regular** employment was available to Casual Labours vide Railway Board Circular dated 14.10.80 partly treating temporary status service on open line casual labour on their regularization as qualifying service for pension.

4. I have gone through the material on record and the judgment referred to by the learned counsel of the applicant. The first ground taken by the respondents that the applicant has not challenged Annexures,.A2 and A3 orders is not correct as the main relief sought by the applicant is to

quash A2 order and it is not correct to contend that payment of gratuity and pensionary benefits are not consequential but both form part of pensionary benefits and hence are inter related even according to Rule position quoted by the respondents themselves. Hence I reject this argument.

5. The main ground taken by the respondents is that the applicant has not produced any documentary evidence or corroborating evidence to prove that he was employed with effect from 1.4.58. A perusal of the A2 order would show that there is a basic fallacy in this argument. The respondents themselves had taken into account the endorsement in the personal file of the applicant only and the basis for the conclusions of the respondents is the certificates issued by the SM/ CHTS and the CGC/CHTS who were the controlling authorities when the applicant worked. The respondents have accepted the certificate issued by the SM/CHTS stating that the applicant was drawing a scale of pay from 11.7.63 and on that basis have come to the conclusion that he was granted temporary status from that date. In the same breath they have disowned the certificate issued by another officer the CGC/CHTS who has certified that the applicant worked as casual labour in broken spells between 1.4.58 and 17.7.58 and then continuously under his control from 15.8.58 till the date of issue of the certificate ie., 28.10.67. It is strange as to what compelled the respondents to accept one certificate and deny the other. In my view if the certificate given that he was drawing a pay scale from 11.7.63 can be accepted as proof of temporary status when there is no other corroborating evidence of any order issued for grant of temporary status; the certification of the controlling authority that the applicant has been continuously working under his control from15.8.58 till 28.10.67 can also be accepted. The contention of the applicant is that he acquired

temporary status on completion of 120 days of continuous service to be computed from 15.8.58 as per the certificate which would mean from 15.12.58. The rule position cannot be denied as it was granted under the scheme of the Ministry of Railways issued by the Railway Board by order dated 14.10.80. The relevant portion is extracted as under:

> "The concession of counting half of the above service as qualifying for pensionary benefits, as per the OM of 14.5.1968 would be made applicable to casual labour in the Railways who have attained temporary status. The weightage for the past service would be limited from 1.1.1961 in terms of conditions of the O.M. Ibid. Past cases of retirement before the date of this letter will not be reopened."

This position has also been confirmed by the judgment of this Tribunal and other coordinate benches and one such order in OA 689/02 produced by the applicant is the precedent in the matter. It has been held in the above order in the case of a similarly placed applicant that having completed 120 days of continuous casual service he became entitled to acquire temporary status on that date and that half of the service till the date of regular absorption could be taken as qualifying service for pension and also that he was eligible for payment of gratuity for the period of service. There is no reason why similar benefit should not be granted to the applicant in this OA in view of the clear rule position and precedent quoted above. The judgment in 1998(5)SCC 111 relied upon by the learned counsel of the applicant has been gone through but I find that it does not relate specifically to the issue on hand because the ratio of that judgment related to differential treatment to two sets of casual labour namely open and project casual labours in the Railways and it was upheld that such treatment is valid in law. However, some benefit can be derived from certain observations in the judgment relating to the treatment of temporary status service of open line casual labours. In Para 4 of the judgment they have dealt with Para 2501 of the Indian Railway Establishment Manual and

the definition of casual labourers therein which was divided into three categories namely (i) staff paid from contingencies, (ii) labour on projects and (iii) seasonal labour and only persons falling in category (i) but continue to do some work for more than six months were to be treated as temporary after the period of six months of continuous employment. Since this period which was further reduced to 120 days was not counted for pensionary benefits there was a demand for the same and the Railway Board by order dated 14.10.80 took a decision as a result of the representations from recognized Labour Unions, the relevant portion has been quoted above (supra). The main factor to be noticed relevant to the issue in this OA is that the weightage of this past service would be limited from 1.1.1961 in terms of the conditions laid down in OM of 14.5.68. It is clear therefore, that even though the qualifying service can be counted for pensionary benefits it would be applicable only from 1.1.61. The applicant in this O.A. according to the above provisions of the OM had completed 120 days on15.12.58 and attained temporary status on that date but the weightage for that service would have to be given only from 1.1.61 in terms of the OM mentioned above. Annexure.A2 order has already granted him the benefit from 11.7.63 and therefore the period that would be additionally admissible would be from 1.1.61 to 11.7.63.

6. As regards gratuity the respondents have themselves admitted that the gratuity is payable as per Para 2 of Annexure.A4 order, according to which the applicant has to submit an option. Para 2 of Annexure.A4 is produced as under:

> (i) payment of gratuity under the provisions of the Payment of Gratuity Act,1972 for the period of service upto the date preceding the date of absorption and for payment of gratuity and pension for the period of regular service under the provisions of the Railway Services (Pension) Rules, 1993' or

(ii) to payment of gratuity and pension counting half of the service rendered in temporary status and full service rendered on regular basis under the provisions of the Railway Services (Pension) Rules, 1993, besides gratuity under PG Act for the period preceding the attaining of temporary status.

7. The respondents contend that the applicant has not given any such option as provided in the Act. This contention is not at all acceptable as the applicant can claim gratuity only if his casual service is counted. It is only by A2 order that the respondents have now granted him the benefit of temporary status. He could not have anticipated such an order and given option in advance. Moreover, the scheme as envisaged in A4 has placed a moral responsibility on the Railways to examine all past cases on the basis of records available and it specifically states in Para 6 thereof that the Railway Administration shall extend all assistance to retired as well as serving railway servants to exercise option judiciously in order that the option exercised is advantageous to them. In the face of such a direction to the respondents to take pains for guiding and extending assistance to all the employees, they cannot deny the benefits to the employees on the ground that they have not approached the Administration to give option. It is not becoming of a model employer like the Railways to advance such arguments. Therefore, the claim of the applicant to gratuity will have to be determined in accordance with the instructions in A4 by the respondents and by obtaining an option from him as required.

8. In the light of the facts and circumstances as discussed above, I am of the view that the reliefs sought for by the applicant is to be granted. The respondents are hereby directed to treat the applicant as having acquired temporary status from 15.12.58 and allow 50 percent of the service rendered by him from 1.1.61 for the purpose of calculation of qualifying service and work out the pensionary benefits accordingly. They are also directed to consider payment of gratuity under the Payment of Gratuity Act

and rules issued vide Railway Board's Order dated 30.6.2000 for the period of service rendered by the applicant as casual labour and also to pay the amount of gratuity thus worked out along with interest for the period of delay as provided for in Paragraph 4 of the order referred to above at the same rate of interest as payable under the Board's order referred to above. The O.A. is allowed. No order as to costs.

Dated this the 8th day of July, 2005

SATHI NAIR
VICE CHAIRMAN

S.