CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.77/2007

Friday this the 14th day of September, 2007

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.Saraswathy, aged 61 years,
D/o Neelakantan, retired Sr.Gangwoman,
Southern Railway residing at Plavelivadakkethil
House, Ponakam, Mavelikkara PO. ....Applicant

(By Advocate Mr.P.C.Sebastian)

V.

1 The Senior Divisional Personnel Officer,
Southern Railway, Thiruvananthapruam.

2 The Union of India, represented by the
General Manager, Southern Railway, Chennai..... Respondents

(By Advocate Mr K.M.Anthru)

This application having been finally heard on 5.9.2007, the Tribunal on 14.9.2007 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant, a retired Sr.Gangwoman under the Trivandrum Division of the Southern Railway is aggrieved by the respondents' denial of pension to her, on her superannuation on the ground that she had not put in the minimum requisite qualifying period of service of10 years.

2 The facts in brief, according to the applicant, are that she entered service as an open line casual labour at Mavelikara with effect from 3.9.75 and worked upto 11.5.76 without any break. Again she was re-engaged as a woman Khalasi for periods from 21.5.76 to 27.11.76, 6.12.76 to 20.1.77, 27.1.77 to 19.12.77, 2.2.78 to 15.3.80 and 20.5.80 to 5.8.81. In

support of her claim, she has produced the Annexure A.1 casual labour card. After a period of more than 15 years, she was absorbed as Gangwoman with effect from 28.1.97 and retired from service on 31.1.2006. While granting the terminal benefits she was denied pension for the reason that she had not put in the minimum requisite qualifying service of ten years from the date of her absorption till retirement. She has claimed that she worked for 182 days continuously during the first spell of her engagement itself ie., from 3.9.1975 to 11.5.1976 thereby qualifying herself to be granted with temporary status for which the minimum continuous period of casual work required is only 120 days. She has, therefore, made Annexure.A2 representation dated 9.5.2006 stating that she was entitled to have 50% of the casual service rendered after completion of 120 days from the date of initial engagement as Casual Labourer, reckoned as qualifying service for pensionary benefits as per the extant rules and requested the respondents to issue appropriate orders for the revision of her retirement benefits. It was in response to the aforesaid A2 representation 9.5.2006 that the respondents have issued the Annexure.A3 letter dated 9.5.2006 denying pension to her. She contended that the casual labourers engaged in the open line for the day to day maintenance of the traffic were treated as temporary status casual labourers immediately on completion of 120 days of continuous work and were given all the benefits as applicable to a temporary employee as per the provisions contained in para (i) of Rule 2001 of the IREM and further as per Note 8 under the said Rule. The aforesaid provisions are reproduced below:

> 2001 (i) Definition of Casual Labour:- Casual labour refers to labour whose employment is intermittent,sporadic or extends over short periods or continued from one work to another. Labour of this kind is normally recruited from the

nearest available source. They are not ordinarily liable to transfer. The conditions applicable to permanent and temporary staff do not apply to casual labour.

Casual labour on Railways should ordinarily be employed only in the following types of cases:

(a) **Casual Labour (Open line)**- Casual Labour are primarily engaged to supplement the regular staff in work of seasonal or sporadic nature, which arises in the day today working of the railway system. This includes labour required for unloading and loading of materials, special repair and maintenance of tracks and other structures, supplying drinking water to passengers during summer months (recoupment of man days lost on account of absenteeism) patrolling of tracks etc. Casual labour so engaged in the operation and maintenance of railway system is referred to as open line casual labour, as distinct from Project Casual Labour described in para (b) infra.

(b) **Casual Labour (Project)**: Casual Labour are also engaged on Railways fore execution of railway projects, such as new lines, doubling, conversion, construction of buildings, track renewals,. Route Relay Interlocking Railway Electrification,setting up of new units etc. Casual labour so engaged are referred to as "Project Casual Labour."

Such of those casual labour engaged on open line (revenue)works, who continue to do the same work for which they were engaged or other work of the same type for more than 120 days without a break will be treated as temporary (ie., given "temporary status") on completion of 120 days of continuous employment.

Casual labour on projects who have put in 180 days of continuous employment on works of the same type are entitled to 1/30th of the minimum of the appropriate scale of pay plus Dearness Allowance.

Before giving regular scale of pay or 1/30th of the minimum of the scale plus Dearness Allowance on completion of 120 days or 180 days continuous employment as the case may be,a preliminary verification in regard to age and completion of requisite number of days of continuous service should be done by the Assistant Officer and the person should also be got medically examined and only if found fit he should be granted regular scales of pay.

(ii)Grant of temproary status to Project casual labour is regualted by instructions separately issued by the Railway Board. As far as possible, casual labourers are required for new projects must be taken from amongst those casual labourers, who have worked on the open

line/projects in the past in preference to outsiders.

(iii)Seasonal labour sanctioned for specific works of less than 120 days duration: If such labour is shifted from one work to another of the same type and the total continuous period of such work at any time is more than 120 days duration, they should be treated as temporary (ie., granted "temporary status") after the expiry of 120 days continuous employment."

Note (8): Once an individual acquires temporary status after fulfilling the conditions indicated in para(i) or (iii) above, he retains that status so long as he is continuous employment on the railway. In other works, even if he is transferred by the administration to work of a different nature, he does not lose the temporary status."

3 The applicant has also relied upon an order of this Tribunal in OA 473/99 dated 14.12.99 in the case of G.Vasu Pillai (Retd Sr.Gangman) V. Divisional Railway Manager and others. He was initially engaged as a casual labourer from 21.3.63 and continued as such till 20.11.72. Again, a casual labourer, he worked for the period from 27.11.72 to 31.5.74 and from 1.6.74 to 20.7.78. He was granted temporary status with effect from 21.3.75. Thereafter, he was appointed as a substitute with effect from 21.10.78 and later promoted as Sr.Gate Keeper. Finally, he retired as a Senior Gangman on 30.11.97. His contention was that he was entitled to count his service for pensionary benefits immediately after expiry of 6 months continuous casual service. On the other hand, the respondents contended that the service rendered by him as a casual labourer could not be considered because the rule stipulated that the single day's absence will make the applicant forfeited the past service. While allowing that OA this Tribunal held that the applicant therein had acquired temporary status from 21.9.63 ie., 6 months after his initial engagement and retained the same till 30.12.77 and as such he was entitled to get 50% of his service rendered as a casual labourer from 21.9.63 reckoned for determining the qualifying service for pensionary benefits.

4 The first submission of the respondents in this case is that the applicant was granted temporary status only with effect from 28.1.97 as per Office Order No.61/97/WP dated 13.7.97 and she had accepted the same without raising any objections. They have further stated that if the applicant had any grievance regarding granting of temporary status from the aforesaid date, she should have challenged the same at the relevant time instead of contending now that she should have been granted temporary status on completion of 120 days of continuous service and at this stage it is beyond the competence of anybody to ascertain whether she was eligible for temporary status and if so why it was not granted to her at that time. They have therefore, relied upon the judgment of the Hon'ble High Court of Kerala in W.P(C) No.1850/2005 filed by them challenging the orders of this Tribunal in OA 403/04 wherein it was observed as under:

> "7 When patently stale claims are brought before the Tribunal, they have to discourage them. Even good claims get obliterated by passage of time. In this view, normally entertainment of an application well after the retirement would have been impermissible. However, we hope, the Tribunal will bear in mind the inconvenience that is caused to the other side, when such claims are entertained and they are asked to explain the circumstances. The officers who had dealt with the files might have long retired, records will be difficult to be verified, and the principle of acquiescence may apply. Especially when there is a restrictive provision in the statute regarding limitation due deference thereto requires to be given."

5 The other submission of the respondents is that the periods of service shown in the Annexure A1 casual labour card cannot be treated as qualifying service as the period of service from 3.9.75 to 27.11.76 and 27.1.77 to 19.12.77 are not having the required service of 120 days continuously and the other spells of service were rendered in the projects and the project casual labourers were not entitled for temporary status prior to 1.1.1981. The service rendered by the applicant upto 5.8.81 were in

project and only from 30.8.96 the services were rendered in open line. According to them, the instructions in the Indian Railway Establishment Manual for the purpose of grant of temporary status cannot be invoked in the case of the applicant, as even in the case of casual labourers of the open line, temporary status were granted at the relevant period of time only on completion of 120 days of service without even a single day's break. The applicant's case is not so and even if her alleged service is proved to be in open line, she was not entitled for the grant of temporary status as she has not completed 120 days service continuously.

6 In the rejoinder, the applicant has submitted that she had attained temporary status after she had completed 120 days of continuous work as casual labour in open line and there was no question of issuing any separate order conferring temporary status on such employees. Consequently, the order dated 13.7.97 granting temporary status to her with effect from 28.1.97 was inconsequential. She has also reiterated that according to her casual labour card she has been continuously working during the period from 3.9.75 to 11.5.76 without any break and had put in 243 days of work at a single stretch. It was also evident from the casual labour card that upto 27.11.76 she was working under the Permanent Way Inspector ,Mavelikkara in the open line. Subsequent transfer to any project line will not forfeit the temporary status already acquired by her by the operation of law, as stated in Note (8) under para 2001 of IREM.

7 The respondents have filed an additional reply statement and submitted that the Annexure.A1 casual labour card does not prove continuous service during the period from 3.9.75 to11.5.76 without any break and the 243 days of alleged work is not at a single stretch as the

number of days for the period from 3.9.75 to 11.5.76 comes to 252 and not 243 as stated by the applicant. According to them, the applicant had worked only 243 days and there were break of 9 days on different occasions during the spell of service and there was no period of continuous engagement of 120 days during the period from 3.9.75 to11.5.76. As regards the service rendered during the next re-engagement period from 6.12.76, the respondents submitted that it was in project and the Annexure.A1 card for the relevant period indicates different versions ie., it shows services for the period from 21.12.76 to 20.1.77 whereas it also shows that she was settled on 20.12.76. The entries for the period from 21.12.76 to 20.1.77 are seen not entered in the correct fashion as the entries were to be made month wise, as have been done for the period from 3.9.75 to 20.12.76. Therefore, respondents' submission is that the question of granting temporary status should have been raised by the applicant before the appropriate authority at the appropriate time.

8 I have heard Shri PC Sebastian for the applicant and Shri K.M.Anthru for the respondents. The only dispute is regarding the counting of past service rendered by the applicant as a casual labourer from 3.9.75 as qualifying service for the purpose of determination of the applicant's pensionary benefits. The applicant's contention is that during her first spell of engagement as casual labourer w.e.f.3.9.75 to 11.5.76 itself she had put in 182 days of continuous service in the open line at Mavelikkara and attained temporary status by the operation of Rule 2001 of the IREM (supra). Thereafter, she worked continuously from 6.12.76 to 20.1.77, 27.1.77 to 19.12.77 and 2.2.78 to 5.8.81. On the other hand, the contention of the respondents is that during the spells of engagement from 3.9.75 to 27.11.76 and from 27.1.77 to 19.12.77, the applicant had never

put in the required minimum service of 120 days continuously without even a single day's break. Though the respondents have no documentary evidence to prove their contentions, they submitted that by applicant's own admission as evidenced from the Annexure.A1 Labour Service Card, she had worked only for 243 days out of the 252 days available between the period from 3.9.75 to 11.5.76 and, therefore, the service during the said period was not continuous. As regards the other spells of service were concerned, they were rendered in projects and project casual labourers were not entitled for temporary status prior to 1.1.81. The principle has already been laid down by the Apex Court in L.Robert D'Souza Vs. Executive Engineer, 1982 SCC (L&S) 124 as under:

> "It is thus abundantly clear that if a person belonging to the category of casual labour employed in construction work other than work-charged projects renders six months' continuous service without a break, by the operation of statutory rule the person would be treated as temporary railway servant after the expiry of six months of continuous employment. It is equally true of even seasonal labour. Once the person acquired the status of temporary railway servant by operation of law, the conditions of his service would be governed as set out in Chapter XXIII."

This Tribunal has already considered similar disputes recently in OA 221/06 decided on 13.6.2007 in the case of M.U Mathai and others V. Sr.DPO and others. The said OA was allowed declaring that the applicants therein were entitled to have their temporary status counted from the date of their completion of minimum period for the said purpose as casual labourers. Artificial breaks, if any, are to be ignored and the period of temporary service had to be worked out in accordance with rules and the same is to be added to the total qualifying service. Again in OA 537/06 decided on 9.7.2007 in the case of T.C.Janaki and another Vs. Sr.DPO and others, this Tribunal declared that the applicants therein were entitled to count their past services to the extent of 50% of their casual labour service after expiry of six months of their entry. There was no categorical denial

of the fact that the first engagement of the applicant from 3.9.75 to 26.11.76 as casual labourer was in open line. The main contention of the respondents is that the service rendered during this period is not continuous without even a single day's break. The respondents ought to have verified the casual labour card issued to her before she was absorbed in the regular establishment. It is late at this stage to say that the casual labour service rendered prior to her retrenchment cannot be treated as qualifying service for the purpose of counting 50% of the casual service for pensionary benefits. In the above circumstances, the applicant shall be treated as casual labourer who attained the temporary status by the operation of Rule 2001 of the IREM and Note 8 thereunder (supra). The respondents are, therefore, directed to consider 50% of the entire period of casual service rendered by the applicant after the expiry of 120 days from 3.9.75 as qualifying service and re-determine her pensionary benefits accordingly and issue necessary orders. This shall be done within two months from the date of receipt of this order. No order as to costs.

Dated this the 14th day of September, 2007

GEORGE PARACKEN
JUDICIAL MEMBER

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