

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A. NO.9/2010

Dated this the 28th day of March, 2012

C O R A M

HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

K.M.Ebrahim S/o K.Mohamed, (Retd. Telecom Maintainer Gr.I
O/o the Section Engineer/Exchange/Southern Railway,
Perambur), R/o Kadavath House, Parali, Palghat Distt.

..Applicant

(Mr.T.C.G.Swamy, Advocate)

Vs.

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

2 The Divisional Personnel Officer, Southern Railway,
Chennai Division, Chennai-3.

...Respondents

(By Advocate Mrs.K.Girija)

The application having been heard on 22.3.2012 and the Tribunal delivered the following:

ORDER

HON'BLE Mrs.K.NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a retired Telecom Maintainer Gr.I of Chennai Division of Southern Railway, is aggrieved by the erroneous computation of his qualifying service to grant pension and other pensionary benefits.

2 The applicant was initially appointed as Khalasi on 1.11.1966 under the Divisional Signal & Telecommunication Engineer (RM), Madras, Egmore. It is stated that he continued in service without break and promoted to various posts. Ultimately he was regularised as Khalasi from 10.5.1976. He produced Annxs.A1 and A2 to support his contentions. He

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superannuated on 31.5.2002. It is averred that the respondents had taken only a part of his service between 10.5.1976 to 31.5.2002 for computing pension and other terminal benefits whereas the period from 1.11.1966 to 10.5.1976 was not reckoned as qualifying service for the above purpose. On enquiry it was informed that the service rendered between 1.11.1966 to 10.5.1976 as casual labour service is treated as project service which would not be reckoned for the purpose of pension and terminal benefits. After retirement he shifted to his native place in Kerala. The contention of the applicant is that in terms of para 2501 of the Indian Railway Establishment Manual read with the decision of the Apex Court in Robert D'Souza's case [1982 SCC(L&S) 124, he must be deemed to have attained temporary status after completion of six months continuous service as casual labour i.e. from 1.5.1976, by operation of law. Since his service from 1.5.1967 onwards was also continuous and it was followed by regularisation with effect from 10.5.1976 he is entitled to reckon 50% of the service between 1.5.1967 and 10.5.1979 for the purpose of his pension and other retirement benefits. He has, therefore, made the Annexure A-4 representation dated 26.8.2008 to the 2nd respondent which did not elicit any response.

3 The respondents contested the OA by filing reply. In the reply statement it is submitted that the applicant was empanelled in Construction Unit and posted as substitute Khalasi in pay scale Rs.196-232 under Signal Inspector on 10.5.1976. Thereafter he was promoted and he retired as Telecommunication Mechanic Gr.I on 31.5.2002. It is further submitted that para 6 of the letter dated 4/6.5.1965, issued by the General Manager stipulates that in regard to works carried out by the Construction units, all works will be treated as project for the purpose of engagement and payment of wages of Casual Labour at daily rates. It is further submitted that the applicant was well aware that he was a Project Casual Labour and he kept quiet for all these years. More particularly he is agitating his claim 8 years after his superannuation. Therefore the respondents raised an objection

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that the OA is not maintainable on the ground of limitation as the applicant retired in the year 2002 and approached this Tribunal in the year 2010. They have cited Apex Court judgments on the subject. On merit they have submitted that the applicant was a Project Casual Labour and only the casual labourers engaged in open line were entitled for temporary status after completion of 180 days of uninterrupted service. They have also submitted that the Project casual labourers were not entitled for temporary status, irrespective of the period of service rendered by them. According to them, the applicant was rendering service as a project casual labour for the period upto 10.5.1976 in project as is evident from the Annexure A-1 casual service card produced by himself. They have cited the Apex Court judgment in Union of India Vs. K.G.Radhakrishna Panikar, 1988 SCC(L&S) 1281. They further submitted that during the pendency of a litigation before the Hon'ble Supreme Court Ministry of Railways came up with a scheme for grant of temporary status to the Project Casual Labour which was accepted with some modification by the Hon'ble Supreme Court. Accordingly a circular was issued by the Railways on 11.9.1986 drawing up a scheme for project casual labourers. Accordingly, those Project Casual Labour who have completed five years of service as on 1.1.1981 could be eligible for temporary status w.e.f. 1.1.1981. He has not produced any proof to support his claim. As regards the entries in Annx.A1, it is clarified that the said entries are on daily rate basis, whereas, in the open line such daily rated engagements were not vogue even at that time. Therefore he is not engaged in Open Line and the benefits available in open line cannot be extended to him. They further submitted that as per Rule 2001(1)(b), the casual labourer engaged in open line work will be given temporary status on completion of 120 days continuous employment whereas the Project casual labourers who have put in 180 days of continuous employment on works of the same type are entitled only for 1/30th of the minimum of the appropriate scale of pay plus dearness allowance and it does not stipulate the grant of temporary

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status on completion of 6 months. They have further submitted that the applicant's case is hit by inordinate delay and, therefore, barred by limitation as he has not made any claim for temporary status at that point of time when the judgment in Robert D' Souza's case (supra) was pronounced. They have also denied that the judgment in Robert D' Souza's case (supra) is applicable in the case of the applicant as there is no finding to the effect that on completion of six months continuous service as a Casual Labourer, one automatically acquires temporary status.

4 We have heard the learned counsel for the parties and perused the records and judgments relied by them.

5 Regarding the contention of limitation, the learned counsel for the applicant has submitted that wrong fixation of pay is a continuous cause of action and there would be no limitation in such fixation of pay. In support of his contention he has placed reliance on the decision of the Apex Court in *M.R.Gupta Vs. UOI*, (1995) 5 SSC 628. He further submitted that in the absence of anything showing mala fide or deliberate delay as a dilatory tactic, court should normally condone the delay. To support his contention, he has cited (1998) 7 SCC 123, *N.Balakrishnan Vs.M.Krishnamurthy*.

6 The learned counsel for the applicant drew our attention to the documents produced and argued that the O.A is covered by the common order issued by the coordinate Bench of this Tribunal in O.As.566/2004 and 594/2004 decided on 28.9.2006 and 12/2008 and 23/2008 decided on 29.8.2008 and OA 606/2005 decided on 28.2.2007 which are squarely covered in this case and implemented by the respondents.

7 I find that after an elaborate discussion in OA 606/2005, this Tribunal allowed the same. The relevant portion of the order is extracted below:

"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'Souza v. Executive Engineer, Southern Railway* [1982 1 SCC 645] holding that "Construction Wing is a unit of the Indian Railways. It is a permanent

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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 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 O.P.Nos.20772 of 1999 and 6066 of 1999. Therefore, following the above judgments, the O.A 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."

Accordingly, this Tribunal directed the respondents to treat 50% of past service as casual labour eligible to be reckoned for the purpose of terminal benefits.

8 The applicant has produced the order of this Tribunal vide Annx.A3 wherein the case of a similarly placed casual labour in Signal and Telecommunication Workshop Poddanur was considered and an identical relief as in OA 606/2005 supra granted. A perusal of the copy of casual labour service card produced at Annx.A1 shows that the applicant in this OA worked under DSTE(RM)MS continuously from 1.11.1966 to 9.5.1976 till he was regularised on 10.5.1976

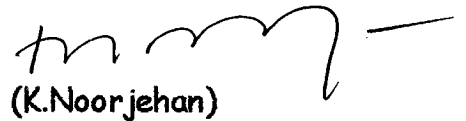
9 In view of above, in my considered opinion, the present O.A before me is squarely covered by the aforementioned Original Applications. I, therefore, follow the above conclusions and declare that;

- a) the applicant is entitled to reckon 50% of the service rendered by him between 1.5.1967 and 10.5.1976 for the purpose of pensionary benefits.

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b) the respondents shall reckon the aforesaid period of service of the applicant as qualifying service for terminal benefits, recalculate and fix his pay, grant pension, arrears of pension and all other retiral benefits accrued there from within 4 months from the date of receipt of a copy of this order. No costs.

(Dated 28th March 2012)



(K.Noorjehan)
Administrative Member

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