

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.12 and 23 of 2008

Friday, this the 29th day of August, 2008.

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

O.A.12/2008

P.Ramachandran, Retd. Senior Valveman,
O/o the Section Engineer/Works/Trivandrum.
TC 24/920, Mettukkada Road,
Thycaud P.O. Trivandrum.Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town P.O.
Chennai-3.
2. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Divisional Office,
Trivandrum-14.
3. The Senior Divisional Finance Manager,
Southern Railway,
Trivandrum Divisional Office,
Trivandrum. - Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

O.A.23/2008

S.Jayaprakash,
Retd. Clock & Watch Repairer Gr.I,
Southern Railway, Trivandrum Division,
TC 24/911, Vattavilakam,
Thycaud.P.O. - Applicant
Trivandrum.

(By Advocate Mr TC Govindaswamy)

v.

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1. Union of India represented by the General Manager, Southern Railway, Headquarters Office, Park Town.P.O. Chennai-3.
2. The Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum-14.
3. The Senior Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum.
4. The Senior Divisional Finance Manager, Southern Railway, Trivandrum Division, Trivandrum.

- Respondents

(By Advocate Mr Thomas Mathew Nellimootttil)

This application having been finally heard on 11.8.2008, the Tribunal on 29.8.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

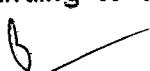
The facts and the issue raised in both these O.As are identical and therefore, they are disposed of by this common order.

2. **Facts in O.A.12/2008:** The applicant was initially appointed as a Casual Labour Khalasi with effect from 18.3.1972 under the Inspector of Works/Southern Railway/Construction/Trivandrum. Later on, his services were regularised with effect from 21.1.1980 and he was posted as Valveman. Thereafter, he was promoted as Senior Valveman before he superannuated from service on 31.10.2007. While settling his pension, the period his service only from 21.1.1980 to 31.10.2005 was reckoned. 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 the status of temporary

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status after completion of six months continuous service as casual labour i.e. from 18.9.1972, by operation of law. Since his service from 18.9.1972 onwards was also continuous and it was followed by regular absorption with effect from 21.1.1980 he is entitled to reckon 50% of the service between 18.9.1972 and 20.1.1980 for the purpose of his pension and other retirement benefits. He has, therefore, made the Annexure A-2 representation dated 25.9.2006 to the 2nd respondent. Since there was no response from them, he has filed the present O.A seeking a declaration that he is entitled to reckon 50% of the service rendered between 18.9.1972 and 20.1.1980 for the purpose of pension and a direction to the respondents to recalculate his pensionary benefits accordingly.

3. In the reply statement, the respondents 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 before 1.1.1981, irrespective of the period of service rendered by them. According to them, the fact that the applicant was rendering service as a casual labour for the period upto 20.1.1980 in a Project is evident from the Annexure A-1 casual service card produced by him itself, wherein it has been stated that he was engaged in the project of Conversion of Ernakulam-Trivandrum Section. 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 in 1972/1973 or after 1982 when the judgment in Robert D'Sourza's case (supra) was pronounced. They have denied that the Annexure A-2 representation dated 25.9.2006 was received by them. 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

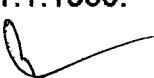


a Casual Labourer, one automatically acquires temporary status. They relied upon the judgment of the Hon'ble High Court of Kerala in W.P.(C) No.18504/2005(S) passed in June 2005 in the following manner:

"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, 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 restrictive provision in the statute regarding limitation due deference thereto requires to be given."

However, they have submitted that the casual service rendered by the applicant may qualify for payment of gratuity under the Payment of Gratuity Act, 1972, but it will not in any case qualify for pensionary benefits under the Railway (Services) Pension rules, 1993 as the pension is payable only to regular employees. In the case of the applicant, according to the respondents, he was granted regular appointment as Gangman with effect from 21.1.1980 by means of empanelment of casual labourers in the Project working in the territorial jurisdiction of the concerned Open Line.

4. In the rejoinder, the applicant submitted that he was not part of any Project and the casual labour card produced by him shows that that the office under which he worked as AEN/O/CN/TVC.Engg/CN and there is no mention of any project anywhere in the cards. He has, therefore, submitted that the contention of the respondents that the services of the applicant were in any Project is contrary to facts. He has also submitted that if he were actually a project casual labourer, he would have been retrenched on completion of the project work in which he was engaged, but in this case he was regularised as on 21.1.1980.



5. Facts in O.A.23/2006: The applicant was initially engaged as a Casual Labour Blacksmith with effect from 21.8.1972 under the Inspector of works/Southern Railway/Construction/Nagercoil. He was also regularised in service with effect from 21.1.1980 and posted as Clock and Watch Repairer Grade III. He got further promotions as Grade II and Grade I in the said post and finally superannuated from service on 31.7.2007. However, he was granted pensionary benefits only for the period from 21.1.1980 to 31.7.2007. His contention, as in the case of O.A.12/2008 (supra) is that since he is entitled for counting 50% of the service rendered by him during the period from 21.2.1973 and 21.1.1980 for pensionary benefits. The respondent's reply is on similar lines as in O.A.12/2008 (supra).

6. Apart from Robert D'Souza's case, the counsel for applicants, Shri TC Govindaswamy, has relied upon the following judgments/orders:

- (i) **Union of India and others v. Basant Lal and others** [1992 SCC(L&S) 611].
- (ii) **O.A.238/2007** dated 14.9.2007.
- (iii) **O.A.273/2007 – S.Duraiswamy v. Union of India & others** – decided on 15.1.2008 and upheld by the Hon'ble High Court of Kerala in its judgment dated 9.6.2008 in W.P.(C) No.14967/2008(S).
- (iv) **O.A.606/2005 - K Rajan v. Union of India and others** – decided on 28.2.2007 – and upheld by the Hon'ble High Court of Kerala vide judgment dated 31.2.2007 in W.P.(C) No.18337/2007 (S).
- (v) **O.A.364/2004 – R.Gopalakrishna Pillai v Union of India & others** – as upheld by the Hon'ble High court vide its judgment in W.P.(C) No.4085/2007(S) dated 24.1.2008.
- (vi) **O.A.269/2004 – C.K.Thankappan Pillai v. Union of India** – as upheld by the Hon'ble High Court vide its judgment dated 3.12.2007 in W.P.(C) No.13245/2006(S) and
- (vii) **O.A.17/2004 – K.Thankachan v. Union of India & others** – as upheld by the Hon'ble High Court in W.P.C.No.21602/2005(S)

dated 27.3.2008.

7. In **L Rober D'Souza's** case (supra), the Apex Court held that "every construction work does not imply project". Project is co-related to planned projects in which the workmen is treated as "work charged" xxxxxxxx "It will be doing violence to language to treat the construction unit as project. Expression 'project' is very well known in a planned development." xxxxxxxxxxxx "And again construction unit is a regular unit all over the Indian Railways. It is a permanent unit and cannot be equated to project. Therefore, the averment of the Railway Administration that the appellant was working on project cannot be accepted. He belonged to the construction unit." xxxxxxxxxxxx "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."

8. In the case of **Basant Lal & others** (supra), the Apex Court has noted the submission of the workers that they were employed as casual labourers in the Construction Division. The Apex Court has also noted the submission of the Railways "that in case the workers were employed in the construction work on the open line then they would acquire a temporary status after continuous employment of 120 days, but if the workers were employed on a project work then they can acquire temporary status only after completing 360 days of service."

9. In O.A.269/2004 (supra), the applicant was initially engaged from 21.1.1972 and reengaged from 14.9.1972 under the Permanent Way Inspector (construction), Quilon. Thereafter, he was transferred to the control of the PWI

(Open Line), Mavelikkara upto 20.4.1978. His services were regularised on 14.4.1984 and superannuated on 31.12.2002. He claimed to reckon 50% of his temporary status from 15.3.1973 to 23.10.1978 for the purpose of pension and other retirement benefits. The question considered by the Tribunal was that whether the applicant was working as a Construction Casual Labour or as a Project Casual Labour. The contention of the applicant was that he was working as a casual labour in Construction Organisation and, therefore, he cannot be equated with that of a project casual labour. Counsel for the applicant submitted that if the applicant was a project casual labour he would not have a case at all. After hearing the parties concerned, this Tribunal came to the conclusion that the applicant was not a Project Casual Labour and 50% of his service from 15.3.1973 to 23.10.1978 was directed to be reckoned for pensionary purposes.

10. In O.A.606/2005 decided on 28.2.2007(supra), the applicant was initially engaged as a casual labour on 5.1.1970. From 14.3.1970, he was engaged as Technical Mate and continued upto 4.6.1970 on which date his services were terminated. He was engaged as a Special Mate on 6.7.1970 under the Inspector of Works (Construction), Olavakkot and continued upto 15.9.1972. He was reengaged with effect from 14.10.1972 and again as a Special Store Mate with effect from 27.11.1972. He continued in that capacity without break upto 5.5.1977. Thereafter, his service was regularised as Gangman with effect from 16.4.1979. The contention of the applicant in that O.A was also that in terms of para 2501 of IREM read with the decision of the Hon'ble Apex Court in **Robert D'Souza's case (supra)**, he is entitled to be treated as temporary by operation of law with effect from 6.1.1971 and he was entitled to 50% of the service rendered between 6.1.1971 and 15.4.1979 for the purpose of pension and other retirement benefits. The aforesaid O.A was allowed and its operative part is as under:



"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 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."

11. In O.A.273/2007 decided on 15.1.2008, the applicant therein was a casual labour with effect from 1.9.1972 under the Inspector of Works/Construction/P.Way/Southern railway/Nagercoil and he continued there in that capacity without break till his service was regularised as a Gangman on 27.9.1980. Later, he retired from service on 31.1.2005. Following the order of this Tribunal in O.A.238/2007 (supra), this Tribunal rejected the stand of the respondents that the applicant therein was a project casual labour. Accordingly, the O.A was allowed. Respondents were directed to treat the casual labour service rendered by the applicant from 25.5.1973 to 27.8.1990 as service rendered in the open line and to treat 50% of that service as qualifying service for pensionary purpose as per rules.



12. In O.A.238/2007 dated 14.9.2007 (supra), the applicant entered service as casual labour on 11.10.1972 and he was made regular with effect from 27.9.1980. Prior to his regular appointment, his services were uninterrupted, as authenticated by the Inspector of Works(Construction), Nagarcoil. The Tribunal held that the following points would go to show that the applicant's earlier services as Casual Labourer cannot be but were treated as one of Open Line, as qualifying for terminal benefit purposes at the proportionate ratio prescribed in the rules.

- "a) Casual labour certificate was issued by the IOW (Construction) Southern Railway, Nagarcoil.
- b) The applicant was regularly appointed as Gate Keeper with effect from 27.9.80;
- c) There appeared to be no direct recruitment to the post of Gate Keeper and always the past service are taken into consideration;
- d) The fact that the applicant's regular appointment preceded implementation of Inder Pal Yadav's case shows that the applicant's past services were not for project work;
- e) As per the decision in the Apex Court's judgment in D'Souza, all construction works do not come under project labour;
- f) The applicant's case comes under Rule 2501 of the IREM."

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.

13. In my considered opinion, both the present O.As before me are covered on all fours by the facts of the aforementioned 4 Original Applications. For parity of reasoning and judicial propriety, I must also follow the same conclusions in these O.As. I therefore, declare that:

- 1.1 Applicant in O.A.12/2008 is entitled to reckon 50% of the service rendered by him between 18.9.1972 and 21.1.1980 for the purpose of pensionary benefits.



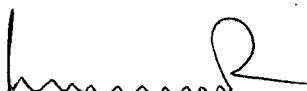
1.2. Applicant in O.A.23/2008 is entitled to reckon 50% of the service rendered by him between 21.2.1973 and 21.1.1980 for the purpose of pension.

2. The respondents shall reckon the aforesaid respective period of service of the applicants in these two O.As as qualifying service for terminal benefits and to recalculate and fix the pay and pension and other retirement benefits and pay them all arrears of pension, retirement gratuity, commuted value of pension etc.

3. The above directions shall be complied with by the respondents within a period of three months from the date of receipt of this order.

14. There is no order as to costs.

Dated, the 29th August, 2008.



GEORGE PARACKEN
JUDICIAL MEMBER

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