

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.13/2004

Tuesday this the 6th day of September, 2005.

CORAM:

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. Onathara Sivadasan (Retd. Tech.Gr-II)
S/o Chamu, Onathara House,
Kalveri Hills, Kadalundi P.O., Calicut.
 2. T.Balakrishnan (Retd. Tech.Gr.I)
S/o T.Kuttayi, Marapally House,
Mannur P.O., Calicut.
 3. K.Komu, (Retd. Tech. Gr.I)
S/o Mayinkutty, Mattemal House,
Karuvantiruthy P.O.,
Via., Feroke, Kozhikode.
- Applicants

(By Advocate Shri Varghese Prem)

Vs.

1. Union of India, represented by
the General Manager,
South Eastern Railway,
Garden Reach, Calcutta-700 043.
 2. Deputy Chief Personnel Officer,
South Eastern Railway, Bhuwaneswar.
 3. Accounts Officer (Pen.)
For F.A. & C.A.O. (Pen),
South Eastern Railway,
Garden Reach, Calcutta.
- Respondents

(By Advocate Shri P.Haridas)

The application having been heard on 6.9.05 the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The claim of the applicants is for reckoning 50% of their casual labour service after completion of initial 6 months' continuous casual service, for the purpose of

L

granting service & retirement benefits. The applicants sought the following main reliefs:

- i. call for and peruse the records leading to Annexure A-1 order and set it aside as illegal and without proper application of mind;
- ii. declare that the applicants are entitled to reckon 50% of the casual labour service rendered after completing the initial 6 months of continuous casual service and grant them all consequential service benefits;
- iii. declare that the applicants are deemed to have acquired temporary status after completing the initial 6 months of continuous casual service.

2. When the matter was taken up on 24.5.2005, 4.8.2005 and 25.8.2005 counsel for applicants was absent and hence, the matter was finally posted for today, making it clear that if the applicants' counsel would not appear on the next date of hearing, the matter would be heard and disposed of. Today when the matter was taken up, none appeared for the applicants and there was no representation on their behalf. Hence, I am of the view that the applicant is not interested in prosecuting the matter.

3. Accordingly, the O.A. is dismissed for default.

Dated the 6th September 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 13 of 2004

Thursday, this the 13th day of July, 2006


C O R A M:

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

1. Onathara Sivadasan,
Retd. Tech. Grade-II,
S/o. Chamu, Onathara House,
Kalveri Hills, Kadalundi P.O.,
Calicut.
 2. T. Balakrishnan,
Retd. Tech. Grade-I,
S/o. T. Kuttayi,
Marapally House,
Mannur P.O., Calicut.
 3. K. Komu,
Retd. Tech. Grade -I,
S/o. Mayinkutty,
Mattemal House,
Karuvantiruthy P.O.,
Via. Feroke, Kozhikode.
- ... Applicants.

(By Advocate Varghese Prem)

Versus

1. Union of India represented by
The General Manager,
South Eastern Railway,
Garden Reach,
Calcutta - 700 043
 2. Deputy Chief Personnel Officer,
South Eastern Railway,
Bhuaneswar
- 

3. Accounts Officer (Pen.),
For F.A & C.A.O. (Pen),
South Eastern Railway,
Garden Reach, Calcutta.

... Respondents.

(By Advocate Mr. P. Haridas)

O R D E R
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

The short question for consideration in this case is whether the applicants are entitled to have a part of their casual labour services rendered prior to his temporary status w.e.f. 01-01-1981, counted as qualifying service or not. Answer to this question hinges upon whether the casual labour service which the applicants have rendered prior to their having been conferred with temporary status was in the open line or in the construction wing (also called ' Project Casual Labour').The applicants claim the services as in open line, while the respondents contend that the initial service was in the construction wing.

2. Brief Facts of the case: The following details as contained in the list of dates would suffice to have a thumb nail sketch of the facts of the case. These dates being admitted, the situation does not warrant any debate on the same:-

1st Applicant :

28.10.72	:	Initial date of appointment as casual labourer in open line.
1.1.1981	:	Granted temporary status.
1.4.1984	:	Regularised in service.
30.6.2002	:	Retired as Tech. Grade – II



2nd Applicant :

- 16.8.1973: Initial date of appointment as casual labourer in open line.
- 1.1.1981: Granted temporary status.
- 01.4.1988: Regularised in service.
- 31.5.2002: Retired as Tech. Grade – I

3rd Applicant:

- 18.10.75: Initial date of appointment as casual labourer in open line.
- 01.1.1981: Granted temporary status.
- 01.4.1988: Regularised in service.
- 31.7.2001: Retired as Tech. Grade – II

3. Respondents have contested the OA. According to them, the initial engagement of the applicants being in construction wing "regirdering unit, the services rendered prior to grant of temporary status cannot be counted.

4. In the rejoinder the applicants contended that the certificates rendered by the authorities did not indicate that the applicants were in the construction wing, as otherwise, there would been the use of the term "(C)" to denote construction wing in the casual labour card.

5. The counsel for the applicant was not present at the time of hearing. It was only the counsel for the respondents who was present and as such, invoking



the provisions of Rule 15(1) of the CAT (P) Rules, 1987, the case was heard (However, later on when the counsel for the applicant mentioned the matter in the chamber, he was permitted to file written arguments but no such written arguments were filed). Though no documentary evidence could be furnished by either side to confirm the wing in which the applicants were initially engaged (i.e. open line wing or construction wing) from certain admitted position, one can perhaps arrive at the conclusion in this regard. Open line casual labours were entitled to temporary status after completion of 120 days of their engagement. Earlier it was 180 days. Such a provision was not available to the Project Casual Labour. It was in the wake of the decision by the Apex Court in the case of Inder Pal Yadav {(1985) 2 SCC 648} that a scheme was framed to confer temporary status on the Project Casual Labours who have completed 360 days or more, subject also to certain other conditions. And, it is by virtue of the scheme so framed by the Railways that temporary status was afforded to such Project Casual Labours uniformly w.e.f. 01-01-1981 in respect of those who had put in 3 years or more of casual labour service by that date and with effect from 01-01-1982 in respect of those who had put in two years by 01-01-1981. In the case of Ram Kumar Vs Union of India {1988} 1 SCC 306} at para 5, the Apex Court has held as under:-

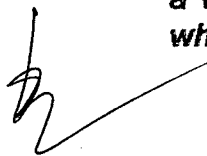
Learned Additional Solicitor General states that petitioners are project employees and do not belong to the open line. According to him employees in the open line acquire temporary status on completion of 120 days of service as against 180 days which was the previous requirement. That status is acquired on completion of 360 days by casual labour in project



works as provided in the scheme formulated under orders of this Court, though such status were acquirable by project casual labourers on completion of 180 days of continuous employment previously.

6. The above observations were construed to mean that temporary status was admissible for Project Casual Labours also but with the difference that in their case, the duration of casual labour service prior to temporary status was 360 days. This misconception was removed in a subsequent judgment in the case of Union of India v. K.G. Radhakrishana Panickar, (1998) 5 SCC 111 wherein the Apex Court has held as under:-

"In the afore-quoted passage the Court has taken note of the distinction between Open Line Casual Labour and Project Casual Labour in the matter of grant of temporary status and has pointed out that Open Line Casual Labour acquire temporary status on completion of 120 days' continuous service and earlier the said requirement was 180 days, but such status is acquired on completion of 360 days by casual labour in project works. The submission that prior to the acceptance of the scheme by this Court in Inder Pal Yadav Project Casual Labour were entitled to grant of temporary status on completion of 180 days of continuous service is neither borne out by para 2501 of the Manual nor by the decision of this Court in Inder Pal Yadav. The acceptance of the contention of Ms Ramamurthi that earlier Project Casual Labour could be treated as temporary after completion of 180 days of continuous service would mean that as a result of the scheme that was accepted by this Court in Inder Pal Yadav the position of Project Casual Labour became worse than what it was prior to the acceptance of the scheme because under the scheme they could be treated as temporary only on completion of 360 days of continuous service. The decision in Inder Pal Yadav does not support such a view. It must, therefore, be held that prior to the scheme which was accepted by this Court in the case of Inder Pal



Yadav Project Casual Labour could not claim temporary status and such temporary status could only be acquired by them on the basis of the scheme as accepted in Inder Pal Yadav." (Emphasis supplied)."

7. The applicant relies upon the decision of the Apex Court in the case of L. Robert D'Souza v. Executive Engineer, S. Rly., (1982) 1 SCC 645 wherein it has been held as under:-:

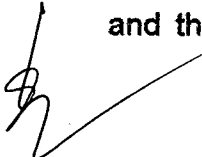
"The test provided is that for the purpose of determining the eligibility of casual labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers. 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."

8. All the above, of course, relate to grant of temporary status. What is to be seen is the law/orders relating to counting of 50% of casual labour service and whether such service prior to grant of temporary status would qualify for the same. Inder Pal is the decision on the basis of which the very temporary status to the project casual labourers had been directed to be afforded. While formulating the scheme the Railways have, uniformly treated the entire period of



casual labour service prior to 01-01-1981 as having completed only 360 days of service for the purpose of affording temporary status. Any service in excess of 360 days had to be treated as only overflowing and not to be counted for the purpose of grant of temporary status. Hence, in respect of project casual labourers, the benefit of counting of 50% of casual labour service has not been given. If at all, in my opinion it should be only to the extent of 360 days of casual labour service, which qualified for affording temporary status, as aforesaid and 50% of the same becomes less than 185 days, and hence not to reckon for counting for qualifying service, as minimum period required for such counting is in terms of completed six months.

9. One aspect has to be seen. As stated earlier, none of the parties could establish by documentary evidence that the applicants belonged to one wing or the other i.e. open line wing or the construction/project wing. In response to the reply statement, the applicants in their rejoinder have contended that they belonged to open line casual labour group. If that is the case, it is for the applicants to satisfy the respondents accordingly, in which event, the respondents shall consider the case for counting of 50% of their casual labour service. In the absence of the applicants' so proving, from the circumstantial evidences (in as much as, the regularisation had taken place only w.e.f. 01-01-1981 i.e., presumably on the basis of the scheme framed in the wake of Inder Pal decision), it appears that they belonged to the Project Casual Labour group and thus, they are not entitled to count 50% of their past services as casual



labour for pension purposes. Giving the liberty to the applicants to substantiate before the respondents, their stand that they belong to open line casual, this OA is disposed of.

10. No costs.

(Dated, the 13th July, 2006)



K B S RAJAN
JUDICIAL MEMBER

CVR.