

***CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH***

OA No.131/2012

Friday, this the 22nd day of March, 2013.

CORAM

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

A.Ramaksirhnan Unnithan
S/o Ayyappan Pillai
Retired Helper Grade-I
Southern Railway
Thiruvananthapuram.
Residing at Kanjiram Vila Veedu
Thekkemuri, East Kallada
Kollam.

Applicant

[By advocate: Mr.Karthikeya Panicker]

Versus

1. Union of India represented by the General Manager
Southern Railway, Headquarters Office
Park Town P.O.
Chennai-3.
2. The Senior Divisional Finance Manager
Southern Railway, Trivandrum Division
Trivandrum-695 014.
3. The Divisional Personnel Officer
Southern Railway,
Trivandrum Division
Trivandrum-695014.
4. The Secretary, Railway Board
New Delhi-1.

Respondents

[By Advocate: Ms.P.K.Radhika]

This Original Application having been heard on 18th March, 2013,
this Tribunal on 22nd March 2013 delivered the following:



ORDERHON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

Reckoning of casual service prior to regular service is the issue involved in this case.

2. Applicant who retired from the Railways as Helper Grade-I was engaged initially as a Casual Labourer on 17.05.1973 and in the same capacity he served for a decade plus till 31.12.1984 when he was confirmed on regular employment. He superannuated on 29.02.2008. While calculating his services, the respondents had taken into account only the services rendered on regular basis without any regard to the casual service rendered prior to the regular service. According to the applicant, Para 2501 of the Indian Railway Establishment Manual provides for reckoning of 50% casual service as qualifying service, on the basis of which pension/other terminal benefits have to be worked out.

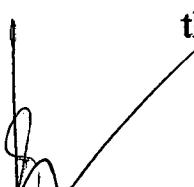
3. The applicant has prayed for the following reliefs:-

i) *To declare that the applicant is eligible and entitled to reckon 50% of the casual service rendered by him between 17.5.1973 and 31.12.1984 as qualifying service for the purpose of fixation of pension and other retiral benefits.*

ii) *To direct the respondents to calculate/revise pension and pay the applicant pension and other retiral benefits duly reckoning 50% of the casual labour service rendered by the applicant between 17.5.1973 and 31.12.1984 and pay the consequential benefits such as gratuity, pension and other allowances with 12% interest till realization of the same.*

iii) *To grant any other order or direction as this Hon'ble Tribunal deems fit and proper in the case with cost of the proceedings.*

4. The respondents have contested the OA. According to them, the applicant has not challenged any of the orders (A-2 & A3) and as such his claim cannot be maintained. They have also stated that in proof of his alleged causal service, no document has been annexed. There is no other proof other than the entry 'temporary status w.e.f.1.1.1981'. The applicant was empanelled



as a Gangman in 1986 and superannuated on 29.2.2008. On the basis of his services records, his terminal benefits had been worked out. As such, this OA is liable to be dismissed.

5. Applicant has filed a rejoinder in which he has annexed a copy of the entire service card issued by the department, which contains details of his engagement as casual labourer from 1973 to 1983. In their additional reply, the respondents have denied the same stating that all the entries are illegible and the period overlapped.

6. Counsel for the applicant has advanced his arguments mainly stating that as per the respondents, no documents is available to substantiate the case of the applicant as to the casual service. Secondly, the applicant was working in project line. The counsel, therefore, produced the original service card in support of the services rendered as casual labourer and as regards to the character of the casual service, he relied upon the decision of the Tribunal in OA No.541/09 decided on 1st July 2010 wherein it has been stated that when a casual labourer is transferred from one place to another, the character of his casual service cannot be treated as one of project casual labour, but open line casual labour. This decision is upheld by the High Court vide judgment dated 3.12.2007 in WP No.18337/07.

7. Counsel for the respondents submitted that the service records did not reflect any of the casual service. The original service book was made available for our scrutiny.

8. Arguments were heard and documents perused.

9. At the very outset, it is to be stated that in so far as the service register is concerned, it may not reflect casual service for which casual card is maintained. The service book obviously reflects only the date on which the applicant was confirmed with temporary status (vide DPO/TVC office order

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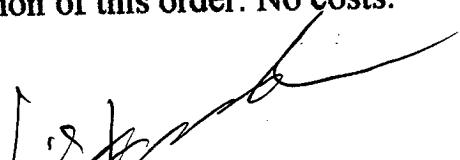
dated 30.5.1984). on the basis of the fact that the service record does not reflect any casual service, the respondents have state that there no proof. That contention has to be ignored. Applicant has produced the casual card which distinctly spells out the entire details of his casual service. The original does not give any impression that the same is not genuine. According to the casual labour service card, the service rendered by the applicant from 1976 till 26.9.1983 cannot but be genuine..

10. Thus the question of documentary evidence of casual labor service is to be answered in favour of the applicant. The next question that arises for consideration is whether the applicant's service should be treated as project casual labour service or open line service.

11. The applicant was granted temporary status w.e.f. 1.1.1981. As such, this crucial date of 1.1.81 is in the wake of the decision by the Apex Court in the case of **Inderpal Yadav & Ors Vs. Union of India & Ors [1985 (2) SCC 648]** whereby direction was given for grant of temporary status to the project casual labourers. Save in the case of open line casual labourers who too would have been granted temporary status w.e.f. 1.1.81, which possibility is remote, in all other cases where such temporary status had been granted as a matter of rule w.e.f. 1.1.81, all such casual labourers were only project casual labourers. The precedent quoted by the applicant is one wherein applicant- P.G.Manoharan- was regularized as early as 5.5.1979. And he was in the construction organization and as per the decision by the Apex Court in the case of **L.Robert D'Souza Vs. The Executive Engineer, Southern Railway & another [1982 AIR 854]**, not all construction casual labourers were project casual labourers. As such, no advantage could be taken by the precedent referred to by the applicant's counsel. The benefit of counting of past service as available to project casual labourers alone would be admitted to the case of the applicant. As regards reckoning of past service as casual labour in respect of project employees for the purpose of qualifying service, the rule is that from

the date of temporary status till the date of regularization, 50% of the casual labour service shall be counted. In the instant case, as such, the applicant is entitled to count only the period from 1.1.81 to 31.12.1984 as qualifying service for the purpose of fixation of pension and other retiral benefits.

12. Accordingly the OA is partly allowed. It is declared that the applicant is entitled to count 50% of casual labour service from the date he attained temporary status for the purpose of working out pension and other terminal benefits. Respondents are directed to pass suitable orders accordingly and make available the arrears of pension/terminal benefits due to the applicant within four months from the date of communication of this order. No costs.



Dr K.B.S. RAJAN
Judicial Member

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