

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 145/2011

Friday, this the 11th day of November, 2011.

CORAM

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

1. P.Baby, W/o George,
(Retired Track Woman, SSE/P.Way/VAK),
Puthenvila Veedu, Vennicode.P.O.
Melvettor, Thiruvananthapuram.
2. C.Vijayamma, W/o Krishnankutty,
(Retired Sr., Track Woman, SE/P.Way.VAK),
Vilayikulam Veedu, Kazhakkottam,
Trivandrum.
3. C.Radha, W/o Chellan,
(Retired Sr., Track Woman, SSE/P.Way.VAK),
Panavila Puthen Veedu,
Thalayaarkonam, Naruvamoodu.P.O.
Thiruvananthapuram.
4. C.Balamma, W/o Appukuttan,
(Retired Sr.Track Woman SSE/P.Way/VAK),
Kuzhuvila Veedu, Merryland Studio Road,
Nemam.P.O., Trivandrum.Applicants

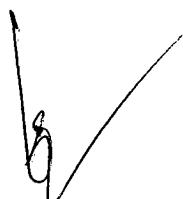
(By Advocate Mr M.P.Varkey)

v.

1. Union of India represented by
General Manager, Southern Railway,
Chennai-600 003.
2. Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum-695 014.Respondents

(By Advocate Mr P Haridas)

This application having been finally heard on 8.11.2011, the Tribunal on 11.11.2011 delivered the following:



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

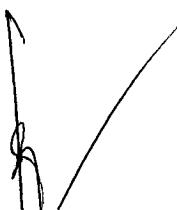
This OA is accompanied by MA No. 135 of 2011 filed under Rule 4(5) of the C.A.T. (Procedure) Rules, 1987. The said M.A. No. 135 of 2011 is allowed.

2. The brief particulars of the facts of the case are that all the applicants were initially engaged as casual labourers in the Respondents' Organization and were later on absorbed as regular Railway Employees. While the period of their service on regularization enabled them to be entitled to pension and other Terminal Benefits (including Composite Transfer Grant at the time of superannuation) under the provisions of Railway Service (Pension) Rules, the former period of service (rendered as casual labourer prior to absorption) made them entitled to payment of service gratuity under the Payment of Gratuity Act, 1972.

3. The grievance of the applicants is that they were deprived of their service gratuity for the period of casual services rendered prior to their regularization and in addition, they were not paid the composite transfer grant to which also they are entitled to. Hence, the applicants have prayed for the following:-

(a) for a declaration to the effect that the applicants are entitled to payment of gratuity and interest for their casual labour service and a further direction to the respondents to make the payment thereof;

(b) For a declaration to the effect that the applicants are entitled to the payment of Composite Transfer Gratuity and for a direction to the respondents to pay the same to the applicant.

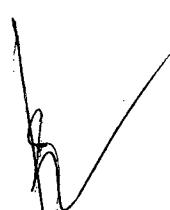
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4. Respondents have contested the O.A. As regards the first applicant, their contention is that no claim was made by the applicant in this regard. As regards the other applicants the respondents have given the particulars of Cheque No. and amounts towards payment of composite Transfer grant. As regards payment of gratuity, the contention of the respondents is that save the first applicant, others had not rendered the minimum years of service required for eligibility to the grant of Terminal benefits.

5. The applicants have furnished their rejoinder stating that in so far as applicant No. 1 is concerned, he too had submitted claim for the composite transfer grant in the prescribed format but the same might have been misplaced by the respondents and that the said first applicant is prepared to submit the another application in this regard. In so far as the payment of service gratuity, the applicants have filed Annexure A-6 (a) which is a format for claiming the dues payable to the applicant which had not been made available to them. As regards minimum period of service for entitlement to payment of service gratuity, the applicants contended that vide para 2 of Annexure A-6, gratuity is payable even when the period of service is less than five years.

6. Counsel for the applicants presented the case on the same lines as the contentions contained in the OA as well as rejoinder. He has further submitted that the first applicant had already furnished the composite transfer grant claim on 10-09-2011. As regards payment of service gratuity he has invited the attention to para 2 of Annexure A-6 which provides for two options to the applicants and which reads as under:-

"Though the provisions of the Payment of Gratuity Act, 1972 shall continue to be applicable to the casual labour for the purpose of calculating gratuity for the period of casual labour service upto the date of preceding the date of absorption, it has now been decided



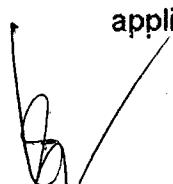
by the Board that such of the casual labour who continued to be in service and were absorbed against regular vacancies, shall be allowed to exercise an option as under:-

- (i) payment of Gratuity under the provisions of the payment of Gratuity Act, 1972 for the period of service upto the date preceding the date of absorption and for payment of gratuity and pension for the period of regular service under the provisions of Railway Services (Pension) Rules, 1993; or
- (ii) to payment of gratuity and pension counting half of the service rendered in temporary status and full service rendered on regular basis under the provisions of the Railway Services (Pension) Rules, 1993, besides gratuity under PG Act for the period preceding the attaining of temporary status.

7. Counsel for the applicant also referred to the provisions of para 6 of the said Annexure A-6 to contend that it is the duty of the Railways to take suo moto steps to examine all the past cases and all the assistance to the past as well as the presently serving Railway Employees shall be extended to enable them to exercise their option.

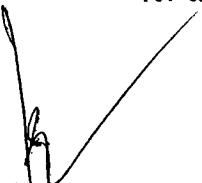
8. Though counsel for the respondents was not present at the time of hearing, the counter filed by the respondents through their counsel came handy to consider their case.

9. Arguments were heard and documents perused. The contention of the applicants' counsel is that there is no requirement of completion of five years service as the same has not been indicated in Annexure A-6. Counsel for the applicant argued that if period of temporary services is reckoned for working out the qualifying service @ half the temporary services, then in none of the case, the period of service of casual labour would be five years or more and hence, the Railway Board's circular at Annexure A-6 should be construed to mean that the minimum of five years' service is not contemplated in the case of the applicants. This contention is liable to be rejected outrightly as the very

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entitlement to the said gratuity arises only in accordance with the provisions of the said Payment of Gratuity Act, 1972, which inter alia provides for the minimum period of five years of service. Thus, prior to regularization, if the period of service is less than five years, the question of payment of gratuity under the said Act does not arise. The option given to the employees is with regard to counting of the period of temporary service (which is in sandwiched between the period of casual service and regular service) to associate either with casual service (in which event the full period of temporary service plus the casual labour service preceding temporary services would count for working out the extent of service gratuity admissible, subject, however, to the minimum of five years) or with the period of qualifying service (in which event, half the temporary services would be counted for the purpose of working out qualifying service). All the applicants have been provided with the terminal benefits under the Railway Services (Pension) rules, 1993 taking into account the period of temporary service rendered by the applicants and as such, the question is only with reference to the period of casual labour services rendered, which in all the cases, save that of applicant No. 1 is less than 5 years. The reply furnished by the counsel for the respondents clearly indicate the same and there is no denial of the same in the rejoinder. Thus, in so far as applicants other than the first applicant is concerned, they having been paid the Composite Transfer Grant, and their period of casual labour service preceding the period of temporary service being less than five years, no amount is due to them. Thus, this OA is dismissed in respect of applicant Nos. 2 to 4.

10. As regards applicant No. 1, the respondents have stated that as and when the said applicant No. 1 produces Annexure A-1 series cards in original her claim for Gratuity will be processed further. To this part of the counter, counsel for the applicant submitted that in many cases (OA No. 202 of 2009, OA No. 359



of 2008) the Tribunal has held that in the event of non availability of original casual labour card, the respondents shall consider the available documents produced by the applicants and act on the basis of the same. The counsel also stated that the applicant No. 1 did surrender the original casual labour card and as such, the same cannot be produced by the said applicant. As per the respondents, the said applicant had been in casual labour service from 06-05-1974 to 15-03-1981. The applicant has also claimed so vide para 4(a) of the O.A. stating that the applicant served during this period in the construction organization at Trivandrum Division of Southern Railway. Thus, this period could be safely taken as the period of casual service rendered and service gratuity for the same could be paid.

11. In view of the above, while the OA in respect of applicant Nos. 2 to 4 is dismissed, in so far as it concerns Applicant No. 1, it is declared that the applicant No. 1 is entitled to the payment of gratuity for the period of casual service rendered from 06-05-1974 to 15-03-1981 (i.e. 7 years) and the dues thereof be payable to her. This shall be paid within a period of four months from the date of communication of this order. In so far as Composite Grant is concerned, if the said applicant has not been paid, the same, if not already paid, is also payable on the basis of claim preferred/even if preferred now.

12. The OA is disposed of on the above lines. No cost.



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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