

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A.No.147/2007**

Dated the 21st day of November, 2007

CORAM :

HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

A Sadasivan Nair
Retired Senior.Loco Pilot (Goods),
Southern .Railway, Quilon
Residing at "Mr.Nair's Houses"
Thrikkovil Vattom, Mukhathala P.O.,
Quilon-691 577. ... Applicant

By Advocate Mr.T.C.G.Swamy

V/s.

- 1 Union of India represented by
General Manager,
Southern .Railway,
Headquarters Office, Park Town P.O.
Chennai
- 2 The Divisional Railway Manager,
Southern .Railway, Trivandrum Division
Thiruvananthapuram- 695 014.
- 3 The Senior Divisional Personnel Officer,
Southern .Railway, Trivandrum Division
Thiruvananthapuram- 695 014.
- 4 The Divisional Personnel Officer,
Madurai Division, Madurai. ... Respondents.

By Advocate Mr.Thomas Mathew Nellimoottil

The application having been heard on 1.11.2007 the Tribunal delivered the following on 21/11/2007.

(ORDER)


Hon'ble Mr.George Paracken, Judicial Member

The dispute raised by the Applicant in this OA is regarding the



determination of qualifying service rendered by him for the purpose of pensionary benefits.

2 The facts as stated by the applicant are that he was initially engaged as Substitute Mechanical Khalasi on 13/5/1970 and on completion of 120 days of continuous work, he was granted temporary status with effect from 6/1/1974 by the Annexure A-1 order dated 28/7/1976. He continued to work as Substitute Mechanical Khalasi with temporary status in the scale of pay of Rs.196-232 till he was regularised in the same post w.e.f. 25/2/1978. Later on, he was promoted as Diesel Assistant and then as Senior Loco Pilot (Goods) and finally . He retired from service on 30/9/2006. According to him, his date of appointment should have been recorded in the Service Book as 6/1/1974 in terms of the Annexure A-2, Railway Board letter dated 19/9/1979 circulated by the Divisional Office, Trivandrum vide their letter dated 8/11/1979, wherein it has been "decided that the date of appointment of Substitutes to be recorded in the service book against the column, date of appointment should be date on which he attains temporary status if the same is followed by his regular absorption otherwise, it should be the date on which he is regularly appointed/absorbed." The said date has been correctly indicated in the Annexure A-3 seniority list of Diesel Assistant dated 15/7/1994. Despite of the above facts on record, the Respondents have taken into consideration only half the period of service between 6/1/1974 to 25/2/1978 for the purpose of determination of qualifying service for pensionary purpose. He made the Annexure A-4 representation dated



31/10/2006 and appeared before the Pension Adalat for redressal of his grievance. However, the respondents vide the impugned Annexure A-5 letter dated 4/12/2006 rejected his request on the following grounds:-

"On verification of your Service Register, it could be seen that you were initially engaged as casual labour in Railways and you were granted Temporary Status from 6/1/1974. You were empanelled for regular appointment with effect from 25/2/1978. As per rules 50% of the Temporary Status attained casual labour service was taken into account followed by full service from 25/2/1978 to 30/9/2006, till your retirement on 30/9/2006, for pensionary benefits. There is no proof that you were engaged as substitute in Railways and therefore your claim that you had worked as substitute from 6/1/1974 to 25/2/1978 and grant of full pensionary benefits for the said period cannot be agreed to as per rules."

3 The applicant challenged the aforesaid decision of the respondents in this OA on the ground that he has never been engaged as a Casual Labourer but his initial engagement itself was as a substitute and in terms of Rule-32 of the Railway Service (Pension Rules) 1993, he was entitled to reckon the whole of his service from the date of grant of temporary status, i.e. with effect from 6/1/1974 to the date of regularisation i.e. w.e.f. 25/2/1978 for the purpose of determination of the qualifying service. . The aforesaid rule is reproduced below for the sake of convenience:-

"Service rendered as substitute shall be counted for pensionary benefits from the date of completion of three months in the case of teachers and four months in other cases of continuous service as substitute followed by absorption in a regular Group C or Group D posts without any break."




4 In the reply statement, the respondents have not accepted the applicant's contention that he was a substitute as on 6/1/1974. Their contention is that the Annexure A-3 letter dated 15/7/1994 regarding seniority list of staff absorbed as Diesel Assistants as on 1/7/1994 cannot be accepted as conclusive proof of his status as a substitute as on 6/1/1974. They have submitted that the entry in the service register clearly indicated that he was appointed as a casual labourer with effect from 6/1/1974.. They have accepted the Annexure A-1 order but stated that it did not reveal as to who all were the substitutes and/or who were all the casual labourers and the said document has to be read along with other documents such as Service Register of the applicant available in the matter. According to the service register of the applicant, "he was engaged as casual labour from 13/5/1970 to 17/5/1970 on market rate. He was again engaged from 20/6/1970 to 3/7/1970, 9/7/1970 to 30/7/1970, 16/9/1970 to 19/9/1970, 1/10/70 to 23/10/1970, from 2/11/1970 to 30/11/1970, 16/12/1970 to 31/12/1970, 7/12/1970 to 14/12/1970, 1/1/1971 to 18/4/1971 at TVC. Absent on 19/4/71, 20/4/1971 to 23/4/1971, stopped on 24/4/1971, 9/6/1971, 16/6/1971 to 19/6/1971, 9/10/71 to 12/11/71, 1/1/72 to 1/4/72 (stopped on 2/4/72) 16/4/72 to 21/4/72 (stopped on 22/4/72) 23/4/72 to 30/4/72 (stopped on 1/5/72), 10/5/72 to 16/5/72, 11/1/73 to 28/2/73 (stopped on 1/3/73 to 6/3/73) 7/3/73 to 29/8/73 (stopped from 30/8/73 to 5/9/73) and re-engaged from 6/9/73 and continued. He was granted temporary status on 6/1/1974 and empanelled as a temporary Running Bungalow Servant on 25/2/1978. According to the respondents,

the above entries prove that engagement from 6/9/73 till he was regularised on 25/2/1978. was only as a casual labourer. They have also submitted that the Rule-32 of Railway Service (Pension Rules) 1993 is not applicable in the case of applicant as he was not a substitute but was only a casual labourer.

5 Along with the rejoinder, the applicant produced the Annexure A-6 letter dated 9/2/1978 by which 66 empanelled Substitutes were posted as Substitute Running Bungalow Servants against the existing vacancies and posted to the stations noted against their names. The applicant's name was at Sr.No.66. According to the applicant, the aforesaid document proves beyond any doubt that atleast as on 9/2/78, he was a Substitute and not a casual labourer as stated by the respondents. He has also relied upon the Annexure A-7 copy of the seniority list of diesel assistants published under V/P.612/M/RG/Vol.3 dated 30/9/1997 by the third respondent in which the Applicants name is at serial no.48 showing his date of appointment as 6/1/1974. Again, the applicant has produced the Annexure A-8 letter dated 16/12/2003 which is another seniority list of Goods Drivers in the scale of pay of Rs.5000-8000 as on 1/11/2003 wherein the applicant's name is shown at serial no.111 which has also recorded his date of appointment as 6/1/1974.

6 The applicant has also relied upon the order of this Tribunal in OA-576/97 decided on 13/11/1997 G.Gopinathan V/s. Union of India & Ors wherein similar dispute has been raised by the applicant therein and similar contentions have been made by the respondents. This Tribunal allowed



the said OA as under:-

"17 In the face of such documentary evidence and in the light of the clarifications furnished in respect of a few ambiguities, which are apparent on the face of these records and discussed above, we are of the considered view that it is not open to the respondent Department to treat the initial appointment of the applicant, made admittedly on a scale of pay, only as a casual labourer and then proceed to consider his service, between 18/6/62 to 31/1/72, only on that basis. We are clearly of the opinion that between the two entries with opposite effects in R1, i.e., the particulars of service concerning the applicant and maintained by the respondent Department, namely, the one mentioning that the applicant was appointed on a scale of pay with a very specific and further mention of that scale of pay and the initial pay in that scale, and the other one mentioning that he was appointed as a casual labourer, it is the former entry which, in the totality of circumstances discussed above, has to be treated as more authentic.

18 We also find it difficult to understand how in the case of Shri Sathyaseelan the fact that he was engaged initially on a scale of pay could be considered as conclusively determining his status as a 'substitute', irrespective of the existence of all other entries including that of his status as a casual labourer and absence of any entry evidencing his appointments as a substitute and yet in the face of the same fact, as evidenced by the document R1, similar benefits could be withheld from the applicant. In our opinion, the respondent Department is not competent to apply such patently discriminatory and equitable standards to cases which are similar in this crucial aspect.

19 In the result, we are unable to agree with the respondent department that the applicant was initially engaged only as a casual worker, even though his engagement was admittedly against a specific scale of pay and even though his date of appointment has admittedly been shown in the seniority list as 18.6.1962. We also hold that in the light of this finding by us, the period of service rendered by him from 18.10.62 to 31.1.72 could not be legally and validly treated at only 50% for the purpose of calculating the pensionary benefits by the respondent Department.

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20 In the event, we quash the impugned order at Annexure A7 and allow the application with the direction that the respondent Department must treat the initial appointment of the applicant as a 'substitute' and that further on completion of four months after that initial appointment i.e. w.e.f. 18.10.62, his entire service should be treated as qualifying for pensionary benefits in terms of the existing rules. We direct that the pensionary benefits of the applicant shall be so calculated and paid to the applicant with arrears within three months from the date of receipt of a copy of this order by the respondent Department.

There will be no order as to costs."

7 The respondents have not refuted the aforementioned documentary proof produced by the applicant.

8 In my considered view the Applicant has produced enough material to show that he was initially engaged as a Substitute Khalasi and not as a Casual Labourer. . The opening sentence of the Annexure A-1 letter of the respondents, namely, "The undermentioned substitutes/casual labourers are granted temporary status with effect from dates noted against each." itself shows that the Applicant was a Substitute as the first name in the said list is that of the applicant. In the absence of any document contrary to the same, it can safely be concluded that being the first person in the list, he was a Substitute with continuous service from 6/9/73 and got the temporary status from 6/1/74. Again, in the seniority list circulated vide Annexure A-3 letter dated 15/7/1994 the date of appointment of the applicant was shown as 6/1/1974. The Annexure A-6 letter dated 9/2/1978

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also clearly indicates that he was a substitute atleast on that date. The Annexure A-7 and Annexure A-8 documents further supporting his claim. The only contention of the respondents is that the entry in the service book alone is the most authentic document and according to it he was engaged as a casual labourer from 13/5/1970. When the applicant has produced enough documentary proof to show that he was appointed as a substitute and not as a Casual Labourer, in my considered opinion the entry made in the service book can be considered as a mistake and not based on any documentary proof. It is not the case of the respondents that the entries made in the service book are based on the respective orders issued by them from time to time. Most conclusive proof is the Annexure A-6 document which has not been denied by the respondents. It shows that atleast on 9/2/1978, the applicant was a Substitute and, therefore, the contention of the respondents that he was granted temporary status as a Casual Labour from 6/1/1974 and till his absorption on 24/2/1978, he was entitled only for 50% of the service cannot be accepted. In the face of the above documentary proofs produced by the applicant, I declare that the applicant was a Substitute Mechanical khalasi as on 6/1/1974, the date on which he was granted the temporary status and he was entitled to counting the entire period from the said date for determination of his qualifying service for calculating the pensionary benefit admissible to him.

9 In the above facts and circumstances of the case, this OA is allowed. The respondents are directed to re-calculate and refix the qualifying service of the applicant and re-determine his pensionary benefits



accordingly and pay him the arrears of pension and other retirement benefits within three months from the date of receipt of this order. However, I am not inclined to grant any interest to the applicant in the given facts and circumstances of the case. Respondents are directed to comply with the aforesaid order within the aforesaid period failing which they will be liable to pay the interest of 12% from the date of institution of this petition i.e. 28/2/2007 till the date of payment. There shall be no orders as to costs.



GEORGE PARACKEN
JUDICIAL MEMBER

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