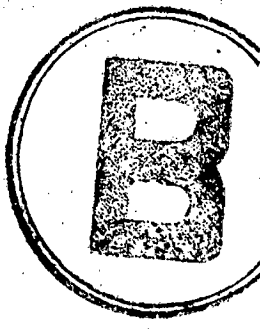


**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**



ORIGINAL APPLICATION NO:158/2006

FRIDAY THIS THE 15TH DAY OF DECEMBER, 2006

CORAM:

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN

**M.Sathyarthy Paul,
S/o.Loath Retired Electrical Signal Maintainer/Gr.II
Southern Railway, Shornur,
Residing at Meladath House,
Korambakel Post, Nirmalagiri(via),
Koothuparambu, Calicut. ... Applicant.**

By Advocate Ms.Heera for Mr.T.C.G.Swamy

V/s.

- 1. Union of India represented by General Manager,
Southern Railway, Headquarters Office,
Park Town Post, Chennai-03.**
- 2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.**
- 3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.**
- 4. Divisional Signal and Telecommunication
Engineer(Works),
Southern Railway,
Poddanur (Coimbatore District) ... Respondents**

**By Advocate Mr.Varghese John for
Mr.Thomas Mathew Nellimoottil**

**This OA having been heard on 15th December, 2006, the Tribunal on
the same day delivered the following:-**

(ORDER)

Hon'ble Smt.Sathi Nair, Vice Chairman

**The applicant was working in the Southern Railway as an
Electrical Signal Maintainer/Grade II in the pay scale of Rs.4500-**

7000. He had taken voluntary retirement in the year 2000 and this OA has been filed for non consideration of his service as casual labourer from 1/7/1967 to 17/8/1976. He seeks the following reliefs:-

- a) Declare that the applicant is entitled to be treated as temporary by operation of law with effect from 1/4/1968 and declare further that the applicant is entitled to reckon 50 per cent of the service rendered by him for the period from 1/4/1968 to 17/8/1976 as qualifying for the purpose of pension and other retirement benefits.
- b) Direct the respondents to grant the applicant all consequential benefits arising out of the declaration in para 8 (a) above including revision of pension with effect from 1/7/2000 and other retirement benefits.
- c) Award costs of this application and incidental thereto.
- d) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal.

2. The respondents have filed the reply statement stating that the applicant is not entitled to temporary status, and therefore the question of counting 50% of casual labour service rendered in the Signal and Telecommunication Workshop, Poddanur does not arise. They have submitted that the applicant has not produced any orders granting him temporary status and he cannot claim such a benefit after 38 years. He has not given any convincing explanation for the delay in filing the OA. They have also contested that he is not a casual labourer in the Open Line and Project casual labourer is not entitled to counting 50% of the casual labour service rendered for pensionary benefits.

3. According to the respondents his period of service from June

1975 onwards was rendered in different projects like Hassan-Mangalore Project and there is no continuity of service as shown in Annexure A-1 document produced by the applicant. They have also submitted that the issue whether the Construction Unit of Sr.DSTE/W/PTJ was a project was considered by the Apex Court in CA No.2481/98 wherein a direction was given to Railways to consider individual cases and determine status and in a subsequent OA 532/2002 filed before the CAT, Madras Bench, it was declared that the applicants therein who had worked in DSTE/Works are not open Line Casual Labourers but Project Casual Labourers.

4. I have heard Ms.Heera for the applicant and Mr.Varghese John for the Respondents respectively.

5. The issue regarding the status of casual labour in the DSTE Workshop Poddanur has been the subject matter for consideration before this Tribunal and Hon'ble High Court for quite some time. The earliest judgment in this regard being OA-849/1990 (Annexure A-2) dated 27/1/1992 (C.Arumugham and 27 Ors), wherein casual labourers had approached this Tribunal on rejection of their representations for grant of temporary status. Para-6 of the judgment is reproduced below:-

"6. In the conspectus of facts and circumstances, therefore, we allow this application, set aside the impugned order at Annexure A5 and hold that the applicants have been in continuous service under the Sr.DSTE which is a non-project permanent establishment right from the date of their initial continuous engagement as casual labour and are deemed to have attained temporary status on expiry of six months of such

duties as indicated in the O.A as non-project casual labour. The respondents are directed to treat the applicants as temporary Railway servants under para 2511 of the Indian Railway Establishment Manual with all consequential benefits. There will be no order as to costs.

6. The above order makes it clear that the DSTE works Poddanur was deemed to be a non-project permanent establishment in the Railways and the Railways were directed to treat the applicants as temporary Railway Servants under para-2511 of Indian Railway Establishment Manual with all consequential benefits. According to the applicant's counsel, the said judgment has been upheld by the Hon'ble Supreme Court and has become final. Identically situated employees had approached this Tribunal in OA 727/1999 and they were granted same benefits and the orders of the Tribunal were upheld by Hon'ble High Court in O.P.No.19763 of 2000 vide order dated 19/9/2003 as identical contentions raised by the respondents were dismissed in O.P. Nos.1743 and 24523 of 1998(C) and O.P. 16991 of 1997 by a Division Bench. The Hon'ble High Court observed that "the decisions by the Tribunal are based on facts and records and when a finding had been arrived at as to whether a particular work is a project work or an open work and number of years they have worked on a particular project, etc, we have no ground to interfere."

7. During the hearing the learned counsel for the applicant also produced a copy of the recent orders of this Tribunal in OA 566/2004 and 594/2004 which were disposed of on 28th September 2006, filed

by applicants who were initially appointed in the same S&T Workshop, Poddanur and praying for grant of temporary status and consequential benefits of counting 50% of the said services towards pensionary benefits. Respondents had rejected their request on the same ground taken in this OA. They had also taken the ground that the OAs are time barred. The grounds have been rejected and Railways had been finally directed to consider the cases on the basis of details furnished by the applicant, as their services have to be taken as permanent service in the Railways.

8. Since the matter is being agitated for the last two decades, I find no reason to accept the same argument of the respondents, every time an application is received. Once the status of the organisation has been determined and the same has been upheld at the Apex Court level, there should be some finality in the matter. It is not open to the respondents to contend and put forth the same argument each time. They have relied on the judgment of CAT, Madras Bench in OA 532/2002. I find that this judgment has not dealt with the issue of status but has only distinguished the decision of this Bench in OA-849/90 holding that the Railways are competent to decide as to whether the applicants are Open Line Casual Labourers or Project Casual Labourers. The Madras Bench had gone more on the facts of the case and the records submitted by the applicant to determine whether the work of a casual labour was of a nature of project work or regular work and had come to the conclusion that the applicants therein were not open line casual

labourers. In the reply statement filed by the respondents, they have not put forth any such contention in the case of the applicants in this case. In fact, in para-5 of the reply statement, they have stated that the applicant appears to have worked in the projects under the ASI for only the period from 1/12/1975 to 17/8/1976 and have expressed vague doubts on the genuineness of the particulars and that records are essential for verification of the service, other periods of service have not been seriously disputed. This aspect has already been discussed in the judgment of this Tribunal in OA-566/2004 and 594/2004 holding that, it is for the respondents to have retained their proper records in the absence of which details furnished by the applicants have to be believed. According to the particulars furnished by the applicant, he has been working continuously as a semi-Skilled carpenter under the ASI(Stores) in the DSTE/W/PTJ.

9. In the totality of the facts and circumstances of the case, I am in agreement with the order of this Tribunal in OA 566/2004 and 594/2004 and the earlier judgment in Annexure A-2 (OA 849/90) wherein it was determined that S&T Workshop is not a project. Similar decisions of this Tribunal have been upheld by the Hon'ble High Court of Kerala. I consider that the applicant is eligible for the reliefs prayed for and direct the respondents to reckon the service rendered as casual labourer in the S&T Workshop at Poddanur from 1/1/1968 to 17/8/1976 and to reckon 50% of that service as qualifying service for pension. The applicant's pensionary benefits shall be revised accordingly and the benefits made available to the applicant

within a period of six months from the date of receipt of copy of this order. OA is allowed. No costs.

Sathi Nair
Vice Chairman

abp