

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

185 of 1990

DATE OF DECISION 22.11.1991

U.R. Karuppan

Applicant (s)

M/s K.Ramakumar &

V.R.Ramachandran Nair Advocate for the Applicant (s)

Versus

Union of India rep. through
General Manager, Southern Railway, Respondent (s)
Madras and others

Mr. M.C.Cherian

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Mr.S.P.Mukerji, Vice Chairman)

In this application dated 22.2.1990 filed under Section 19 of the Administrative Tribunals Act, the applicant an ex-Railway employee has prayed that the respondents be directed to grant him pension and other terminal benefits from 31.1.1988 along with interest. According to the applicant he was initially engaged as Khalasi in 1966 in the Madurai Division and has been working in the open line as Black Smith Khalasi. He attained temporary status after six months of service in 1966 and was regularised as Blacksmith Grade III. Later he was posted in the Palghat Division from where he retired on 31.1.88 under the Senior ~~Divisional Signal~~ and Telecommunication Engineer, Podanur. He was given the impression that his lien is maintained in the Madurai

Division but having been regularised in the Skilled category of Blacksmith with effect from 1.3.80 he did not bother about his lien. His grievance is that on his retirement on 31.1.88 he was given only gratuity, leave salary and provident fund money but no pension was sanctioned to him. He represented on 9.7.88 at Annexure-A and he was informed that the D.P.O. Madurai has been advised to take suitable action on his pension. In spite of his further representation dated 30.8.88 he received no redress. His contention is that if 50 per cent of his casual service after attaining temporary status is added to his regular qualifying service, he would have more than 15 years of service for which he will be eligible for pension.

2. In the counter-affidavit the respondents have stated that instead of in 1966, the applicant ^{was} initially engaged as a casual labour Khalasi on 7.6.71 till 28.2.80 in various construction projects under the fourth respondent. Being a project casual labour he was not entitled to temporary status but was granted skilled rate of pay with effect from 3.10.74. His services were being utilised either as casual labour Khalasi or skilled casual labour Blacksmith. Thereafter he was empanelled and absorbed as a regular temporary Khalasi with effect from 1.3.80 and was given first increment on 1.3.81. He retired on 31.1.88 as an adhoc Blacksmith. Since he had not completed even eight years of service as a regular Railway servant, he was not entitled to any pension for ^{qualifying} which 10 years of minimum service is required.

3. In the rejoinder the applicant has denied that

he had been working in various construction projects ~~only~~ between 1971 and 1980. He has asserted that from 1966 the applicant was working in the open line. He has produced the duty passes issued in his favour even prior to 1980.

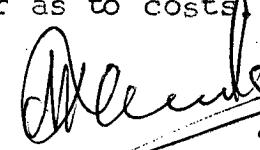
4. In the additional counter affidavit the 4th respondent ie., Divisional Signal and Telecommunication Engineer, Podanur has stated that the applicant was a project casual labour from 7.6.71 to 21.2.80. There is no record to show that he was engaged as a casual labour prior to 7.6.71. He has also referred to the major projects of construction of new meter-gauge line, ^{applicant} doubling of track in which the ^{had been} engaged during 1971 to 1980. They have argued that the duty passes were issued to him in connection with the project work.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The Service Book of the applicant containing inter-alia the casual labour cards was produced by the learned counsel for the respondents. The first appointment of the applicant even as a casual labour was recorded on the service card as from 7.6.71 as a Blacksmith under the Signal Construction Unit. There is no record to show that the applicant had been engaged as a casual labourer before 7.6.71. The applicant also has not produced any document to substantiate his claim. From 15.3.72 onwards the applicant has been shown as working continuously in various new construction projects as a Blacksmith till he was appointed as a temporary Khalasi with effect from 1.3.80. If his claim of working in open line is accepted, then he will be entitled to temporary status on 15.9.72 and will be entitled to count

half of his casual service from 15.9.72 to 29.2.80 as qualifying service for pension. Thus he will be entitled to add about four years⁷ qualifying service in lieu of his^{about} eight years of casual service to his eight years of regular service between 1.3.80 and 31.1.88. This will take his total qualifying service to more than ten years and will be entitled to pension. The point, therefore, to be decided is whether he was working in the open line as a Blacksmith till his regular appointment on 1.3.80. From the service cards it is clear that he was all along working under the Divisional Signal and Telecommunication Engineer, Podanur even though he was engaged in the various new construction projects. It cannot, therefore, be said that he was working in the project as^{even though} he was recruited for the project work, but he was recruited in the unit of Divisional Signal and Telecommunication Engineer. It is also surprising that he should have continuous casual service in the projects right from 1972 to 1980 without any break. This should be possible only if he is held to be in the continuous/ establishment of the Divisional Signal and Telecommunication Engineer instead of in the establishments of the various project works which he was servicing through the D.S.T.E. His service card during this period also was being endorsed by the Signal Inspector (Works), Podanur and D.S.T.E. instead of by the project staff. It is unthinkable that a project casual labour would continue in service for 8 years without a day's break.

6. In the facts and circumstances, we hold that the applicant has been in continuous service under D.S.T.E which is a non-project^{permanent} establishment right from 15.3.72 to 28.2.80. Since he is deemed to have attained temporary status in 1972 itself his services between 1972 and

1980 will count in half as qualifying service for the purpose of pension in addition to the ^{regular} temporary service from 1.3.80 to 31.1.88. The total qualifying service being more than 10 years he will be entitled to pension. Accordingly we allow the application to the extent of directing the respondents to count half of applicant's service from 15.3.1972 to 28.2.1980 ^{also} as qualifying service and give him pensionary and other benefits on that basis. There will be no order as to costs.


22.11.91

(A.V.HARIDASAN)
JUDICIAL MEMBER


22.11.91

(S.P.MUKERJI)
VICE CHAIRMAN

22.11.91

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