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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 193/2004

Thursday,, this the 3rd day of August, 2006

C O R A M :

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

P. Gurusamy,
S/o. Palaniappa Gounder,
Retired (Pointsman-A, Southern Railway, Peelamedu),
Residing at No. 2/46,
Vallipurathan Palayam,
Via. Vellode, Erode.

... Applicant.

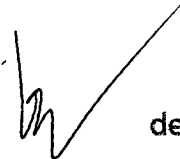
(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office,
Park Town P.O., Chennai – 3
2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
4. The Senior Divisional Accounts Officer,
Southern Railway, Palghat Division,
Palghat.

... Respondents.

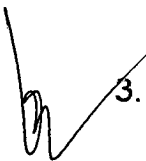
(By Advocate Mrs. Sumathi Dandapani)

 This application having been heard on 25.07.06, the Tribunal on 3.8.06
delivered the following.

O R D E R
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

Certain admitted facts would suffice to have a grip of the subject matter and the controversy involved. The applicant was engaged as a substitute on 16-02-1972 and sometimes in 1975 his engagement was terminated without regularization on the ground that he was overaged at the time of initial engagement. Similar termination took place in respect of certain other individuals as well and these individuals approached the Hon'ble High Court of Kerala by filing OP No. 178/1975 and the Court allowed their writ petition and directed the respondent for reinstatement vide judgment dated 11-12-1975. Based on the above judgment, the High Court had also allowed the OP No. 3935/75 vide order dated 04-02-1976. Thus, the applicant was reengaged in April, 1976 and temporary status granted on 09-08-1976. The applicant was later on confirmed and he superannuated on 30-04-2003.

2. The respondents, while working out the qualifying service had taken into account the period of engagement as Temporary Status i.e., 09-08-1976, ignoring the earlier period of substitute service from 06-02-1972 to the date of re-engagement and thereafter from 09-04-1976 to 08-08-1976. The applicant has claimed this period as qualifying service.

 3. Respondents have contested the OA. Though it has been admitted that

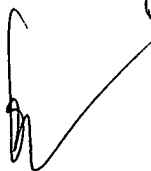
the applicant was engaged as a substitute and though services rendered as a substitute do qualify for qualifying service, yet, the respondents have rejected the claim of the applicant for taking the period from 06-02-1972 to the date of re-engagement and thereafter from 09-04-1976 to 08-08-1976 as qualifying service as, according to them, there has been a break in service and as per para 32 of Railway Services (Pension) Rules, 1993, the services rendered as Substitute shall be counted for pensionary benefits from the date of completion of four months continuous service, provided it is followed by absorption in regular service without any break. The respondents have relied upon the rule position as contained in Rule 1516 of the IREM which reads as under:-

1516. Breaks in service.- The following cases of absence will not be considered as break in service for the purpose of determining 'four month' continuous employment referred to above :-

- (a) The Periods of absence of a Substitute who is under medical treatment in connection with injuries sustained on duty covered by the provisions under the Workmen's Compensation Act.
- (b) Authorised absence not exceeding 20 days during the preceding six months.

Note: Unauthorised absence or stoppage of work will be treated as a break in continuity of employment.

- (c) Days of rest given under the Hours of Employment Regulations or under the Statutory Enactments and the days on which the Establishment employing the substitutes remains closed will not be counted against the limit of 15 days authorised absence referred to above. The term "authorised absence" for the purpose covers permission granted by the Supervisory official in charge to be away from the work for the period specified.
- (d) Periods involved in journey etc., for joining the post on transfer from one station to another station or within the same station



itself, in the exigencies of service but not exceeding in any case normal period of joining time permissible under the rules.

- (e) A register should be maintained for recording the names of all "Substitutes" wherever employed according to the unit of recruitment e.g. Division, Workshops, P.W.Is, lengths etc. strictly in the order of their taking up Substitute employment at the time of their initial engagement.

4. In his rejoinder the applicant contended that no communication was given as to the break in service, nor is there any order of grant of temporary status from 09-08-1976. Respondents in their additional reply annexed a document, wherein the applicant has indicated the commencement of his regular appointment w.e.f. 09-08-1976.

5. Arguments have been heard and documents perused. The above rule relied upon by the respondents does not deal with all the circumstances or contingencies whereby the period of absence occurs. Here is a case where the termination was caused by the respondents and their fault has been brought to the surface by allowing the OP filed by the applicant before the Hon'ble High court. Now, on the basis of this period of absence, the respondents try to deny the applicant the benefit of his past services on the ground that there is a break in service. This is impermissible for two reasons – (a) the applicant shall not be made to suffer for no fault of his and (b) the Respondents cannot encash their own mistake. The Apex Court has, in the case of Bhoop v. Matadin Bhardwaj, (1991) 2 SCC 128, "The learned Single Judge in the High Court rightly held that a party cannot be made to suffer for no fault of her own."



Similarly in the case of Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363 the Apex Court held, "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."

6. In the instant case, instead of delay, the mistake is illegal termination. The termination initially imposed upon the applicant was held illegal and it was on court order that the applicant was taken back. Once the initial termination has been held illegal, the consequences of termination do not survive. The re-engagement of the applicant after he had won in the High Court is in compliance with the order of the Court. Once the re-engagement has taken place, the logical consequences should follow. Of course, by virtue of a good number of judgments, under the proposition "No work, No pay", the applicant would not have been paid his wages. But this illegal termination cannot entail deprivation of the past service as a substitute which is certainly sizeable. It has been held in the case of Bhagwati Prasad v. Delhi State Mineral Development Corpn., (1990) 1 SCC 361 as under:-

"Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period."



7. The above dictum has two aspects; (a) length of casual labour service and (b) crystallization for confirmation. Of course, the second aspect has been overruled by the Constitution Bench Judgment in the case of Secretary, State of Karnataka vs Uma Devi, (2004) 4 SCC 1. In the instant case, the period is four years plus and regularization has already taken place. The termination is due to a wrong approach of the respondents.

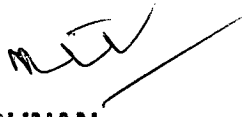
8. The applicant has made out a case in his favour, for, his termination was by an act of the respondents and this act was held to be bad in law, vide High Court's orders as otherwise, the writ petition would have been dismissed. That order has become final by virtue of the re-engagement of the applicant by the respondents and further action taken by them by granting temporary status to the applicant followed by regularization. The break in service from the date of disengagement till 08-04-1976 shall not be treated as a break in service to disqualify the past services from counting as "qualifying service." It is to be treated as if there is no break in service, but the period from the date of termination till re-engagement shall not be counted for the purposes of working out the qualifying services. Once there is an addition in the qualifying period, the same would, subject to ceiling of qualifying service, correspondingly enhance the amount of terminal benefits and monthly pension.

9. The OA is allowed. Respondents are directed to treat the period from 06-02-1972 till the date of disengagement as qualifying service and the same be



added to the other period from 09-04-1976 till the date of superannuation of the applicant. Pension and terminal benefits arising out of this enhanced period of service be worked out and the difference thereof be paid to the applicant. This drill shall be performed in four months from the date of communication of this order. No costs.

(Dated, the ~~3rd~~ August, 2006)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER

CVT.