

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.196/2008

Dated the 19th day of February, 2009

CORAM :

HON'BLE Mr GEORGE PARACKEN, JUDICIAL MEMBER

P Aboobaker,
Retd. Chief Serang,
Office of the Deputy Chief Engineer,
Construction, Calicut, Southern Railway
residing at : Perinkolathody,
Beypore P.O., Kozhikode DT. ... Applicant

By Advocate Mr B V Joy Shankar

V/s

- 1 Union of India represented by
General Manager,
Southern Railway, Chennai
- 2 Chief Engineer, Construction,
Southern Railway, Egmore, Chennai
- 3 Deputy Chief Engineer, Construction,
Southern Railway, Calicut ... Respondents


By Advocate Mr P Haridas (absent)

This application having been heard on 19.02.2009 the Tribunal on the same day delivered the following

(ORDER)

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

The applicant was initially engaged as a project casual labourer w.e.f. 1962 in the construction wing of Southern Railway. He was granted temporary status on 1.1.1981. He was empaneled for regular appointment as a Gangman (Group D) w.e.f. 10.3.1997. The applicant



challenged the aforesaid empanelment as as Gangman (Group D) on the ground that he has already been working as a Group `C' employee in the scale of pay of Rs.1320-2040. Applicant and other similarly placed persons had challenged their regularisation to Group `D' post. He filed OA 1193/97 before this Tribunal. Another person Mr E C Poulouse filed OA 1194/97 and Mr N K Ahmedkutty filed OA 1196/97. All these OAs were heard together and this Tribunal passed a common order on 30.8.2000 (Annexure A-8) and its operative part was as under:-

"7 A careful scrutiny of the above order would show that their pay need be fixed only on a regular post according to the instructions. While the applicants are retained in the construction organisation for the self same work they were performing, we are of the considered view that the reduction is uncalled for and unjustified and will amount to violations of the principles of equal pay for equal work. Just because of the applicants' status changed from casual labour to regular employee they cannot be denied the wages for the work that they have been doing and are continuing to do. The impugned orders in these cases are, therefore, liable to be set aside.

8 In the result, all these applications are disposed of with the following declaration and directions:

i The applicants in all these cases shall be considered for regularisation in Group `C' according to their qualification and entitlement giving them the benefit of Railway Board's order dated 9.4.97.

ii So long as the applicants are retained in the construction organisation for performing the work which they have been doing prior to their empanelment by order dated 10.3.1997, they shall be continued to be paid at the same rate as they were being paid till that date. Respondents shall consider the regularisation of the applicants in Group `C" giving them the benefit of the Railway Board's circular dated 9.4.97 as expeditiously as possible and till the resultant orders are issued they shall not be disturbed from the present posting. No costs."

2 The applicant and other similarly placed persons continued to work as casual labourer Group `C' employees with temporary status.



Before the applicant's turn for regularisation in Group 'C' came, he retired from service on 31.7.2004 and the respondents have paid him the gratuity under the Payment of Gratuity Act 1972, Leave Salary, Provident Fund and Transfer grant. However, Shri E.C.Poulose, when he was not granted the pension, he approached this Tribunal vide OA 694/06 and it was allowed of by an order dated 30.3.2007 (Annexure A-6). It was declared that the applicant therein was a regular employee of Railways having his regularisation effective from 10.3.97 and, therefore, entitled for pensionary benefits. The operative part of the order is as under:-

"8 Arguments were heard and document perused. The service record in clear and unequivocal term confirms the fact of the applicant's services having been regularised with effect from 10.3.97. The contention of the respondents that in view of the order dated 30th August 2000 (Annexure R-4) the applicants status was kept as casual cannot be accepted. For, even if one goes by way of Railway Board Circular dated 9.4.1997 (Annexure R 3) the mandate of the Board was to consider all casual labour/substitute for Group C post but at the same time it has been clearly stated therein, "all casual labour may continue to be considered for absorption in Group D on the basis of number of days put in as casual labour in respective units." Regularisation of the applicant is in conformity with the above dictate of the Railway Board. Thus the recording by the Executive Engineer, dated 20.7.2008 that "the provisions of lien in TVC Division vide Sr. DPO/TVC memo No.V/P 564/1/EMP/TVC/Vol.V (P1) dated 27.12.2004 will not apply to EC Poulose, Sarang" is thoroughly wrong.

9 In view of the above the OA succeeds. It is declared that the applicant is a regular employee of the Railways, having his regularisation effective from 10.3.97. He is therefore entitled to the pensionary benefits on the basis of total length of qualifying service both as a temporary status casual labour and regular Group D employee. Respondents are directed to calculate the extent of qualifying service and also work out his terminal benefits and pay the same to the applicant and whatever pension is admissible the same should also be paid to him from 1.8.2006 and continued to be paid in accordance with law. While formal orders in this regard should be passed within a period of two months, and payment of



pension to the applicant shall follow immediately arrears of pension, and payment of other terminal benefits etc. should be made within a further period of two months from the date of issue of orders as mentioned above. No costs."

3 In the case of Shri A H Ahmedkutty, who had filed OA 1196/97 (supra) was also granted pension on his superannuation from service.

4 I have heard Advocate, Mr B.V.Joy Shankar for the applicant and Advocate Mr Shyamraj G proxy counsel for Mr P Haridas for the Respondents. I have gone through the record. There is no doubt that the applicant Shri E.C.Poulose and Shri A H Ahmedkutty are similarly placed and therefore they have to be treated like. Otherwise it will amount to discrimination. The applicant's case is fully covered by the judgment of this Tribunal in OA 694/06 E.C.Poulose v/s. Union of India & Ors decided on 30.3.2007. In view of the above facts and circumstances of the case, I allow this OA and direct the respondents to pay pensionary benefits to the applicant on the grounds of continuous qualifying service in the Railways after making adjustments, if any, as he has already been paid the gratuity under the Payment of Gratuity Act 1972. He is also entitled to get interest @ 9% on the arrears of pension payable to him from the date of his superannuation 31.7.2004 till the date of payment. The respondents shall comply with the aforesaid directions within a period of three months from the date of receipt of copy of this order. There shall be no orders as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER

abp