

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A.No.198/2007**  
**Dated the 7<sup>th</sup> day of March, 2008**

**CORAM:**

## **HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER**

P.V.Antony  
Retd. Pointsman/I/Piravom Rd,  
Southern Railway  
residing at Puthunilam House,  
Kurumbanadam P.O.,  
Madappally, Kottayam Dist. .... Applicant

By Advocate Mr.M.P.Varkey

V/s

- 1 Union of India represented by General Manager, Southern Railway, Chennai-600 003.
- 2 The Senior Divisional Personnel Officer, Southern Railway, Trivandrum
- 3 The Senior Divisional Finance Manager, Southern Railway, Trivandrum-695014. ... Respondents

By Advocate Mr.P.Haridas

The application having been heard on 20.2.2008 the Tribunal delivered the following :

(ORDER)

## **Hon'ble Shri George Paracken, Judicial Member**

This is the second round of litigation by the applicant to get half of his temporary status service from 11.2.1966 to 20.4.1979 counted towards his qualifying service for pensionary purpose.



2 Alongwith other casual labourers, having completed six months continuous service with effect from 11.8.1965 on the same type of work on daily wage the applicant was also granted temporary status with effect from 11.2.1966 (Annexure A-1) . Thereafter, he was empaneled for appointment as temporary Gangman with effect from 13.12.1978 and conveyed the same to him vide Annexure A-2 order dated 22.1.1979. The applicant retired on 30.6.2005. When he came to know from the Pension Payment Order (PPO) passed in his case by the respondents that his date of appointment was reckoned only as 21.4.1979 for the purpose of determining the qualifying service for pensionary benefits. He, therefore, made the Annexure A-5 representation to the Senior Divisional Personnel Officer,TVC with the request to count half of his period of service from 11.2.1966 to 20.4.1979 (which comes to six years seven months and four days) and to add it to full service from 21.4.1979 to 30.6.2005, and revise the pension, commutation, DCRG etc on the basis of the total qualifying service thus arrived at. Since there was no response from the respondents, he filed OA-605/2006 before this Tribunal. His contention was that his initial engagement as casual labourer Khalasi was under Inspector of Works, Southern Railway, Quilon and the same was in open line. This Tribunal considered his case and held that in terms of the Union of India v/s. K.G.Radhakrishna Panicker (1998) 5 SCC 111, temporary status rendered in open line is to be counted for qualifying services (to the extent allowed as per the provisions of the I.R.E.M) while this benefit is not available to the temporary service of the project casual labourers as the



grant of temporary status to Project casual labourers was a new benefit conferred upon them in the wake of the judgment of the Apex Court in the case of Inder Pal Yadav (1985) 2 SCC 648. The Tribunal further held that if his statement was correct he was entitled to the benefit of 50% temporary status service be counted as qualifying service for the purpose of pensionary benefits. The respondents were therefore directed to verify the record and ascertain as to whether the applicant's service as casual labourer from 1965 to 1979 were in open line and if so, to revise the quantum of qualifying service and consequently, the terminal benefits.

3 It is in purported compliance of the order of this Tribunal dated 28.9.2006 in OA 605/2006 (supra) that the respondents have issued the impugned Annexure A-7 letter dated 22.1.2007. According to them, as per his service register, he had reported for duty in open line under PWL/MVLK only on 21.4.1979 and they opened the Service Register in his name from the same date as they did not have any record for his earlier service. According to them, the applicant had also not produced any record substantiating his claim for the service rendered by him from 1966 to 1979 except the copy of the unsigned Office Order No.12/71/WP (U/P.407/111/I/IOW/QLN) dated 20.2.1971 (Annexure A-1) and the Annexure A-2 memorandum dated 22.1.1979 produced along with the earlier OA filed by him before this Tribunal showing that he worked under IOW/OLN (construction) which also comes under "Project." According to them, even if he had some casual service prior to 21.4.1979, it might have been only as a Project casual labourer and there were no provisions to



count such casual labour service on daily wages for pensionary benefits and even if it is presumed that he was granted temporary status on 11.2.1966, he had not produced any records to prove that there was continuity in service. As per the Railway Board's letter Nos.E(NG) II/78/CL/12 dated 14.10.1980 and E(NG)II/85/CL/6 dated 28.11.1986 and E (NG)II/85/CL/6 dated 19.05.1987, half of the period of service of a casual labour (other than casual labour employed on Projects) after attaining of temporary status on completion of 120 days continuous service can be counted for pensionary purposes if it is followed by absorption in service as regular employee. As far as Project casual labourers are concerned, this benefit was extended to them only with effect from 1.1.1981. They have also taken note of the fact that the applicant was given regular appointment as per the orders of Hon'ble High Court of Kerala in OP No.3246/76 vide memorandum dated 22.1.1979 (Annexure A-2).

4 We have heard Advocate Mr.M.P.Varkey for the Applicant and Advocate Mr.P.Haridas for the Respondents. The Applicant has been able to prove beyond doubt by way of documents that he was in employment with effect from 11.8.1965 and on completion of six months service, he was granted the temporary status with effect from 11.2.1966 (Annexure A-1). There cannot be any valid dispute as to the continuity of the service of the applicant from 11.2.1966 because vide Annexure A-2 memorandum dated 22.1.1979, he was empaneled for appointment as temporary Gangman in the vacancies as on 31.12.1976. There is no merit in the contention of the respondents that there are no entries in the Service Register regarding his service prior to 21.4.1979. It was for the



respondents to maintain the service record in the prescribed format for the earlier period of service of their employees. There is also no merit in the contention of the respondents that the applicant's service was not in open line but was, perhaps in Project. The very fact that the applicant had been granted temporary status immediately on completion of six months continuous service itself shows that he was working in the Open Line as temporary status was not granted to the Project casual labourers on completion of six months continuous service. In the case of R.Haridasan Pillai V/s. Divisional Railway Manager, Trivandrum and Ors, OA-597/99 decided by this Tribunal on 30.3.2000, similar issue was considered. In that case also, the prayer of the Applicant was for taking into account half the temporary status period from 21.5.66 to 20.6.80 for the purpose of fixing his retirement benefits. This Tribunal noted that the respondents did not categorically deny the submissions of the applicant therein that he had commenced his service in the open line. This Tribunal also considered the provisions contained in paragraph 2501, I.R.E.M, 1968 that on continuous service of six months, a casual labour would be entitled to be treated as temporary, and the Note 2 under the said paragraph which reads as under:-

"Once any individual acquires temporary status, after fulfilling the conditions indicated in (i) or (iii) above, he retains that status so long as he is in continuous employment on the railways. In other words, even if he is transferred by the administration to work of a different nature he does not lose his temporary status."

Though the applicant was transferred to work under the Divisional Store Keeper, TVS/ERS Conversion, Quilon for some period, in view of the



aforesaid note below paragraph 2501, he did not loose his temporary status acquired by him from 21.5.66. Accordingly, this Tribunal held that the applicant therein was entitled to have half the period from 21.5.66 to 20.6.80 and full period from 21.6.80 to 31.10.1997 reckoned as qualifying service for pension. The aforesaid order of this Tribunal was also upheld by Hon'ble High Court of Kerala vide OP No.14991 of 2000 (S) dated 8.10.2003.

5 In my considered opinion, the order in OA-597/99 dated 30.3.2000(supra) squarely applies in this case also. From the Annexure A-1 Office Order dated 20.2.71, it is clear that the applicant was working under the Inspector of Works, Quilon at the time of granting him temporary status w.e.f. 11.2.1966. While so, he was empaneled for appointment as temporary Gangman in AEN/QLN Sub Division as per memorandum dated 22.1.79 issued by the Divisional Personnel Officer, Madurai Division. By virtue of the note below paragraph 2501 of I.R.E.M., 1968 edition, he did not loose the temporary status granted to him w.e.f. 11.2.66 even after he was transferred to work under Inspector of Works, Quilon(CN). The only reason for the Respondents to deny him the benefit of his service from 11.2.1966 to 20.4.1979 is that they have not maintained any record to that effect in his service book. The Annexure A-1 Office Order No.12/71/WP dated 20.2.1971 was issued from the Respondents file bearing No. U/P.407/III/I/IOW/QLN and it was duly signed by the Divisional Superintendent, Madurai. It is not the case of the Respondents that the said order was a forged one. It was clearly stated in the said order that the Applicant was in continuous engagement w.e.f 11.8.65 and he was granted



temporary status on completion of six months w.e.f 11.2.66. The Applicant was later, along with a large number of similarly placed casual labourers with temporary status, empaneled for appointment as Temporary Gangman in vacancies as on 31.12.1976, vide the Annexure A-2. His empanelment was also approved by the Divisional Office, Madurai on 13.12.1978. The aforesaid Annexure A 2 sanction was also issued by the D.R.O., Divisional Office, Madurai and its authenticity has also not been disputed by the Respondents. It was on the basis of the aforesaid direction that the Applicant has joined as Gangman on 21.4.1979. Just because the Respondents failed to maintain the service record of the Applicant prior to 21.4.1979, it does not mean that the Applicant was not working as Casual Labourer with temporary status in the open line prior to that date. I, therefore, allow this OA holding that the applicant is entitled to have the period from 11.2.66 to 20.4.79 (six years seven months and four days) and full period of service w.e.f. 21.4.79 to 30.6.05 counted as qualifying service for pension. The respondents are, therefore, directed to re-compute the retiral benefits including pension, leave salary, etc of the applicant and make available to him the monetary benefit arising there of, within three months from the date of receipt of copy of this order. There shall be no orders as to costs.



GEORGE PARACKEN  
JUDICIAL MEMBER

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