

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.208/2007

Dated Tuesday, 19th day of February, 2008.

CORAM :

HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

**P.C.Arbi, Supervisor (Retd.), S.Rly, Mysore ;
Pulikkottil House,
Kunnamkulam PO,
Trichur**

... Applicant

By Advocate Mr.P.Santhoshkumar (absent)

V/s

- 1 Union of India represented by
General Manager,
Southern Railway,
Park Town, Chennai**
- 2 The Divisional Railway Manager
Southern Railway, Mysore Division
Mysore.**
- 3 The Senior Divisional Personnel Officer,
Southern Railway, Mysore Division
Mysore.**
- 4 Senior Divisional Accounts Officer,
Southern Railway, Mysore ... Respondents**

By Advocate Mr.Thomas Mathew Nellimoottil

**The application having been heard on 19.2.2008 the Tribunal on the same day
delivered the following :**

(ORDER)

Hon'ble Shri George Paracken, Judicial Member

**The applicant retired as a Supervisor on 30.4.1997 from the
Southern Railway. According to him, he entered Railway service on casual**

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basis with effect from 14.8.1963 and worked as a Skilled Khalasi Mate. He continued to work upto 9.1.1968 in different spells as indicated in Annexure A-1 and A-2. (copies of casual labour service cards). His submission is that he came to know about the Annexure A-3 order dated 2.11.2006 in OA 677/2005 – in the case of Mr.G.Balakrishnan V/s. Union of India & Ors in which a similarly placed applicants therein was granted the benefits of counting of 50% of the period casual labourer service rendered by him for the purpose of pensionary benefits. He has, therefore, sought the following relief:-

- "i Issue an appropriate direction directing the respondents to refix the pension of applicant taking in to account half of the Annexure A1 and A2 service as qualifying service with consequential of arrears. And fixation in accordance to Central Pay revisions.
- ii Issue a declaration that the applicant is entitled for benefit of annexure A 3, Judgment as the applicant is similarly placed pension like the applicant in Annexure A 3 judgment.
- iii To grant such other further reliefs as this Hon'ble Tribunal may deem just fit and proper in the circumstances of the case."

2 Respondents have submitted that the contention of the applicant that his case is similar to that of the applicant in OA 677/2005 is not correct as he had been engaged as a project casual labour and had not worked in the construction line. They have also submitted that the applicant had retired from service on 30.4.1997 and this OA has been filed after several years and therefore it is badly hit by delay and laches. On merit they have submitted that the applicant actually worked as a project casual labour as is evident from the Annexures A 1 and A 2 filed by him. It

clearly shows that he worked in the Salem Bangalore project under the control of Inspector of Works, Toppur. They have also relied upon the Judgment of Hon'ble Supreme court in Union of India vs. S.Radhakrishna Panicker (1998) 5 SCC III. The facts in that case were that some Project Casual Labourers in Southern Railway, Madras who joined as such during the period from 1954 to 1973 were all employed in construction works and were regularly employed and then absorbed in Class IV service on various dates from 1962 to 1982. They had put in 5 to 14 years of service as casual labour before they were so absorbed. Most of them were absorbed in 1981. Their plea was that after six months of continuous service as casual labour they were all entitled to be treated as temporary railway employees and the entire period of their service as casual labour should be counted for the purpose of retiral benefits. The OA No. 485/1989 filed by them was allowed by the Tribunal but the same was challenged before the Apex Court. Another set of casual labourers of identical nature he filed OA No. 456/1993 for identical relief as in the other OA No. 485/1989 but their OA was dismissed by the Madras Bench of the CAT. The earlier order in OA No. 485/89 was held to be '*per incuriam*'. The applicants to this OA also approached the Apex Court. The Apex Court in its judgment held as under:-

" 7. In Civil Appeal No. 4643 of 1992,.... the respondents joined as Project Casual Labour in the Southern Railway, Madras on different dates during the period 1954 to 1973. They were all employed in construction works and were Project Casual Labour. They were regularly absorbed in Class IV service on various dates from 1962 to 1982. They had put in 5 to 14 years of service as casual labour before they were so absorbed. Most of them were absorbed in 1981. Before the Tribunal it was contended that the respondents having continuously worked as casual labour without any break followed by regularisation their entire service as casual labour should be counted for the purpose of retiral benefits and that in any event at least half of their service as casual labour after the initial period of six months should be taken into account

as qualifying service for retiral benefits. By its judgment dated 8-2-1991 the Tribunal has accepted the said contention of the respondents and has held that unfair treatment would be meted out to the respondents if the entire period of their continuous service as casual labour is ignored for the purpose of retiral benefits whereas such service is taken into account in respect of the latter entrants. Civil Appeals have been filed by the Railway Administration against the said judgments of the Tribunal.

8. In its judgment dated 30-11-1994 in OA No. 456 of 1993 the Madras Bench of the Tribunal has taken a view different from that taken in the judgment dated 8-2-1991 in OA No. 485 of 1989. In that case the petitioners were employed as casual labourers in construction work in Southern Railway on different dates during the period from 1955 to 1974 and were absorbed on regular posts on different dates between 1962 and 1983 and their service as casual labour was not taken into account for the purpose of retiral benefits. The Tribunal, while dismissing the said application, held that temporary status could be granted to Project Casual Labour only from 1-1-1981 or from the date on which 360 days of service as Project Casual Labour was completed after 1-1-1981, whichever was later and Project Casual Labour who had already been regularised prior to 1-1-1981 could not be granted any deemed date for grant of temporary status.

10. The period of service rendered after attainment of temporary status but before absorption on regular temporary/permanent post was taken into account for the purpose of pensionary benefits for the first time by order dated 14-10-1980 whereby half of the period of service after attaining of temporary status was to be counted for the purpose of qualifying service for pensionary benefits. Under para 2501(b)(i) of the Manual the benefit of temporary status was available to Open Line Casual Labour only and it was not available to Project Casual Labour till the decision of this Court in *Inder Pal Yadav*¹ whereby the scheme for grant of temporary status to Project Casual Labour was approved. Under the scheme temporary status was given from 1-1-1981 to those who had completed five years service as Project Casual Labour as on 1-1-1981, those who had completed three years service as Project Casual Labour as on 1-1-1981 were given the temporary status from 1-1-1982, those who had completed 360 days but less than three years of service as Project Casual Labour as on 1-1-1981 were given temporary status from 1-1-1983 and those who completed 360 days as Project Casual Labour after 1-1-1981 were given the temporary status from 1-1-1984 or on the date on which 360 days are completed, whichever is later. Project Casual Labour could claim the benefit of the order dated 14-10-1980 only after they could be treated as temporary as per the scheme accepted by this Court in case of *Inder Pal Yadav*¹. The respondents in the appeals filed by the Railway Administration and the appellants in the other two appeals were employed as Project Casual Labour. They never obtained temporary status prior to their absorption on regular temporary/permanent post on the basis of the scheme that was approved in *Inder Pal Yadav*¹ and, therefore, no part of their service as Project Casual Labour has been counted as qualifying service for the purpose of pensionary benefits. Their service as Project Casual Labour prior to 1-1-1981 could not be treated as qualifying service for the purpose of retiral benefits because under the scheme they could not be

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treated to have attained temporary status prior to 1-1-1981.

.....It must, therefore, be held that prior to the scheme which was accepted by this Court in the case of *Inder Pal Yadav*¹ Project Casual Labour could not claim temporary status and such temporary status could only be acquired by them on the basis of the scheme as accepted in *Inder Pal Yadav*¹.

12. In its judgment dated 8-2-1991 the Tribunal has held that exclusion of period of service rendered as Project Casual Labour before they were regularly absorbed prior to 1-1-1981 results in such employees being discriminated against as compared to Project Casual Labour who were employed subsequently and whose service as Project Casual Labour prior to absorption is counted for the purpose of qualifying service. The said finding of the Tribunal is based on the decision of this Court in *D.S. Nakara*². In this regard, it may be stated that the Tribunal was in error in invoking the principle laid down in *D.S. Nakara*² in the present case. The decision in *D.S. Nakara*² has been considered by this Court in subsequent decisions and it has been laid down that the principle laid down in *D.S. Nakara*² can have application only in those cases where there is discrimination in the matter of existing benefit between similar set of employees and the said principle has no application where a new benefit is being conferred with effect from a particular date. In such a case the conferment of the benefit with effect from a particular date cannot be held to be violative of Article 14 of the Constitution on the basis that such a benefit has been conferred on certain categories of employees on the basis of a particular date. (See: *Krishna Kumar v. Union of India*⁴; *State of W.B. v. Ratan Behari Dey*⁵ and *State of Rajasthan v. Sevanivatra Karamchari Hitkari Samiti*⁶.) In the present case, the benefit of counting of service prior to regular employment as qualifying service was not available to casual labour. The said benefit was granted to Open Line Casual Labour for the first time under order dated 14-10-1980 since Open Line Casual Labour could be treated as temporary on completion of six months period of continuous service which period was subsequently reduced to 120 days under para 2501(b)(i) of the Manual. As regards Project Casual Labour this benefit of being treated as temporary became available only with effect from 1-1-1981 under the scheme which was accepted by this Court in *Inder Pal Yadav*¹. Before the acceptance of that scheme the benefit of temporary status was not available to Project Casual Labour. It was thus a new benefit which was conferred on Project Casual Labour under the scheme as approved by this Court in *Inder Pal Yadav*¹ and on the basis of this new benefit Project Casual Labour became entitled to count half of the service rendered as Project Casual Labour on the basis of the order dated 14-10-1980 after being treated as temporary on the basis of the scheme as accepted in *Inder Pal Yadav*¹. We are, therefore, unable to uphold the judgment of the Tribunal dated 8-2-1991 when it holds that service rendered as Project Casual Labour by employees who were absorbed on regular permanent/temporary posts prior to 1-1-1981 should be counted for the purpose of retiral benefits and the said judgment as well as

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the judgment in which the said judgment has been followed have to be set aside. The judgments in which the Tribunal has taken a contrary view have to be affirmed.

13. In the result, the appeals filed by the Railway Administration are allowed and the judgments of the Tribunal impugned in these appeals are set aside. The appeals arising out of Special Leave Petitions (C) Nos. 26790 of 1995 and 3423 of 1997 filed by the employees are dismissed. No order as to costs."

[1 (1985) 2 SCC 648 : 1985 SCC (L&S) 526 : (1985) 3 SCR 837

2 (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165

3 (1988) 1 SCC 306 : 1988 SCC (L&S) 329 : (1987) 5 ATC 404 : (1988) 2 SCR 138

4 (1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846

5 (1993) 4 SCC 62 : 1993 SCC (L&S) 1123 : (1993) 25 ATC 574

6 (1995) 2 SCC 117]

3 Since the applicant's counsel was not present, I could not get his assistance in the matter. However, I have gone through the file and heard Advocate Mr. Thomas Mathew Nellimoottil, counsel for the Respondents. From the Annexures A-1 and A-2 filed by the applicant, it is clear that he had been working in the Salem-Bangalore project under the control of Inspector of Works, Toppur. He has also not produced any other documents to show that he has worked as a construction casual labour who is entitled to the benefit of counting 50% of period spent of casual service. In the above circumstances, I do not find any merit in the OA and the same is accordingly dismissed. There shall be no orders as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER

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