CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 221/06

Wednesday, this the 13th day of June, 2007

CORAM:

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

1. M.U. Mathai,
S/o. John,
Railway Gangmate (Retired),
Residing at Parakkattuvellyil House,
Chethicode P.O., Kanjiramattom : 682 315

2. K.G. Viswanathan,
S/o. Govinda Kaimal,
Senior Trackman (Retd.),
Residing at Kappil House,
Kaipattoor P.O., Arakunnam : 682 313

3. E.O. Kuttappan, S/o. Onchi,
Gangmate Railway (Retired),
Residing at Edavellikkal House,
Velloor, Mevalloor P.O.: 686 609 ... Applicants.

(By Advocate Mr. P.C. Sebastian)

v e r s u s

1. The Senior Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram.

2. The General Manager,
Southern Railway, Chennai.

3. The Union of India represented by
The Chairman, Railway Board, New Delhi ... Respondents.

(By Advocate Mrs. Sumathi Dandapani, Sr. with Ms. P.K. Nandini)

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

Three applicants have jointly filed this OA and the main relief sought for is as under:-

(I) To declare that applicants have attained temporary status on completion of 120 days of casual labour service from the date of their appointment as casual labourers in the respondent Railways and thus have become eligible and entitled to have half of the casual labour service rendered by them after attaining the temporary status reckoned as qualifying service for the purpose of computation of pensionary benefits;

(II) To direct the first respondent to issue revised pension payment orders to the applicants reckoning half of the period of the casual labour service rendered by them from the date on which they completed 120 days of service from the respective dates of their appointment as casual labour, till the date of their appointment as regular employees and to effect payment of arrears of pension, commutation pension and DCRG due to them in this regard within a time limit as deemed fit to this Tribunal.

2. Now the facts the minimum extent required:

(a) Applicants were initially appointed as Casual Labourers under PWI, Kottayam as open line casual labourers respectively on 5.6.66, 6.6.66 and 1.4.70. They were continuously engaged till their regularisation. The 1st and 2nd applicants were appointed as Temporary Gangman on 23.10.78 and 21.4.79 respectively. The 3rd applicant was appointed as Temporary Gangman with effect from 13.12.78. Applicants were issued casual labour service cards as per extant rules. It is clear from the casual labour service cards issued to the applicant that they belonged to the category of open line casual labour. The rule provides that casual labours who continue for more than 120 days without break will be treated as temporary. By the decision of Hon'ble Supreme Court in **L. Robert D'souza vs. Executive Engineer**, casual laboures on completion of the prescribed period of continuous work, attain temporary status by operation of statutory rules irrespective of their being declared as such.

(b) As per rule 2005 of IREM, casual labourers shall be eligible and entitled to count half of the period of their casual service after attaining temporary status, as qualifying service for the purpose of pensionary benefits. This provision has been incorporated in Rule 31 of the Railway Services (Pension) Rules which are applicable to the applicants. Applicants were granted pensionary benefits on their retirement but without reckoning 50% of the casual labour service after they had attained temporary status. Ist applicant's service was taken from 23.10.78 to 30.04.05, 2nd applicant from 21.4.79 and 3rd applicant from 13.12.78 to 30.06.02. By the decision of this Tribunal in a similar case, O.A. No. 403/04 decided on 23.02.05, employees like the applicants are entitled to have their retirement benefits computed taking into account half of the casual labour service after attaining temporary status and the respondents have already complied with the decision of this Tribunal in the case of similarly placed persons.

(c) As soon as the applicants came to know about the aforesaid decision, they submitted representations dated 1.10.05 to the 1st respondent requesting to recompute their pensionary benefits reckoning half the period of their casual service immediately on completion of 120 days of continuous work from the initial appointment as casual labour and prior to their regularisation. But no positive action is forthcoming on their representations. Hence this O.A.

3. Respondents have contested the OA and their version is as under:-

(a) The respondents submitted that the temporary status granted has not been challenged by them even till date. Therefore, the prayer for entitlement of being a temporary status employee is badly time barred. While disposing the Writ Petition WP (C) No. 18504/2005(S) in June, 2005, the appeal against Annexure A/3 order in O.A. No. 403/04 wherein a similar prayer as herein

figured, Hon'ble High Court of Kerala has given the following guidelines:

> "When patently stale claims are brought before the Tribunal, they have to discourage them. Even good claims get obliterated by passage of time. In this view, normally entertainment of an application well after the retirement would have been impermissible. However, we hope, the Tribunal will bear in mind the inconvenience that is caused to the other side, when such claims are entertained and they are asked to explain the circumstances. The officers who had dealt with the files might have long retired, records will be difficult to be verified and the principle of acquiescence may apply. Especially when there is a restrictive provision in the statute regarding limitation due reference thereto requires to be given."

(b) As per paragraph 2501 of Indian Railway Establishment Manual, 1968 edition, the rules applicable at the relevant time, the required period of service for temporary status was 6 months continuous service without break of even a single day. The six months service was changed to 120 days service only in 1972 but there too the clause "without break of even a single day". The applicants do not have a case that they had rendered service without break of even a single day during these periods so as to have been entitled for temporary status. The services from the date of initial engagement were flooded with many breaks and that there is no uninterrupted service qualifying for grant of temporary status.

(c) Again the statement of the applicants that they were appointed as open line casual labourers is stoutly denied. The applicants alongwith number of other casual labourers were engaged as Casual Labourers in the Trivandrum-Ernakulam Conversion Project which was being executed by the Construction

Wing of Railways. On completion of the said Project, it was handed over to the Open Line Wing alongwith 378 Casual Labourers who were engaged in the said work. After they were taken over as Casual Labourers in the open line, the Chief Personnel Officer, Southern Railway, Madras has issued orders to grant temporary status to all such Project Casual Labourers who have come over to open line. On the basis of the said order, the Divisional Superintendent, Madurai, has issued letter dated 11.6.79 (Annexure R/1) granting temporary status to all the said 378 Casual Labourers including the applicants.

(d) Applicants No. 1 and 2 are at Sl. Nos. 129 and 135 in Annexure R/1. The 3rd applicant was given temporary status with effect from 21.4.1979. The applicants had no such case at any point of time for temporary status from dates prior to what have been granted. The very fact that they had no such claim while in service is a clear indication that they themselves were conscious that they were not entitled to such benefits as per the provisions of law at that time.

4. Rejoinder had been filed and the respondents have filed their additional reply as well, wherein they have asserted that grant of temporary status is a sine-qua non for getting any benefits, including counting of service for pension purpose.

5. Counsel for the applicant submitted that the applicants were functioning under the Permanent Way Inspector at Kottayam till their absorption they were

in the open line only. Thus, according to the decision of the Apex Court in the case of **L. Robert D Souza vs Executive Engineer** (1982) 1 SCC 672, the applicants are entitled to temporary status after 120 days of service and the service shall count for pensionary purposes as per the existing law. As to the civil writ petition decided by the Hon'ble High Court referred to by the respondents in their reply/additional reply, the applicant's counsel contended that the High court did not touch the legal issue in that case.

6. Per contra, the senior advocate for the respondents has stated that the applicants were engaged in the conversion project of Trivandrum - Ernakulam sector. As such, the nature of the casual labour service is one coming under project. Again, limitation is a factor which has been highlighted by the counsel for the respondents. It has also been stated that as many as 378 such cases are there and if the OA is allowed, it would result in a heavy burden on exchequer as others similarly placed too should be extended the benefits as available to the applicants. Counsel for the respondents has heavily relied upon the decision in the case of **K.G.. Radhakrishna Pillai** (AIR 1998 SC 2073.)

7. Arguments were heard and documents perused. The fact that the applicants were working under PWI, Kottayam has not been disputed. Rather it is a clear case of the respondents too that the applicants were engaged in the job relating to conversion of TVM-EKM sector. This job cannot be treated as project work within the meaning as contained in the case of K.G. Radhakrishna Pillai. For, in the case of **Union of India v. K.G. Radhakrishana Panickar**, (1998) 5 SCC 111 the Apex Court has held as under:-

> ***3.*** *In sub-para (a) of para 2501 of the Indian Railway Establishment Manual (hereinafter referred to as the Manual), as it*

stood at the relevant time, the expression casual labour was defined in these terms:

Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour.

***4.** In sub-para (b) of para 2501 of the Manual casual labour was divided into three categories, namely, (i) staff paid from contingencies except those retained for more than six months continuously, known as Open Casual Labour; (ii) labour on projects, irrespective of duration, known as Project Casual Labour; and (iii) seasonal labour who are sanctioned for specific works of less than six months duration. Persons falling in category (i) who continued to do the same work or other work of the same type for more than six months without a break were to be treated as temporary after the expiry of the period of six months of continuous employment. The said period of six months was subsequently reduced to 120 days. Since the period of service of such casual labour, after their attaining temporary status on completion of 120 days of continuous service, was not counted as qualifying service for pensionary benefits and there was a demand for counting of that period of service for that purpose, the Railway Board, by order dated 14-10-1980, took the following decision:*

> *"As a result of representations from the recognised labour unions and certain other quarters, the Ministry of Railways had been considering the demand that the period of service in the case of casual labour (i.e., other than casual labour employed on projects) after their attainment of temporary status on completion of 120 days continuous service, should be counted as qualifying service for pensionary benefits if the same is followed by their absorption in service as regular railway employees. The matter has been considered in detail in consultation with the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) and the Ministry of Finance. Keeping in view the fact that the aforesaid category of employees on their attainment of temporary status in practice enjoy more privileges as admissible to temporary employees such as they are paid in regular scales of pay and also earn increments, contribute to PF etc. the Ministry of Railways have decided, with the approval of the President, that the benefit of such service rendered by them as temporary employees before they are regularly appointed should be conceded to them as provided in the Ministry of Finance OM No. F.12(1)-EV/768 dated 14-5-1968. (Copy enclosed for ready reference.)*
>
> *The concession of counting half of the above service as qualifying for pensionary benefits, as per the OM of 14-5-1968 would be made applicable to casual labour in the Railways who have attained temporary status. The weightage for the past service would be limited from 1-1-1961 in terms of conditions of the OM ibid . Past cases of*

retirements before the date of this letter will not be reopened.

2. Daily-rated casual labour or labour employed on projects will not however, be brought under the purview of the aforesaid orders."

5. *Project Casual Labour were left out from the ambit of this order because there was no provision for grant of temporary status to Project Casual Labour. Project Casual Labour has a grievance that, though very large in number, they had no security of service and no protection whatsoever. The said grievance of the Project Casual Labour was raised before this Court in Writ Petitions Nos. 147, 320-69, 459, 4335 of 1985 etc. filed under Article 32 of the Constitution. During the pendency of the said writ petitions before this Court, the Railway Ministry framed a scheme making provision for grant of temporary status to Project Casual Labour on completion of 360 days of continuous service. The said scheme provided as follows:*

5.1 As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as Project Casual Labour) may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided further as under:

(a) These orders will cover:

(i) Casual labour on projects who are in service as on 1.1.1984; and
(ii) Casual labour on projects who, though not in service on 1-1-1984, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or will complete the said prescribed period of continuous employment on re-engagement in future. (A detailed letter regarding this group follows.)

(b) The decision should be implemented in phases according to the Schedule given below:

Length of service (i.e., continuous employment)	*Date from which may be treated as temporary*	*Date by which decision should be implemented*
(i) Those who have completed five years of service as on 1.1.1984	01/01/84	31.12.1984

Length of service (i.e., continuous employment)	*Date from which may be treated as temporary*	*Date by which decision should be implemented*
(ii) Those who have completed three years but less than (sic) years of service as on 1.1.1984	01/01/85	31.12.1985
(iii) Those who have completed 360 days but less than three years of service on 1.1.1984	01/01/86	31.12.1986
(iv) those who have completed 360 days after 1.1.1984	1.1.1987 or the date on which 360 days are completed whichever is later	31.12.1987

6. By the judgment dated 18-4-1985 in Inder Pal Yadav v. Union of India this Court approved the said scheme but modified the date 1-1-1984 in para 5.1(a)(i) to 1.1.1981 and as a result there was consequent rescheduling in absorption from that date onwards. The Court, while accepting the scheme with the modification gave a direction that it must be implemented by recasting the stages consistent with the change in the date as directed. As per the aforesaid scheme temporary status was conferred on Project Casual Labour with effect from the dates specified therein and on the basis of such temporary status they were also extended the benefit of the order dated 14-10-1980 and the temporary service after attaining the temporary status was counted for pension and other retiral benefits."

8. The above would go to show that in so far as temporary status to Project Casual Labour is concerned, the same came into existence only since 1980 whereas in the case of the applicant, admittedly, the temporary status is from 1978/79. As such, the case of the applicants fall away from Project casual labour.

9. In that event, the next question for consideration is as to whether limitation comes in the way of the applicants. What 'D'Souza' has stated is that

a person inducted into casual labour service under Rule 2501 'acquires' temporary status w.e.f. the completion of 120 days of continuous service as a casual labour. If so, it is obligatory on the part of the respondents to have afforded temporary status after completion of minimum period of casual labour service in which event, the delay in grant of temporary status cannot be attributable to the applicant. That they have been granted temporary status in 1978 or 1979 and they have not agitated against the delay at that time cannot be the reason to deny them of the legitimate dues. **If a benefit has to be obtained only on application by the individuals, and if they are indolent, perhaps they may be denied the benefit.** And, the benefit of the observations of the Hon'ble High Court as extracted in the counter would have certainly been pressed into service in such a case. If, instead, the law demands the authorities to afford them the benefits and the authorities fail to afford the same, then expecting the individuals to point out the mistake of the authorities itself is not appropriate, much less contending that any delay in so pointing out the same would disentitle them to the benefit. Here, by virtue of completing the minimum period the applicants have crystallized their rights to be conferred temporary status and the rules stipulate that they "acquire" the temporary status. Reference to the note appended to Rule 2505 is appropriate in this regard. The rule states, "*Note.* In the case of a casual labourer who is to be treated as temporary after completion of six months' continuous service, the period of notice will be determined by the rules applicable to temporary railway servants." (emphasis supplied) Thus, by an order reflecting the termporary status acquired by the casual labours after completion of the requisite period, all that is done is that the already acquired status is only authenticated by the authorities and not newly conferred.

10. The respondents have also contended that the requirement of continuous service has not been fulfilled in this case. This has been refuted in the rejoinder stating that such a break is not attributable to the applicants but the applicants, though ready to work, were denied the work. It may not be that in all the cases where temporary status had been granted, the casual labourers would have served all the 30/31 days in a month continuously for six months. There could be some breaks in such cases as well. If so, the same treatment should be given to the applicants as well. As this is a matter to be verified through the records and compared with other identical cases, this exercise may have to be undergone by the respondents and temporary status should be granted, if the applicants fulfil this requirements. Artificial breaks are apt to be ignored as such absence cannot be attributable to casual labourers.

11. The counsel for the respondents has contended that in the event of the applicants' case being considered, it may swell the expenditure of the ex-chequer as there are as many as 378 similarly situated individuals. This arguments may have to be summarily rejected. Financial implication cannot be the reason to deny equality in matters of employment. It has been held in the case of **Gopal Krishna Sharma v. State of Rajasthan**, 1993 Supp (2) SCC 375 :-

> *It was contended by the learned counsel for the University that such an order will throw a heavy financial burden on the University. That may be so but that is no ground to deny to the employees what is due to them in law.*

12. In view of the above the **OA is allowed.** It is declared that the applicants are entitled to have their temporary status counted from the date of their completion of minimum period for the said purpose, as casual labourers.

Artificial breaks if any may have to be ignored and the period of Temporary service be worked out in accordance with the rules and the same added to the total qualifying service. On the basis of the same, the applicants' entitlement be worked out to arrive at the terminal benefits and the difference between the amount due and paid be made available to them. This drill be completed within a period of six months from the date of communication of this order.

13. No costs.

(Dated, the 13th June, 2007)

Dr. K B S RAJAN
JUDICIAL MEMBER

cvr/-