

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.227/04

Monday this the 23rd day of October, 2006

CORAM

**Hon'ble Mrs. Sathi Nair, Vice Chairman
Hon'ble Mr. George Paracken, Judicial Member**

S.Kandasamy,
aged 61 years, S/o K.Sundaram Asari,
Retd.Adhoc clerk, Office of the Deputy
Chief Engineer/Guage Conversion
Southern Railway, Madurai
residing at No.52, Puthurasantham II Street,
Sammattipuram, Madurai.10.Applicant

(By Advocate Mr. T.C. Govindaswamy)

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- 1 Union of India, represented by the
General Manager, Southern Raiway,
Headquarters Office, Park Town PO
Chennai.3.
- 2 The Chief Engineer/Construction,
Southern Railway, Egmore,
Chennai.8.
- 3 The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum.
- 4 The Senior Divisional Accounts Officer,
Southern Railway, Trivandrum Division,
Trivandrum.Respondents

(By Advocate Mrs.Sumati Dandapani)

The application having been finally heard on 6th October, 2006, the Tribunal
on 23rd October, 2006 delivered the following:

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O R D E R

Hon'ble Mr. George Paracken, Judicial Member

The applicant's grievance is that the service rendered by him for the period from 9.4.68 to 1.5.79 as a substitute against a regular vacancy of Lascar followed by absorption in regular service was not counted for the purpose of determining the qualifying service for pensionary benefits. According to the applicant, on his retirement from service on 30.4.02, only when the Annexure.A5 "Payment of Settlement Dues" dated 30.4.02 was issued to him, he found that only 23 years of his service from 2.5.79 to 30.4.02 was taken into consideration for determining the pensionary benefits and the aforesaid period of service rendered as 'substitute' from 9.4.68 to 1.5.79 was ignored. He made the Annexure.A6 representation dated 25.5.02 to the respondents stating that he initially joined as Extra Labour (ELR) with effect from 16.1.63 and later engaged as a Casual Labour Lascar vide order No.587 dated 8.4.68 and he was working in that capacity without any break from 9.4.68 till 1.5.79 when he was regularized as Gangman with effect from 2.5.79 maintaining his lien in Trivandrum Division, but continuing in the construction organization. Later he was posted as adhoc clerk and from that post he superannuated on 30.4.02. Since no action was taken on his aforesaid Annexure.A6 representation dated 25.5.02, he approached this Tribunal vide OA 803/03 and it was disposed of on 1.10.03 with the direction to the respondents to consider the said representation already pending with them as also the supplementary representation to be made by him in the light of the rules and instructions on the subject and to give the applicant a speaking order. The impugned

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Annexur.A9 order dated 21.1.04 has been passed in compliance of the directions of this Tribunal in the said order dated 1.10.03.

2 According to the respondents, the contention of the applicant that he served as a substitute against the sanctioned post of labour with effect from 9.4.68 was not correct because the service register maintained by the Executive Engineer (Construction), Nagarcoil clearly indicates that he was a substitute only from 2.5.79. They have submitted that the office order No.587 dated 8.4.68 submitted by the applicant along with his representation itself shows that the applicant was a temporary casual labour Lascar on daily rate wages. The office order 6/70 dated 21.9.70 produced by the applicant as Annexure.A2 also shows that he was an ELR Storemate working under the IOW/CN appointed as a Casual Labour Lascar with effect from 21.9.70 and he was to be governed by the usual terms and conditions for appointment of Casual Labour Lascar retained to work under the IOW/CN against the existing vacancies with headquarters at Virudhnagar. They have submitted that since he was appointed as a substitute only from 2.5.79 and subsequently empanelled, the entire service from 2.5.79 to 30.4.02 ie., from the date of his appointment as substitute till the date of his superannuation has been counted for the purpose of determining the qualifying service.

3 We have heard Shri T.C.G.Swamy, for the applicant and Smt. Sumati Dandapani for the respondents. Shri Swamy has relied upon the orders of this Tribunal—O.A 1345/97 dated 19.3.99—Y.Kunjukoshy Vs. Union of India and others. The applicant in that case was aggrieved because the respondents reckoned only 50% of the substitute service from 20.4.63 to 1.2.72 as qualifying service for pension, while, in fact according to rules, the whole of his service as a substitute for

the aforesaid period should have been reckoned for the purpose of qualifying service for pension. Considering the facts of the case, this Tribunal declared that the applicant was entitled to count whole of his service from 20.4.63 to 30.6.97 as service qualifying for pension. The counsel has also relied upon the order of this Tribunal in OA 569/97 dated 22.9.909 – A.Abdul Rahseed Vs. Union of India where the grievance of the applicant was that the whole of his substitute service was not counted as qualifying service for pensionary purpose. In terms of Rule 32 of the Railway Services (Pension) Rules, this Tribunal held that the applicant was entitled to count his entire substitute service as qualifying service for pensionary benefits. He has also relied upon the order dated 7.1.2000 in OA 738/97 – D.Sebastian Vs. Union of India and others in which case, the respondents fixed the pension of the applicant reckoning only 50% of his service from 1.5.61 to 1.2.72 as qualifying service on the ground that during this period the applicant's status was that of a casual labour with temporary status. However, this Tribunal came to the conclusion that the service rendered by the applicant for the period from 1.5.61 to 1.2.72 was that of a substitute and not as a casual labour and therefore it was ordered for counting the entire period as qualifying service for the purpose of pension. Shri Swamy has also relied upon the order of this Tribunal dated 23.6.98 in OA 1323/96 -N.Mohammed Vs. Union of India and others in which the applicant was aggrieved because the Railways have considered only 50% of the service from 1.7.70 to 5.1.93 spent as substitute as qualifying service for pension whereas under the rules, the entire service rendered by a substitute after he was granted temporary status till he is absorbed would qualify for pensionary benefits. Having found the claim of



the applicant true, this Tribunal declared that the applicant in the said OA was entitled to have the period of service from 1.7.72 to 5.1.93 counted in full as qualifying service for pensionary benefits. The respondents have carried the said order before the Hon'ble High Court of Kerala vide OP No.191778/98 but it was dismissed after having found that the applicant therein was a substitute from 1.1.70 and the findings of the Tribunal was only factual.

4 The respondents on the other hand relied upon the judgment of the Apex Court in Union of India and others Vs. K.G.Radhakrishna Panicker and others, AIR 1998 SC 2073. The question before the Hon'ble Supreme Court in that case was whether the employees who were initially engaged as a Project Casual Labour by the Railway Administration and was subsequently absorbed on a regular/temporary/permanent post are entitled to have their service rendered as Project Casual Labour prior to 1.1.81 counted as part of qualifying service for the purpose of pension and other retirement benefits. The Apex Court has held as under:-

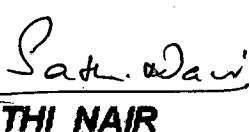
"In the present case, the benefit of counting of service prior to regular employment as qualifying service was not available to casual labour. The said benefit was granted to Open Line Casual Labour for the first time under order dated October, 14,1980 since Open Line Casual Labour could be treated as 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. 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 (1985 (3) SCR 837) 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 October 14,1980 after being treated as temporary on the basis of the scheme as accepted in Inder Pal Yadav."

5 In the present case, there is no dispute as to the counting of service rendered by the applicant as a substitute. However, the dispute is whether the service rendered by the applicant from 9.8.68 to 1.5.79 was that of a substitute at all. The applicant claims that the service rendered during the aforesaid period was that of a substitute whereas the respondents have denied it. We have gone through the pleadings in the case. The applicant has not furnished any document to prove that the period from 9.8.68 to 1.5.79 rendered by him was that of a substitute. Therefore, we are not inclined to agree with the contention of the applicant that the said period was that of a substitute and it is to be counted as qualifying service. On the other hand, the applicant himself has submitted that he joined the respondents initially as a Casual Labour w.e.f. 16.1.1963. The Annexure.A1 Office Order No.587 dated 8.4.68 produced by the applicant also shows that he was appointed 'temporarily' as a Casual Labour and his continuance in service is subject to the extension of posts in which they are charged or subject to the availability of existing vacancies. It was also mentioned in the said Annexure.A1 order that the appointment of the applicant and other two persons were made against the 4 posts of Lascars sanctioned for IOW in connection with proposed Railway Siding for Tamilnadu Cement Factory at Alangulam. The Annexure.A2 Office Order No.6/70 dated 21.9.70 also shows that the applicant was only an Extra Labourer (ELR) working under IOW/CN/VT and he was appointed as Casual Labour Lascar from 21.9.1970 under XEN/CN/MS/(VPT Cell) and retained to work under the IOW/CN/VPT against the existing vacancy with headquarters at Virudhunagar. Annexure.A3 Office Order No.281 indicates that he was posted to TEN-TVC Project w.e.f. 1.6.1972. The Annexure.A4

Office Order No.NGK/19/74 dated 2.9.74 also shows that he was a casual labour working against the regular sanctioned post in NGK Sub-Division. The applicant has not produced any documentary evidence to show that he was working as a substitute even though his claim is that the Annexure.A1 Office Order No.587 dated 8.4.1968 is a sufficient proof to show that he was working as substitute from 9.4.68. According to Rule 2(16) "substitute means a person engaged against a regular, permanent or temporary post by reason of absence on leave or otherwise of a permanent or temporary railway servant and such substitute shall not be deemed to be a railway servant unless he is absorbed in the regular service." As is evident from the judgment of the Apex Court in Union of India and others Vs. K.G.Radhakrishna Panicker and others (supra) applicant being a Project Casual Labour, the benefit of counting of service as casual labour is available only with effect from 1.1.81 under the scheme which was accepted by the Apex Court in Inder Pal Yadav's case. In the present case, the applicant was already empanelled for regular service from 2.5.79 and, therefore, his service from that date was counted for pensionary purpose. The period of service as casual labour in the Project prior to his regular empanelment cannot be counted for pensionary purpose as held by the Apex Court in the aforesaid case of K.G.Radhakrishna Panicker (supra). In the result, we dismiss the Original Application as the same is devoid of any merit. There shall be no order as to costs.

Dated this the 23rd day of October, 2006


GEORGE PARACKEN
 JUDICIAL MEMBER
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SATHI NAIR
 VICE CHAIRMAN