

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 24 of 2012

MONDAY, this the 30th day of July, 2012

CORAM:

Hon'ble Mr. K. George Joseph, Administrative Member

A.K. Poulose, Son of Kuriako, Retd. Senior Gate Keeper,
 Southern Railway, Alwaye, residing at Ayyampilly House,
 Peechanikad, Puliyannam PO,
 Angamaly, Ernakulam District-683 572. **Applicant**

(By Advocates – Mr. M.P. Varkey)

V e r s u s

1. Union of India, represented by General Manager,
 Southern Railway, Chennai-600003.
2. Senior Divisional Personnel Officer, Southern Railway,
 Trivandrum Division, Thiruvananthapuram-695 014.
3. Senior Divisional Finance Manager, Southern Railway, Trivandrum
 Division, Thiruvananthapuram-695 014. **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 23.07.2012, the Tribunal on
20-07-12 delivered the following:

O R D E R

The applicant was a Casual Labour Khalasi under the Civil
 Engineering Department of Southern Railway between 21.10.1967 and
 14.10.1983 with occasional breaks. He was granted temporary status with
 effect from 1.1.1981. He was regularized as Gangman with effect from
 15.10.1983. He superannuated on 28.2.2010. The Railway Pensioners
 Association helped him to make out a representation dated 15.6.2011 to the

2nd respondent to pay him gratuity for his casual labour service as per Annexure A3. On getting no reply he has filed this OA for the following reliefs:-

- "a) Declare that the applicant is entitled of gratuity for his casual labour service during the period 26.10.1967 and 31.7.1981 with interest at 9% till date of payment and; direct the respondents accordingly.
- b) Award costs of and incidental to this application.
- c) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstance of the case."

2. The applicant contended that as per Annexure A3 order the zonal Railways were directed to initiate suo-moto action for payment of gratuity but the applicant was denied the same before or at the time of or after his retirement. Considering the failure of the respondents to implement the Annexure A3 order while he was in service or at the time of his retirement or after retirement, the respondents are liable to pay gratuity and interest. Identical reliefs were granted in OA No. 359 of 2008, 511 of 2009 and many other OAs.

3. Per contra the respondents submitted that the casual labour service of the applicant as shown in Annexure A1 is not verifiable as it relate back to 1967 whereas the Trivandrum Division was formed only on 2.10.1979. The applicant's service register does not show any entries in proof of casual labour service for the period prior to 1.1.1981. The applicant ought to have applied for grant of gratuity immediately after 2006, if he was of the view that he was entitled for the same. Instructions in Annexure A3 are applicable only in respect of past cases i.e. those who have already retired



on 31.3.2006. The applicant was very well in service till he retired on 28.2.2010.

4. I have heard the learned counsel for the parties and perused the records.

5. The respondents have accepted Annexure A3 circular. Paragraph 6 of the said circular is extracted as under:-

“6. The Railway shall suo moto take steps to examine all the past cases on the basis of records available and settle the claims accordingly. For this purpose, all the claimants may be suitably addressed on the basis of particulars available with the Railways, so that the claimants or their legal heirs can claim the payment without delay. The Railway Administration shall extend all assistance to the retired as well as the serving Railway servants to exercise the option judiciously in order that the option exercised is advantageous to them. A compliance report may be sent to Board's Office by 30.9.2000 duly indicated the total number of claims received, the number of claims settled and the reasons for delay in settlement.”

6. The contention of the respondents is that it is applicable only in respect of past cases is not correct as it is stated in the aforesaid circular that the Railway Administration shall extend all assistance to the retired as well as the serving Railway servants to exercise the option judiciously.... This OA is squarely covered by OA No. 359 of 2008. The relevant part of the order in the aforesaid OA is reproduced as under:-

“4. I have heard Shri. T.N.Sukumaran for the applicant and Shri. Thomas Mathew Nellimoottil for the respondents. It is an undisputed fact that the applicant has been working as a casual labourer with the Respondents Department. The respondents themselves have admitted that he was granted temporary status with effect from 10.8.1979. Obviously, he has rendered service prior to that date as a casual labourer. In order to take care of such period of casual service only the Railway Board has issued Annexure A-1 circular dated 30.6.2000. As already noted above the concerned Railways were directed to take suo moto steps to examine all the past cases on the basis of records available and settle the claims accordingly. As the Railway Board has

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envisioned that there will be difficulties in locating the records and the service book would obviously contain only the entries from the date of regular appointment, the Railway Administration were directed to extend all assistance to the retired as well as the serving Railway servants to exercise the option judiciously in order that the option exercised is advantageous to them. Respondents have not complied with the aforesaid directions of the Railway Board. I, therefore, allow this O.A and declare that the applicant is entitled to obtain the casual labour service rendered by him reckoned for payment of gratuity. In the absence of the original casual labour service card, the respondents shall rely upon the Annexure A-2 copy of the casual labour service card submitted by the applicant. They may, if necessary, get it verified from the concerned authorities. The respondents shall consider the case of the applicant strictly in terms of the aforesaid Annexure A-1 circular dated 30.6.2000 of the Railway Board. Since the applicant has already retired from service and he was a low paid employee, an official from the Welfare Department of the Railways shall be deputed to assist the Government servant to exercise his option judiciously as ordered by the Railway Board in their Circular. The benefits arising out of the said circular shall be made available to the applicant within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs."

7. Following the above decision, it is declared that the applicant is entitled to get gratuity for the casual labour service rendered by him prior to 1.1.1981 in terms of Payment of Gratuity Act, 1972. The Original Application is allowed as under:-

The respondents are directed to work out the gratuity payable to the applicant along with the interest and pay the same to him within a period of three months from the date of receipt of a copy of this order.

8. No order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
OF C.A.T. (PROCEDURE) RULES
ERNAKULAM BENCH

O.A.No.359/08

Tuesday this the 31st day of March 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

K.V.Unnikrishnan Nambootheri,
S/o.Vasudeva Sharma,
Retired Pointsman,
Southern Railway, Ernakulam.
Residing at Ambadi, Kothala P.O., Kottayam.Applicant

(By Advocate Mr.T.N.Sukumaran)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Park Town, Chennai – 3.
2. Divisional Personnel Officer,
Southern Railway, Divisional Office,
Personnel Branch, Trivandrum – 14.Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 31st March 2009 the Tribunal
on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has sought a declaration that he is entitled to obtain
the casual labour service reckoned for payment of gratuity for the period
from 20.12.1969 to 29.9.1980 with interest in accordance with Annexure
A-1 R.B.E.No.130/2000 regarding payment of gratuity under the Payment
of Gratuity Act, 1972 to the casual labourers. According to the said circular
of the Railway Board "though the provisions of the Payment of Gratuity Act,
1972 shall continue to be applicable to the casual labour for the purpose of
calculating gratuity for the period of casual labour service up to the date



preceding the date of absorption, such of the casual labour who continued to be in service and were/are absorbed against regular vacancies, shall be allowed to exercise an option as under :- (i) payment of Gratuity under the provisions of the Payment of Gratuity Act, 1972 for the period of service upto the date preceding the date of absorption and for payment of gratuity and pension for the period of regular service under the provisions of the Railway Services (Pension) Rules, 1993; OR (ii) to payment of gratuity and pension counting half of the service rendered in temporary status and full service rendered on regular basis under the provisions of the Railway Services (Pension) Rules, 1993, besides gratuity under PG Act for the period preceding the attaining of temporary status. Para 6 of the said circular give further directions to the Railways which reads as under :-

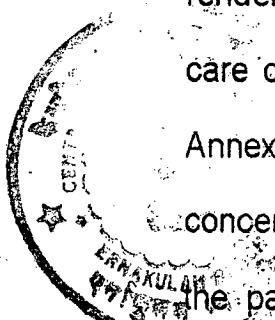
"6. The Railway shall suo moto take steps to examine all the past cases on the basis of records available and settle the claims accordingly. For this purpose, all the claimants are to be suitably addressed on the basis of particulars available with the Railways, so that the claimants or their legal heirs can claim the payment without delay. The Railway Administration shall also extend all assistance to the retired as well as the serving Railway servants to exercise the option judiciously in order that the option exercised is advantageous to them. A compliance report may be sent to Board's Office by 30.9.2000 duly indicated the total number of claims received, the number of claims settled and the reasons for delay in settlement."

2. In this case the applicant retired as a Pointsman - II on 28.2.2007 on superannuation. He had a qualifying service of 27 years with effect from 30.9.1980 and he had the past casual labour service from 20.12.1969 to 29.9.1980. He has also produced Annexure A-2 copy of the casual labour service card with his thumb impression on it showing that he had worked as a casual labourer from 20.12.1969 to 29.9.1980. He has also submitted

that the original of the casual labour service card has already been given to the respondents at the time of his empanelment in the year 1980. He has further submitted that he came to know about the aforesaid Annexure A-1 circular only after his retirement and, therefore, he could not give any option before or at the time of his retirement.

3. Respondents in their reply statement submitted that (i) the applicant has never made any representation before the Respondents Railways so far for the payment of gratuity under the Payment of Gratuity Act, 1972 (ii) the alleged Annexure A-3 representation, stated to have been made by the applicant, has never been received by them (iii) the service register of the applicant does not have any entry regarding the proof of the casual labour service for the period from 20.12.1969 to 9.4.1979 and he has already been granted temporary status with effect from 10.8.1979 and 50% of his service from the said date to 29.9.1980 was counted for the purpose of qualifying service.

4. I have heard Shri.T.N.Sukumaran for the applicant and Shri.Thomas Mathew Nellimoottil for the respondents. It is an undisputed fact that the applicant has been working as a casual labourer with the Respondents Department. The respondents themselves have admitted that he was granted temporary status with effect from 10.8.1979. Obviously, he has rendered service prior to that date as a casual labourer. In order to take care of such period of casual service only the Railway Board has issued Annexure A-1 circular dated 30.6.2000. As already noted above, the concerned Railways were directed to take suo moto steps to examine all the past cases on the basis of records available and settle the claims



accordingly. As the Railway Board has envisaged that there will be difficulties in locating the records and the service book would obviously contain only the entries from the date of regular appointment, the Railway Administration were directed to extend all assistance to the retired as well as the serving Railway servants to exercise the option judiciously in order that the option exercised is advantageous to them. Respondents have not complied with the aforesaid directions of the Railway Board. I, therefore, allow this O.A and declare that the applicant is entitled to obtain the casual labour service rendered by him reckoned for payment of gratuity. In the absence of the original casual labour service card, the respondents shall rely upon the Annexure A-2 copy of the casual labour service card submitted by the applicant. They may, if necessary, get it verified from the concerned authorities. The respondents shall consider the case of the applicant strictly in terms of the aforesaid Annexure A-1 circular dated 30.6.2000 of the Railway Board. Since the applicant has already retired from service and he was a low paid employee, an official from the Welfare Department of the Railways shall be deputed to assist the Government servant to exercise his option judiciously as ordered by the Railway Board in their Circular. The benefits arising out of the said circular shall be made available to the applicant within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 31st day of March 2009)

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GEORGE PARACKEN
JUDICIAL MEMBER

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Date 3-04-09

[Signature]
Deputy Registrar

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

C.P(C) 51 OF 2013 IN O.A. NO. 24 OF 2012

Friday, this the 14th day of June, 2013

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

A.K.Paulose
Retired Senior Gate Keeper
Southern Railways, Alwaye
Residing at Ayyampilly House
Peechanikad, Puliyanam PO
Angamaly, Ernakulam District – 683 572

... Petitioner

(By Advocate Mr. M.P.Varkey)

versus

Rakesh Mishra
General Manager
Southern Railway
Chennai – 600 003

... Respondent

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

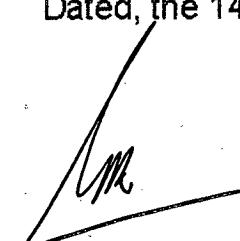
The application having been heard on 14.06.2013, the Tribunal on the same day delivered the following:

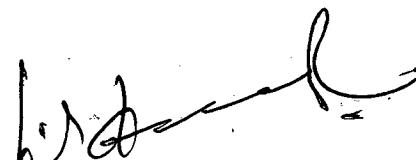
ORDER

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

The counsel for respondents submitted that an amount of ₹7544/- has been paid in compliance of the order of the Tribunal subject to verification by the petitioner. The C.P(C) is closed with liberty to revive, if necessity arises.

Dated, the 14th June, 2013.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

VS