

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.238/2007

Friday, this the 14 th day of September, 2007.

CORAM :

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

A. Paul Nadar,
S/o Ari Krishna Nadar,
Retd.Senior Gate Keeper,
Office of the Section Engineer/P/Way/
Nagercoil/Southern Railway,
Residing at: Beach Road, Leepuram P.O.,
Kanyakumari District. Applicant

(By Advocate Mr.TC Govindaswamy)

Vs.

1. Union of India, represented by
General Manager, Southern Railway,
Head Quarters Office, Park Town – P.O.,
CHENNAI -3.
2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Divisional Office,
TRIVANDRUM – 14.
3. The Senior Divisional Finance Manager,
Southern Railway, Trivandrum Division,
TRIVANDRUM. : Respondents

(By Advoate Shri Thomas Mathew Nellimoottil)

The application having been heard on 14.9.2007, the Tribunal on the same day delivered the following :

ORDER

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

The applicant entered under the service of the respondents as Casual Labour, Khalasi on 11.10.1972 and he was made a regular Gate Keeper on 27.9.1980. Prior to his regular appointment as Gate Keeper his services were uninterrupted, as authenticated by the Inspector of Works (Construction) Nagarcoil as is evident from Annexure A-2. The applicant was promoted as Senior Gate

Keeper and by 31.7.06 he has superannuated. While the applicant was expecting his past services as casual labourer would be included proportionately as qualifying service for pension and further terminal benefits, from the PPO issued by Annexure A-1 he found that, only his regular service from 27.9.80 to 31.7.06 amounting to 26 years had been taken into consideration ignoring the proportionate casual labour services. Annexure A-3 is the representation stated to have been filed by the applicant in this regard, which did not evince in reply. The applicant in his O.A. averred that, on enquiry about his A-3 application he was orally informed that he is not entitled to any benefit of the said past services as the same was in project work.

2. The respondents have denied the receipt of A-3 application, and the oral rejection of the same, as alleged by the applicant. However, in their counter (Para 5, 6 & 7)-they have stated as under.

"5. The averments in paragraph 4(c) are totally not relevant to the prayer herein. It is humbly submitted that the payment of gratuity for the period from 11.10.1972 to 27.9.1980 under the payment of Gratuity Act 1972 is not a pensionary benefit and no prayer for the said benefit is made in the present Original application. If the applicant claims for Gratuity for the said service under the Act, he has to initiate appropriate proceedings thereon, it is humbly submitted.

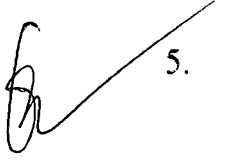
6. The averments in para 4(d) of the O.A. are not accepted to allow the prayer in the O.A. It is humbly submitted that the paragraph 2501 of the Indian Railway Establishment Manual are not at all applicable to the applicant during the relevant period i.e. for the period of service mentioned in Annexure A-2 as he was a Project Casual labourer working in the Project work of laying a new line between Trivandrum-Cape-Comerin (Kanyakumari) - Tirunelveli. Accordingly, the said service is only a Project service and not in the Open Line and not forming a service for the purpose of temporary status. The averments made on the basis of Robert D'Souza case are also not accepted. Hence the statement that the applicant must be deemed to have attained the status of a temporary employee on and with effect from 11.4.1973 is not accepted. It is submitted that there are vast differences between a temporary employee and a temporary status attained employee. Any how, the applicant cannot be considered to be a temporary status attained employee for the reasons stated and hence, he is not entitled to reckon 50% of the service between

11.4.1973 and 27.9.1980 additionally, for the purpose of pensionary benefits. The alleged claim for a total qualifying service of 29 ½ years for pensionary benefits is not accepted, it is humbly submitted.

7. Regarding the averments in paragraph 4(e) of the Original Application it is respectfully submitted that the respondents humbly deny the receipt of Annexure A-3 and so also the alleged oral information to the applicant. It is also humbly submitted that for the reasons stated in the above paragraphs, there is no failure on the part of the respondents to reckon a substantial part of the applicant's service for pensionary benefits and in fact, the said services are not entitled to be accounted."

3. The applicant has filed a rejoinder in which he has stated that, the mention about the non-payment of gratuity was only to substantiate that, had the period of casual labour been treated as a project work casual labourer then the respondents would have certainly paid the gratuity accordingly at that point of time itself. The fact of non-payment only confirms that, the said period was treated by the respondents only as a casual labour service in the Open Line.

4. The counsel for applicant submitted that the services rendered by the applicant prior to 27.9.80 cannot but be one qualifying for terminal benefits which is evident from the fact that, no gratuity was paid and that the regular appointment was much earlier on 1.1.1981, from which date only casual labourers of Project Wing were given temporary status etc. Again, the authentication of casual service had been endorsed by the Inspector of Works (Construction), Nagarcoil, and the same also goes to prove that the applicant was serving only in Open Line. The counsel for applicant relied upon the decision of this Tribunal in O.A. 606/05 as well as 677/05 wherein it was held that, as per the decision of the Apex Court in Robert 'D'Souza (1982 (1) SCC 645), not all the construction works can be treated as project work.

 5. Counsel for the respondents had referred to the counter especially as

contained in para 5,6 & 7 extracted above.

6. Arguments were heard and documents perused. The following points would go to show that the applicant's earlier services as Casual labourer cannot but were treated as one of Open Line, as qualifying for terminal benefit purposes at the proportionate ratio prescribed in the rules:

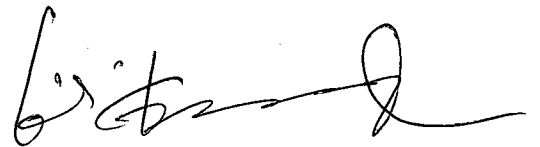
- a) Casual labour certificate was issued by the IOW (Construction) Southern Railway, Nagarcoil,
- b) The applicant was regularly appointed as Gate Keeper with effect from 27.9.80;
- c) There appeared to be no direct recruitment to the post of Gate Keeper and always the past services are taken into consideration;
- d) The fact that the applicant's regular appointment preceded implementation of Inder Pal Yadav's case shows that the applicant's past services were not for project work;
- e) as per the decision in the Apex Court's judgment in 'D' Sousa, all construction works do not come under project labour;
- f) The applicant's case comes under Rule 2501 of the IREM.

7. In view of the above, taking into account the two precedence relied upon by the counsel for applicant, the O.A. is allowed.

8. It is declared that, 50% of past service as casual labour qualifies for being treated as services to reckon for the purposes of terminal benefits. Accordingly, the applicant's services rendered from 11.4.73 to 27.9.80 shall be taken as casual labour service in the open line project for treating as qualifying services to the

extent permissible under the rules and the same be added to the regular service with effect from 27.9.80. Respondents are directed to recast the PPO and re-work out the extent of terminal benefits and pension admissible to the applicant. Revised PPO shall be prepared and sent to the authorities within a period of two months from the date of communication of this order. The difference in terminal benefits and the difference in pension till now, may be worked out and paid to the applicant within two months thereafter. In the circumstances, there is no order as to costs.

Dated the 14 th September, 2007.



DR. K.B.S. RAJAN
JUDICIAL MEMBER