

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.240/94

Friday, this the 9th day of September, 1994.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

KK Gokulan, Velikulathil House,
Eroor P.O., Thripunithura.

....Applicant

By Advocate Shri Asok M Cherian.

Vs.

1. Southern Railway represented by its General Manager, Madras.
2. The Divisional Railway Manager, Divisional Office (Personnel Branch), Southern Railway, Trivandrum.
3. The Executive Engineer, Southern Railway, Ernakulam.
4. The Assistant Executive Engineer, Southern Railway, Ernakulam.

....Respondents

By Shri George Joseph, Addl Central Govt Standing Counsel.

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant was working as a casual labourer khalasi in the Construction Wing of Southern Railway from 16.5.1965 and was eventually absorbed as a Gangman in the regular establishment on 15.10.1983. He retired from service on 30.7.1989. He was paid pensionary benefits on the basis that he attained temporary status on 1.1.1981 and 50% of his service from that date upto the date of his empanelment and the full service thereafter was to be taken into account as qualifying service. Applicant's grievance is that

contd.

he should have been considered as having attained temporary status six months after his initial engagement and 50% of that service prior to 1.1.1981 should also be considered as qualifying service. Applicant relies on the decisions of this Tribunal in OA 484/89 (Madras Bench) and OA 762/90 (Ernakulam Bench).

2. Respondents have not filed a reply statement in spite of several adjournments and in spite of grant of further time on payment of costs. This was a case in which the applicant has been seeking a decision on his pensionary benefits from 1989 and the respondents failed to realise the urgency in having the matter settled. It is also seen that the respondents 3 & 4 are placed at Ernakulam itself. Despite this, respondents failed to file a reply statement. The defence of the respondents was accordingly struck off.

3. The case of the applicant is squarely covered by the two decisions of the Tribunal cited by him. In OA 484/89, the Madras Bench of the Tribunal observed:

"...It is well known established fact that temporary status is merely a concept and it has no normal existence like promotion or confirmation. Temporary status is merely acquired and not granted or conferred to individuals even according to the Railway Rules. It is evident that a casual labourer in the railways acquires temporary status after a continuous period of service of the prescribed period. There can be no doubt that by mere afflux of time, a casual labourer in continuous service in the Railways automatically acquires temporary status. There is no formality of accord or selection or approval required for acquiring the status. Admittedly, nothing is done by the respondents or required to be done by the casual labourer in order to gain that status which rather comes to them if they but merely continue in service without a break for the prescribed period..."

The Tribunal directed respondents in that case to issue appropriate orders and instructions to the effect that 50% of the service of the applicants after completion of six months from the date of their initial appointment as casual labourer should be reckoned as qualifying service for pension and other retiral benefits on their eventual absorption in regular employment.

4. In OA 762/90, the Tribunal followed the decision in OA 484/89 and directed:

"...In fixing the revised pension of the applicant, the respondents shall also take into account 50% of the casual service that may be found rendered by the applicant under para 2503 (of the Indian Railway Establishment Manual) and in the light of the dictum laid down by the Madras Bench..."

It may also be noted that the applicants in OA 484/89 were casual labourers who have joined construction work in various projects while the applicant in OA 762/90 was Lorry Attendant under the Executive Engineer (Construction), Southern Railway. It is seen that a person like the applicant herein is entitled to get the benefit of the principle declared in the cases referred to above.

5. In the result, the application is allowed and the respondents are directed to recompute the retiral benefits due to the applicant reckoning 50% of the casual service rendered by him prior to 1.1.1981 also from the date of his completion of continuous service of six months from his initial engagement. Respondents are also directed to complete this exercise and pay the applicant the consequential arrears/additional amounts due within a period of six months of the date of this order.

6. Application is allowed. No costs.

Dated the 9th September, 1994.

PV Venkatakrishnan
PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

Chettur Sankaran Nair
CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN