

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION No. 245/2007

Dated the 14th January, 2008

CORAM: -

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

P. Suriadevan,
Retired Welder Gr-I,
Office of the Senior Section Engineer,
Carriage and Wagon/Southern Railway/Shornur,
Residing at Palackal House,
Near Printing Technology, Shornur.

....Applicant

By Advocate Ms Heera for Mr TCG Swamy,

-Vs-

1. Union of India,
represented by the General Manager,
Headquarters office, Park Town, PO,
Chennai-3.
2. The Senior Divisional Personnel Officer,
Southern Railway, Palaghat Division, Palaghat.
3. The Senior Divisional Finance Manager,
Southern Railway, Palaghat Division, Palaghat.
4. The Divisional Railway Manager,
Southern Railway, Palaghat Division, Palaghat.Respondents
By Advocate Mr. V Varghese Johan for Thomas Mathew Nellimoottil.

ORDER

The applicant is a Welder Grade-I in the scale of pay of Rs.4500-7500 in the office of the Senior Section Engineer,Carriage and Wagon Wing, Shornur Railway Station of Palaghat Division of Southern Railway. His grievance in the original application is regarding his erroneous calculation of his qualifying service for the purpose of his pension and other retirement benefits.

2] The brief facts of the case are that the applicant was initially appointed as substitute Khalasi in the Mechanical Department of the then Olavakkot Division of Southern Railway on 15.10.68 and he continued with intermittent breaks. Having completed 180 days of continuous service, he was treated as temporary w.e.f. 15.2.71. The temporary status was granted to the applicant by an order dated 12.9.73. However, there was disengagement w.e.f. 10.4.72 for want of work and thereafter he was being utilized with intermittent breaks. The applicant completed six months of continuous service and he was treated as temporary w.e.f. 12.7.73. The applicant, while continuing as a Substitute Khalasi in the Carriage & Wagon Wing of Palghat Division at Shornur was terminated from service during May 1974 in connection with alleged participation in the Nation wide strike of Railwaymen conducted during May 1974. The order of termination was without any inquiry under Rule 149 of the Indian

Railway Establishment Code Volume-I. The applicant and about 15 others who were identically removed from service while working as substitute Khalasis in the Carriage & Wagon Wing of the Mechanical Department approached the Hon'ble High Court of Kerala and the Hon'ble High Court set aside the order of termination with a direction to the respondents to reinstate the applicant and others in service with all consequential benefits. The applicant was reinstated as a Substitute Carriage & Wagon Khalasi by order dated 15.2.75 issued by the 2nd respondent. The applicant's substitute service was followed by regularisation with effect from 19.8.77. The applicant continued in service and was promoted from time to time and superannuated on 31.1.07. After the retirement, he was granted pension for a qualifying service of 31 years and 6 months (31 years 5 months and 7 days) as evident from the pension calculation sheet issued by the respondent vide Annexure-A/2 order dated 9.1.07. As the calculation was erroneous the application submitted Annexure-A/3 representation in the first week of February 07 to the Respondent No.4, however, there was no response from the Respondents. Hence this application praying for the following reliefs:

(i) "Call for the records leading to the issue of Annexure-A2 and quash the same to the extent it calculates the applicant's pension and other retirement benefits for the qualifying

service of only 31 years and 6 months as against a total qualifying service of 33 years;

- (ii) Declare that the respondents are bound to reckon the whole of the applicant's service from 12.7.1973 to 31.1.2007 as qualifying for pension and other retirement benefits and direct the respondents to calculate and revise the applicant's pension and other retirement benefits on a total qualifying service of 33 years and direct the respondents to grant all consequential benefits including arrears thereof forthwith;
- (iii) Direct the respondents to grant the applicant interest on arrears of pension and other retirement benefits at the rate of 9% per annum with effect from 12.2007 until the date of full and final settlement of the same;
- (iv) Award costs of and incidental to this application;
- (v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case."

3] The short argument of the applicant is that he was appointed and continued as a Substitute Khalasi in the Carriage & Wagon Wing of the Mechanical Department, therefore, the respondents ought to have reckoned his service from 12.7.73 till the date of his superannuation i.e. 31. 1.07, for the purpose of pension and other retirement benefits. The respondents received only 50% of the services as he was treated as a casual labour, granted temporary status.

4] Respondents have contested the claim as not maintainable on the facts of the case. According to them, the applicant was engaged as an open line casual labour with

intermittent break and was granted the benefits of temporary status w.e.f. 12.7.73. He had earlier been granted the benefits of temporary status w.e.f. 15.2.71 to 9.4.72, but there was break in his casual service. He participated in 1974 strike from 6.5.74 onwards, and his service as a temporary status was terminated from 23.5.74. however, he was reinstated in service w.e.f. 19.2.75 and granted back wages during the strike period. After screening he got regular absorption as Mechanical Khalasi as per order dated 19.8.77 and was promoted as Welder from 7.8.79. He got further promotions and retired from service on 31.1.2007 as Technician Grade-I/Welding . For calculation of the qualifying service of the applicant, 50% of the temporary status attained casual labour service of the applicant for the period from 12.7.73 to 19.8.77 (excluding the period of 23 days from 6.5.74 to 28.5.74 treated as non qualifying service due to his participation in strike) was taken into account in addition to the period of regular service from 20.8.77 to 31.1.07. Thus the pensionary benefits admissible under Rules were correctly calculated and the applicant received the settlement benefits without any demur. He had also perused the service book register and confirmed the entry made therein, hence he cannot now contend that initially he was engaged as 'substitute' and not as 'casual labourer'. If the applicant was appointed as a substitute, he would have got temporary status on completion of 4 months of continuous service. The claim of status as 'substitute' with

attendant benefits made after 34 years is unjust and without any basis.

5] It has been further submitted that the Substitutes are engaged on CPC scale of pay from the beginning and not on the daily rate of wages. The respondents also enclosed copy of the relevant extracts of the service register, whereas the applicant has filed the rejoinder reiterating the averments made in the application and has further submitted that there was no requirement of employment of casual labours in the Carriage & Wagon side of the Mechanical Department and they were engaged in Railways in Civil Engineering Department only. The applicant has also contested the entries in the service register. In support of his claim he has also produced a copy of the provisional seniority list dated 2.1.07(Annexure-A6) wherein his date of appointment is shown as 12.7.73 and the Railway Board's circular dated 6.3.74 (Annexure-A7) by which according to the applicant causal labourers were granted the benefit of temporary status after completion of four months continuous service.

6] I have considered the submissions made by learned counsel for both sides and have gone through the original service register produced by the respondents. The short question is whether the applicant was engaged as 'substitute' or 'casual' labour at the time of his appointment. The applicant has not produced his original appointment order, but the entries in the service record clearly show that he was engaged as casual labour

on daily wage basis. There was intermittent gap between two spells commencing from 18.1.73. Annexure-A4 dated 18.3.74 now produced by the applicant alongwith his rejoinder granting temporary status of casual labour/substitute Khalasi would show that the applicant at serial No.3 was continuously working from 18.1.73 and granted temporary status after 6 months from 12.7.73. Though the order states in the subject heading "grant of temporary status and authorised scale of pay to CI/Sub. Khalasis" in the designation column against the name of the applicant shown as C/L only which stands for casual labours. Annexure-A7 order produced by the applicant which contains circulars issued by the Railway Board on various dates shows that by order dated 6.3.74 the qualifying service for grant of temporary status for "Substitutes" was reduced from six months to four months. Since the applicant was granted temporary status on 18.3.74, this notification would have to be followed, if he was a 'Substitute'. It is seen from the Annexure-A4 that the applicant was engaged in the category of casual labour only as otherwise he would have been granted the benefit of reduction from the period of six months to four months. It is seen that Substitutes are engaged on CPC scale of pay from the beginning and not on daily rate of wages. Had the applicant been appointed as a substitute as contended by him, he would have given the temporary status on completion of 4 months of continuous service. Hence, A7 order produced by the aplicant

does not help him. As he was granted temporary status on completion of 6 months of continuous service it is clear that he was engaged as a Casual Labour and not as substitute. The applicant has also not been able to produce the order reinstating him after the strike period. Since the appointment orders which would have sufficed to show the nature of appointment as Casual labour or Substitute, are not produced by the applicant, the entries in the Service Record have to be accepted as authentic. Hence, I am unable to uphold the claim of the applicant that he was engaged as a Substitute worker and entitled to get the benefit of the entire qualifying service for pension purpose.

7] The application is devoid of merit and is dismissed. No costs.

Sathi Nair
(SATHI NAIR)
VICE CHAIRMAN

STN