CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 253 / 2004

Thursday, the 4th day of August, 2005.

CORAM :

HON'BLE Mr.K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.Sankaran
Retired Sr.Trackman, Office of the Section Engineer,
Permanent Way, Mavelikara
Residing at : Lalbhavanam, Pathiyurkala
Keerikadu P.O., Kayamkulam, Alleppey : Applicant

(By Advocate Mr. T.C.Govindaswamy)

Versus

1. Union of India represented by the
General Manager
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.

2. The Divisional Railway Manager
Southern Railway, Trivandrum Division
Trivandrum – 14

3. Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum – 14

4. Senior Divisional Financial Manager
Southern Railway, Trivandrum Division
Trivandrum – 14 : Respondents

(By Advocate Mr. P.Haridas)

The application having been heard on 04.08.2005, the Tribunal on the same day delivered the following :

ORDER

HON'BLE Mr. K.V. SACHIDANANDAN, JUDICIAL MEMBER

In this OA, the averment of the applicant is that he was engaged as a Casual Labourer on 27.08.1972, completed six months of continuous service on 26.03.1973 and he should have been deemed to attain the status of temporary employee by operation of law on 27.03.1973. He was granted the scale of pay of a regular employee on

23.10.1978. The applicant was regularised as Gangman on 22.08.1984 and he superannuated on 31.10.2003 as Senior Trackman from Trivandrum Division. In the Pension payment advice and calculation sheet issued to the applicant he was not granted the benefit of reckoning 50% of his service rendered between 27.03.1073 and 23.10.1978 and also the whole of service from 01.01.1984 to 22.08.1984 for the purpose of pensionary benefits. So he has filed this Original Application seeking the following reliefs :-

i. Call for the records leading to the issue of Annexure A-3 & A-4 and quash the same to the extent they calculate the applicant's pension and other retirement benefits on a qualifying service of only 21 ½ years.

ii. Declare that the applicant is entitled to reckon 50% of his service from 27.03.1973 to 23.10.1978 and the whole of his service from 01.01.1984 to 22.08.1984 for the purpose of pension and other retirement benefits.

iii. Direct the respondents to re-calculate the applicant's pension and other retirement benefits taking into consideration the declaration in Para 8 (b) above and to grant and pay the consequential benefits including the arrears of pension and other retirement benefits within a time limit as may be found just and proper by this Hon'ble Tribunal.

iv Award costs of and incidental to this Application.

v. Pass such other orders or direction as deemed just, fit and necessary in the facts and circumstances of the case.

2. The respondents have filed a detailed reply statement contending that the applicant was retired while working under the Section Engineer, Permanent Way, Mavelikara. He was granted temporary status on 23.10.1978. (Annexure R-1) The entries regarding casual service prior to 23.10.1978 as claimed by the applicant cannot be reckoned. It is also not seen in the Service Register. As per the said register, he was absorbed as Gangman on 06.08.1985 (Annexure A-2). As per Rule 31 of the Railway Services (Pension) Rules, 1993, 50% of the service from the date of temporary status to the date preceding absorption (i.e from 23.10.1978 to 05.08.1985 in the case of the applicant) and full service from the date of regular absorption to the date of superannuation (i.e from 06.08.1985 to 31.10.2003) has to be

accounted as qualifying service for pensionary benefits. The applicant has a total qualifying service of 21 years and 8 months rounded off to 21 ½ years as per Annexure A-3 and A-4. The contention of the applicant that he is entitled to reckon his service from 01.01.1984 to 20.08.1984 for the purpose of pensionary benefits since he was regularised against a vacancy as on 31.12.1983 cannot be accepted.

3. The applicant has filed a rejoinder reiterating the contentions in the O.A and further submitting that during the material period he was not part of any project. The Hon'ble Supreme Court has laid down the law in the case of Robert D'souza 1982 SCC (L&S) 124 regarding temporary status as regards to those who are working in the construction organisation itself in the year 1982.

4. The respondents have filed an additional reply statement reiterating the contention that the applicant was working in a Project and therefore his service in the project cannot be taken as qualifying service As per decision in Inder Pal Yadav's case, the Project Casual Labourers are entitled for temporary status from 01.01.1981 or only subsequently. The applicant being a Project Casual Labourer is not eligible for temporary status from an earlier date.

5. Shri T.C.Govindaswamy appeared for the applicant and Shri P.Haridas appeared for the respondents.

6. I have given due consideration to the pleadings, arguments and material placed on record. The learned counsel for the applicant argued that the applicant was a Construction Casual Labourer and therefore, the stand taken by the respondents is not applicable since he was not a Project Casual Labourer as distinguished by the Apex Court. The learned counsel for respondents on the other hand argued that taking into consideration the ratio and on the basis of acceptance of the scheme in Inder Pal Yadav's case, the applicant should be a Project Casual Labourer and therefore, he is not entitled for temporary status or any revision of pensionary benefits.

7. The question for consideration is that whether the applicant was working as Construction Casual Labourer or Project Casual Labourer. The learned counsel for the applicant argued that had he been a Project Casual Labourer, the applicant would not have a case at all. However, Annexure A-1 clearly shows that from 27.08.1972 onwards the applicant had been working in the Construction Organisation as evidenced and certified by the Permanent Way Inspector, TVC, Ernakulam , Southern Railway Quilon. Apart from Annexure A-1, the applicant is subjected to transfer which is a clear indication that he was in the Construction organisation. Admittedly, respondents had reckoned 50 % of the service of the applicant from 23.10.1978 to 05.08.1985 and whole service from 06.08.1985 to 31.10.2003 The fact that considering his service prior to 1981 and reckoniong 50% of service is a clear indication that the respondents had recognised and accepted him as a Construction Casual Labourer. On going through the records and material evidence, this Court cannot infer that the applicant was working as a Project Casual Labourer. It is brought to my notice a celebrated decision of the Hon'ble Supreme Court reported in (1982) SCC (L&S) 124 in L.Robert D'souza Vs. Executive Engineer, Southern Railway and another wherein " the definition of Casual Labourer clearly indicates that the person belonging to casual labour is not liable to transfer and the said issue is settled once for all." It is profitable to quote Para 21, 27 & 28 of the said order.

> " Rule 2501 (b) (i) clearly provides that even where staff is paid from contingencies, they would acquire the status of temporary railway servants after expiry of six months of continuous employment. But reliance was placed on Rule 2501 (b) (ii) which provides that labour on projects, irrespective of duiration, except those transferred from other temporary or permanent employment would be treated as casual labourer. In order to bring the case within the ambit of this provision it must be shown that for 20 years appellant was employed on projects. Every construction work does not imply project. Project is correlated to planned projects in which the workman is treated as work-charged. The letter dated September 5, 1966, is by the Executive Engineer, Ernakulam, and he refers to the staff as belonging to construction unit. It will be doing violence to language to treat the construction unit as project. Expression 'project' is very well known in a planned development. Therefore, the assertion that the appellant was working on the project is

believed by two facts : (i) that contrary to the provision in Rule 2501 that persons belonging to casual labour category cannot be transferred, the appellant was transferred on innumerable occasions as evidenced by orders Ex.P-1 dated January 24, 1962 and ex. P-2 dated August 25, 1964, and the transfer was in the office of the executive Engineer (Construction) ; (ii) there is absolutely no reference to project in the letter, but the department is described as construction unit. If he became surplus on completion of project there was no necessity to absorb him. But the letter dated September 5, 1966, enquires from other Executive Engineers, not attached to projects, whether the surplus staff including appellant could be absorbed by them. This shows that the staff concerned had acquired a status higher than casual labour, say temporary railway servant. And again construction unit is a regular unit all over the Indian Railways. It is a permanent unit and cannot be equated to project. Therefore, the averment of the Railway Administration that the appellant was working on project cannot be accepted. He belonged to the construction unit. He was transferred fairly often and he worked continuously for 20 years and when he questioned the bona fides of his transfer he had to be re-transferred and paid wages for the period he did not report for duty at the place where he was transferred. Cumulative effect of these facts completely belie the suggestion that the appellant worked on project. Having rendered continuous uninterrupted service for over six months, he acquired the status of a temporary railway servant long before the termination of his service and, therefore, his service could not have been terminated under Rule 2505.

There is no dispute that the appellant would be a workman within the meaning of the expression in Section 2 (s) of the Act. Further, it is incontrovertible that he has rendered continuous service for a period over 20 years. Therefore, the first condition of Section 25-F that appellate is a workman who has rendered service for not less than one year under the Railway Administration, an employee carrying on an industry, and that his service is terminated which for the reasons hereinbefore given would constitute retrenchment. It is immaterial that he is a daily rated worker. He is either doing manual or technical work and his salary was less than Rs.500 and the termination of his service does not fall in any of the excepted categories. Therefore, assuming that he was a daily-rated worker, once he has rendered continuous uninterrupted service for a period of one year or more, within the meaning of Section 25-F of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories, notwithstanding the fact that Rule 2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly ther termination of service in this case would constitute retrenchment and for not complying with pre-conditions to valid retrenchment, the order of termination would be illegal

and invalid.

Accordingly, we allow this appeal, set aside the order of the High Court and declare that the termination of service of the appellant was illegal and invalid and the appellant continues to be in service and he would be entitled to full back wages and costs quantified at Rs. 2000. "

8. This decision settled the issue once for all and that if an employee is in Construction Casual Labourer his service is treated as if he is in the open line. This Court had occasion to consider the same point in a decision rendered in OA 808/97 dated 17.02.1999, in P.M Sreedharan Vs. UOI & Ors. Para 6 & 7 of the said order is as under :-

" Learned counsel appearing for the respondents, relying on UOI & Ors Vs. K.G.Radhakrishna Panicker & Ors, 1998 SCC (L&S) 1281, submitted that the applicant was only a project casual labour and therefore, he is not entitled to the reliefs sought for. If Radhakrishnana Panicker's case holds the field, no doubt, the applicant is not entitled to any relief. Learned counsel appearing for the applicant submitted that L.Robert D'souza Vs. Executive Enginer, Southern Railway & another 1982 SCC (L&S) 124, will squarely apply to the facts of the case and that the applicant is entitled to the reliefs claimed for. D'souza's case is left untouched in Radhakrishna Panicker's case. The question that arose for consideration in Radhakrishna Panicker's case was that whether the employees who were initially engaged as Project Casual Labourers by the Railway Administration and were subsequently absorbed on regular/permanent post are entitled to have the services rendered as Project Casual Labourers prior to 01.01.1981 counted as part of qualifying service for the purpose of pension and other retiral benefits. In D'souza's case it has been clearly held that every construction work, does not imply project, that project is correlated to planned Projects in which workman is treated as work-charged, that it will be doing violence to language to treat the construction unit as project, that expression 'Project' is very well known in a planned development, that if a casual labourer becomes surplus on completion of project, there was no necessity to absorb him, that construction unit is a regular unit all over the Indian Railways, that it is a permanent unit and cannot be equated to project and that if a person belonging to the category of casual labour employed in construction work other than work-charged projects renders six month's continuous service without break, by the operation of statutory rule the person would be treated as temporary railway servant after the expiry of six months of continuous employment. So, the arguments advanced by the learned counsel for the

respondents that there are only two types of casual labourers, one casual labourer, Open line and the other casual labourer, Project cannot be accepted in the light of the findings in D'souza's case.

It is also seen from the documents produced in this case that the applicant was transferred on various occasions. Since the applicant was transferred on innumerable occasions and the transfer was issued by the authorities concerned in the Construction Wing, the arguments advanced by the learned counsel for the respondents that the applicant was in Project Line cannot be accepted. If the applicant was Project casual labourer, there was absolutely no necessity to absorb him on completion of the project since he became surplus. If the case of the applicant is to be brought within the ambit of Rule 2501 (P) (ii) of I.R.E.M., it must be shown that for 18 years the applicant was employed on Projects. The burden to prove this is on the respondents. The respondents have not discharged the burden of proving that the applicant was working for 18 years on projects. "

9. The Hon'ble High Court of Kerala in O.P.No.20772 of 1999 (S) dated 19.11.2003 has upheld the decision of this Tribunal on the same issue and observed as follows:-

" His claim was contested by the Railways contending that he was not in Construction Wing but in Project Wing. The Tribunal examined the issue and taking into account his subsequent transfers from one project to another, it was found that he really worked in Construction wing and not in project wing. The Tribunal also took note of the contention in the reply statement of the Railways that the petitioner was in the construction wing posted under the Executive Engineer, Construction, Southern railway, Sakleshpur and was absorbed while working so.

Thus, the employment under the Executive Engineer (Construction) is directed to be taken as employment in construction wing That finding cannot be stated to be faulty to invite interference by exercising the supervisory jurisdiction vested in this court. "

10. The learned counsel for applicant took me through the decision rendered by the Hon'ble High Court in an identical matter UOI Vs. R Arjun Chettiar & anr., (O.P.No. 6066/99 (S)) in which the Hon'ble High Court has accepted the same ratio and granted the relief . The learned counsel for respondents on the other hand tried to impress upon this Court by quoting K.G.Radhakrishnan's case (1993 AIR SCW

1940) and canvassing for a position that the applicants in that case are identically situated as discussed above.

11. In the circumstances, I am of the view that the applicant being a Construction Casual Labourer and the respondents had already reckoned 50% of his services for pensionary benefits from 23.10.1978 onwards as per Annexure A-1 his service from 27.03.1973 to 23.10.1978 should also be reckoned for the pensionary benefits. Another plea taken by the applicant was that by Annexure A-2 the applicant was engaged as Substitute Gangman from 06.08.1985. towards the vacancies as on 31.12.1983, therefore, the period between 01.01.1984 to 22.08.1984 should be considered in full for pensionary benefits. On going through Annexure A-1 though the applicant was engaged as Substitute Gangman towards the vacancies as on 31.12.1983 with effect from 06.08.1985, but it has not been granted retrospectively. Therefore, that claim cannot be sustained.

12. In the conspectus of facts and circumstances, this Court declare that the applicant is entitled to the benefit of reckoning 50% of the casual labour service for the period from 27.03.1973 to 23.10.1978 towards pensionary benefits only. The respondents are directed to grant the benefit within a time frame of three months and pass appropriate orders and communicate the same to the applicant. In the circumstances no order as to costs.

Dated, the 4th August, 2005.

K.V.SACHIDANANDAN
JUDICIAL MEMEBR

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