CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.269/04

Monday this the 12th day of December 2005.

CORAM:

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

C.K.Thankappan Pillai,
S/o Govinda Pillai,
(Retired Gate Keeper, Under section Engineer/
Permanent Way/Southern Railway, Mavelikkara),
residing at : "SHEEJA BHAVANAM',
Kochukuriyikkavila,
Vellimon Post, Quilon. Applicant

(By Advocate Shri TC Govindaswamy)

Vs.

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

2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14. Respondents

(By Advocate Shri Sunil Jose)

The application having been heard on 12.12.2005
the Tribunal on the same day delivered the following

ORDER (Oral)

HON'BLE MR. KV SACHIDANANDAN, JUDICIAL MEMBER

The applicant was initially engaged as a Casual Labourer on 21.1.1972and was re-engaged on 14.9.1972 under the Inspector of works/Construction/Quilon. He worked under the said authority till he was transferred to the control of the Permanent Way Inspector/Open Line/Mavelikkara on 20.4.1978. Thereafter, he continued under the said

authority until he was regularized as a Gangman on 14.4.1984. He was later confirmed and superannuated from service on 31.12.2002. He claims that he is entitled to reckon 50% of his temporary status from 15.3.1973 to 23.10.1978 for the purpose of pension and other retirement benefits which has been denied by the respondents. Aggrieved by non-reckoning the said period of service, the applicant has filed this O.A. seeking the following main 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 on a total qualifying service of only twenty one and half years (21 & ½)years.

ii. Declare that the applicant is entitled to reckon 50% of the applicant's temporary status attained service between 15.3.1973 and 14.4.1984 for the purpose of pension and other retirement benefits.

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

2. The respondents have filed a detailed reply statement contending that the applicant was a Construction Open Line Casual Laborer and he was not a part of any Project is incorrect. The document Annexure R-1 clearly shows that, the persons therein including the applicant, were Project Works Casual Labourers of Trivandrum-Ernakulam Conversion Project and that they were taken over by Open Line and were granted temporary status w.e.f.23.10.1978. Annexure A-1 produced by the applicant does not denote him as an Open Line Casual Labourer as the entries regarding service therein were attested by the authorities in the Construction Organisation. As per Annexure R-1, at the relefant point of time he was a Project Casual

labourer as he was engaged in the Conversion Project of Trivandrum-Ernakulam, i.e., converting the line between Trivandrum and Ernakulam, from meter Gauge to Broad gauge. The instructions in paragraph 2501 of the Indian Railway Establishment Manual and the decision cited by the applicant do not prove the case of the applicant as regards temporary status with effect from 14.3.73. As regards grant of Gratuity under the Payment of Gratuity Act 1972 , it is submitted that the same is a different matter and it does not squarely applicable in reckoning the period of pensionary benefits. If the applicant was aggrieved by the temporary status granted w.e.f. 23.10.1978, he should have definitely approached the appropriate authorities at the appropriate time itself. Having satisfied with the temporary status granted to him with effect from 23.10.1978, the applicant cannot now take a different stand without any documentary proof in support of his claim for revision of pensionary benefits. The fact that the statement of mere continuous and unbroken service alone will not help the applicant to count the said service for pensionary benefits. In accordance with the existing instructions of the Railway Board on the subject for calculation of qualifying service, only the service from temporary status, that too to the extent of 50% can be accounted as qualifying service for pensionary bnefits. In the case of the applicant, 50% of service from 23.10.78, i.e. temporary status, has been accounted as qualifying service for pensionary benefits. The applicant has not made out a substantive claim and therefore, the application is liable to be dismissed.

3. The applicant has filed a rejoinder contending that Annexure R-1 is in dispute. Annexure R1 itself states that the applicant was taken over by the

open line. Annexure R1 also originates from the open line organization. Annexure A1 produced by the applicant would show that during the material period, he was not part of any project. He submits that he is entitled to reckon 50% of the service from 15.3.73 to 22.10.78 for pension and other retirement benefits. In Robert D'souza's case reported in 1982 SCC (L&S) 124, the Hon'ble Supreme Court has declared the law regarding attainment of temporary status as regards to those who are working in the Construction Organization itself in the year 1982. Applicant and Robert D'souza were working in the same Construction Organization and the right of the applicant has been confirmed.

4. We have heard Shri TCG Swamy, learned counsel appearing for the applicant and Shri Sunil Jose, learned counsel appearing for the respondents.

5. Learned counsel for the parties have taken me to various pleadings, materials and evidence placed on record. Learned counsel for the applicant submitted that in the decision in O.A.253/04 dated 4.8.2005 filed by one K Sankaran, who was also in the same list the relief was granted upholding the contention of the applicant in that O.A.

6. Learned counsel for the respondents on the other hand argued that the applicant is not a casual labourer on the Construction/Open Line but he was only a Project Works Casual labourer of Trivandrum-Ernakulam Conversion Project and that they were taken over by Open Line and were

granted temporary status w.e.f from 23.10.1978 and therefore, this service cannot be taken into account.

7. I have given due consideration to the arguments advanced by the counsel on both sides. Admittedly as per Annexure R-1, the applicant was granted temporary status with effect from 23.10.78. The claim of the applicant that he should have been granted the benefit of 50% of his temporary status service between 15.3.73 and 14.4.1984 for the purpose of pension and other retirement benefits. Learned counsel for the 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.

8. The question arises for consideration in this case is whether the applicant was working as Construction Casual Labourer or Project Casual Labourer. Learned Counsel for applicant submitted that the applicant was working as Casual Labourer in the Construction Organisation and therefore, he cannot be equated with that of a Project Casual Labourer. Counsel for applicant also submitted that had he been a Project Casual Labourer, the applicant would not have a case at all. Annexure A-1 clearly shows that the applicant had been working in the Construction organization as evidenced and certified by the Railway authorities. Apart from A-1, the applicant was subjected to transfer which was a clear indication that he was in the Construction Organisation. He also submitted that the respondents had recognized and accepted him as a Construction

Casual Labourer. Admittedly, the respondents had reckoned 50% of the temporary status service of the applicant from 23.10.78 to 13.4.84 and the whole service from the date of regular absorption to the date of superannuation, i.e., from 14.4.84 to 31.12.02 for pensionary benefits. It is an indication that the respondents had recognized and accepted him as a Construction Casual Labourer. On going through the records and material evidence, the Court is of the view that it cannot be said that the applicant was working as a Project Casual Labourer. In the decision reported in **L.Robert D'souza Vs. Executive Engineer, Southern Railway and another**, (1992) SCC (L&S) 124, " 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." Paragraph 21,27 & 28 of the said order is quoted below:

> "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. Burt reliance was placed on Rule 2501 (b) (ii) which provides that labour on projects, irrespective of duration, 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 co-related 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 order 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, enquiries 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 the 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, the 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 qualified at Rs.2000."

9. While considering an identical matter in O.A.253/04 this Court has also gone through the decision in O.A.808/97 dated 17.2.1999, P.M.Sreedharan Vs. UOI & Ors. Para 6 & 7 of the said order is reproduced as under:

"Learned counsel appearing for the respondents, relying on UOI & Ors. Vs. KG Radhakrishna Panicker & ors, 1998 SCC (L&S) 1281, submitted that the applicant was only a Project Casual Labourer and therefore, he is not entitled to the reliefs sought for. If Radhakrishmna 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 Engineeer,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 1.1.1981 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 t panned 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 panned 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 advance 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 the by authorities concerned in the construction Wing, the arguments advanced by the learned counsel for he 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 8 years on projects."

10. The Hon'ble High Court 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 win. 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 a faulty to invite interference by exercising the supervisory jurisdiction vested in this court."

11. In an identical matter **UOI Vs. R.Arjun Chettiar & anr.**, (O.P.6066/69(S)) the Hon'ble High Court has accepted the same ratio and granted the relief.

12. In the above circumstances, I am of the view that the applicant being a a Construction Casual Labourer and the respondents had already reckoned 50% of the service for pensionary benefits from 23.10.1978 onwards as per Annexure A-1, his service from 15.3.73 to 23.10.78 should also be reckoned for pensionary benefits.

13. In the conspectus of facts and circumstances, this Court declares that, the applicant is entitled to the benefit of reckoning 50% of the casual labour service for the period from 15.3.73 to 23.10.78 notionally **for the purpose of pensionary benefits only.** Respondents are directed to pass appropriate orders granting the benefits to the applicant and communicate the same within a period of three months from the date of receipt of a copy of this order

14. O.A. is allowed. In the circumstances no order as to costs.

Dated the 12th December, 2005.

K.V.SACHIDANANDAN
JUDICIAL MEMBER

rv