

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 269 of 2005

Thursday, this the 5th day of October, 2006

C O R A M:

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

A. Kunju Pillai,
S/o. Azhakan,
(Retired Senior Trackman, under the
Section Engineer/Permanent Way/
Southern Railway, mavelikkara),
Residing at : Chakkala Kizhakkethil Puthen Veedu,
Cherianadu P.O., Alleppey District. 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 Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum.
3. The Assistant Divisional Engineer,
Southern Railway, Quilon. Respondents.

(By Advocate Mr. Sunil Jose)

The Original Application having been heard on 5.10.2006, this Tribunal
on the same day delivered the following :

O R D E R

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

The short question involved in this case is as to what is the total length



of qualifying service of the applicant whose service particulars as per the applicant and as per the respondents are as under:-

(a) As per applicant:

- (i) From 21-03-1976 to 14-04-1984: Substitute
- (ii) From 14-04-1984 to 30-04-2004: Regular

(b) As per respondents:

- (i) 21-03-1976 to 13-04-1984: Casual
- (ii) 14-04-1984 to 30-04-2004: Regular.

2. Thus, while the claim of the applicant is that his entire services as substitute and as regular should be reckoned to work out the qualifying service, when then comes to 28 years, the respondents have considered 50% of the services from 76 to 84 (i.e. just four years) and added the same to the regular service of 24 years and thus, fixed the total qualifying service as 24 years and 12 days.

3. Now the facts with minimum required details:

(a) The applicant was initially engaged as casual labourer in 1969 (vide para 1 of Annexure A1 order of this Tribunal dated 18-11-2004 in OA 817/04) and he was afforded temporary status w.e.f. 21.03.1976 (vide para 2 of Annexure A-2 Impugned order dated



03.03.2005). From 21-03-1976 onwards he had been placed under a regular scale of pay. Initially, the scale was Rs. 196-232 but later the same was revised in terms of letter dated 18-11-1980 communicated under letter dated 03-12-1980, in the scale of Rs. 200-250, vide Annexure A-3 order. Thus, from 21-03-1976 the pay of the applicant was in the scale of Rs. 200 – 250. By office order dated 05-10-1983, the applicant was appointed as Substitute Gangman in scale of Rs.200-250 with usual allowances and posted to MVLK/9 vide Annexure A-4. Again, by office order dated 15-04-1985 the applicant was temporarily appointed as Substitute Gangman in the said scale against the vacancy as on 31-12-1982 vide Annexure A-5. The applicant was empanelled as Gangman w.e.f. 14-04-1984 (vide para 6 of Counter). And, by 30-04-2004 the applicant superannuated.

4. Respondents had finalized his pensionary and other terminal benefits by giving the applicant the benefit of casual labour service to the extent of 50% as qualifying service and by adding the same to the regular service from April, 1984. Thus according to the respondents the total period of qualifying service came to be only 24 years plus. When the applicant had observed the same, he had, by Annexure A-7 letter, claimed that period of his service from 21-03-1976 till his services were regularized w.e.f. 14-04-1984 should be treated as substitute in a regular pay scale in which event, he would be entitled to count full period of his service as a substitute. As there was no response, the applicant had moved OA No. 817/2004 which was disposed of by order dated 18th November, 2004 directing the respondents to consider the representation of the applicant. It is in the wake of the aforesaid order of

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the Tribunal that the respondents have considered but rejected the claim of the applicant vide the impugned order dated 03-03-2005.

5. Counsel for the applicant submitted that perusal of the records would show that the applicant has through out been in a regular pay scale (initially of Rs. 196-232, which was later on revised to 200-250) this regular pay scale was available to him right from 21-03-1976. As such, the fact that later by a positive order the applicant was shown as a substitute only from a later period, vide Annexure A-4 and A-5, cannot in any way mean that the period prior to the same could be anything other than substitute. The counsel relied upon the decision of the Tribunal in the case of M.G. Remani Bai vs Union of India, reported in 1997 (36) ATC 603 wherein, the Tribunal has held as under:-

"... It is evident from the service register that by order of the Divisional Personnel Officer, Trivandrum No. 9/81/WP(V/P. 536/1/IV) dated 17.2.1981 his pay was fixed in the scale of Rs. 200-250 enhancing from the scale of Rs. 196-232 with effect from 6.4.1975 in terms of the Railway Board's Letter No. E(NG)II/76CL/25 dated 18.1.1977. As per item No. 57 under caption "Casual labour" in the book titled "Epitome of Railway Board Orders : 1965-1985", vide order No. E (NG)II/70CL-70 dated 9.11.1971, a casual labourer when appointed against regular post should be treated as substitute and paid monthly scales of pay. Even if a casual labourer who has attained temporary status and posted against a regular post is not described as a substitute in view of the above decision, such casual labourer is to be treated as a substitute. Learned counsel for the respondents argued that from the service Register, it can be seen that Shri Sugathan was never described as a substitute and therefore, the argument of the applicant's counsel that Shri Sugathan was a substitute is not sustainable. It is true that in the Service Register produced for our perusal, Shri

Sugathan was described as CPC Mazdoor from the date of his appointment with effect from 6.4.1975. Nowhere in the Service Register he has been described as a substituteGangman. His Service Register has not been attested by any Gazetted Officer nor does it contain anything to show that the entries have been brought to the notice of the employee anually. Further, the definition of substitute in paragraph 2315 of Indian Railway Establishment Manual being :

"Substitutes " are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts may fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant."

To decide whether a person was working as a substitute or not, the fact to be verified is whether he has been engaged in the Indian Railway Establishments on regular scales of pay and allowances applicable to posts on which they are employed. The allegation that her husband K. Sugathan, was from 6.4.1975 onwards working against sanctioned posts and was getting the pay attached to that post and was therefore, a substitute, has not been denied by the respondents in their r eply statement. The argument that the applicant's husband was not a substitute solely on the ground that the word 'substitute' was not written in the Service Register, has no force at all. Further, it is seen that Shri Sugathan's pay was fixed in teh scale of Rs. 200-250 with effect from 6.4.1975 by the order of the DPO dated 17.2.1981. It therefore, cannot be now seriously argued that Shri Sugathan was not a substitute in teh absence of the specific pleadings to that effect.."

6. In the case of the applicant also, his pay scale was revised from Rs. 196-232 to Rs.200-250 as per the Railway Board's letter dated 18.01.1977.

7. In view of the above precedent, it has to be held that the applicant's

service right from 21-03-1976 has been in the status of a substitute and as per the provisions relating to working out qualifying service, the entire service as substitute, followed by regular service shall count as qualifying service.

8. Thus, the respondents are in patent error when they had presumed that the applicant's service before regularisation cannot be counted for pension purposes.

9. In view of the above, the O.A succeeds. Annexure A-2 order is hereby quashed and set aside. It is declared that the applicant is entitled to reckon the whole of his service from 21-03-1979 to 30-04-2004 as qualifying service for the purpose of pension and other terminal benefits. Accordingly, Annexure A-6 calculation sheet, which took into account only the regular period of service is also quashed and set aside to the extent it has taken into account only 24 years. Respondents are to work out the terminal benefits and pension taking into account the period of qualifying service to the tune of 28 years and after working out the same they should pay the arrears of pension and the balance of other terminal benefits to the applicant. In addition, future pension shall also be at the rate of revised pension which shall continue to be paid. Payment of arrears of pension and other benefits shall be made within a period of 3 months. Though the applicant has claimed interest, as the mistake has occurred due to erroneous interpretation of the

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rules and regulations, the department is not saddled with either interest or costs.

(Dated, the 5th October, 2006)



K B S RAJAN
JUDICIAL MEMBER

CVR.

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