

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 273 of 1997

Monday, this the 4th day of August, 1997

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. T.K. Saraswathy Amma,
W/o Late Balakrishnan Nair,
(Retired Gang Woman, Southern Railway,
Trivandrum Division),
"Sree Visalam", Padinjattinkara Post,
Kadaplamattom (Via), Kottayam District.

.. Applicant

By Advocate Mr. T.C. Govindaswamy

Versus

1. Union of India through
the General Manager, Southern Railway,
Park Town PO, Madras-3
2. The Chief Personnel Officer,
Southern Railway,
Head Quarters Office, Madras-3
3. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum-14

.. Respondents

By Advocate Mr. K.V. Sachidanandan

The application having been heard on 4.8.1997, the
Tribunal on the same day delivered the following:

O R D E R

The applicant seeks for a declaration that she
is entitled to reckon 50% of her casual labour service
rendered between 28.1.1973 and 22.10.1978 as qualifying
for pension and other retiral benefits and is also
entitled to reckon the whole of her service from

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23.10.1978 to 31.5.1994 as qualifying service for pension and other retiral benefits.


2. The applicant retired as Senior Gangwoman of Southern Railway, Trivandrum Division on attaining superannuation on 31.5.1994. The applicant joined as casual labourer on 17.7.1972. She was granted temporary status with effect from 23.10.1978 and was regularised with effect from 5.12.1988. The applicant says that she has got a total qualifying service of about 18 years. On the retirement of applicant, no pension was granted to her on the ground that she had only 7 years of qualifying service. The applicant says that no part of her service was ever certified as non-qualifying in the Service Record and she was not informed of any such entry in the Service Record.

3. According to respondents, since the applicant retired on 31.5.1994 and has filed this OA only in February, 1997, this OA is hopelessly barred by limitation. As far as the pension is concerned, it gives a recurring cause of action. Hence, the plea of limitation cannot be accepted.

4. Respondents say that the applicant is not having 10 years qualifying service for granting pension based on the Service Record of the applicant.

5. The service record of the applicant was made available before me by the respondents. The relevant

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entries according to the respondents are contained in pages 10, 11 and 12 of the service record. The learned counsel appearing for the respondents submitted that all the entries regarding qualifying service in the service record were made at the time of the retirement of the applicant, being calculated from the leave account of the applicant. This submission alone is sufficient to hold that the service record of the applicant is not maintained in the way in which it should be maintained and is not worth the paper on which it is written.

6. Rules 1228 to 1235 of the Indian Railway Administration and Finance Code say how the Service Record is to be maintained. Rule 1228 says that even with regard to Class IV staff, every incident in the service of the employee which may affect the amount of gratuity/special contribution to Provident Fund or pension must be carefully entered and entries relating to the commencement and termination of service and recommendations for gratuity/special contribution to Provident Fund or pension shall be attested by a Gazetted officer. Rule 1229 says every period of suspension and every other interruption of service must be noted, with full details of its duration, by an entry across the page of the service record. Rule 1230 says that the service books and service rolls of pensionable employees should be taken up for annual verification and how it is to be done. Rule 1234 says that it shall be the duty of every Head of Office to initiate action to show the service books to railway servants governed by pension rules under his administrative control every year and

to obtain signature therein in token of their having inspected the service books. How the scrutiny of the service book could be done is made clear in Rule 1235. On a mere perusal of pages 10 to 12 of the service record of the applicant, it is very clearly seen that none of the provisions mentioned is complied and all the provisions are only flagrantly violated. It is interesting to note that all the entries right from 31.3.79 as the first entry contained in page 10 upto the last entry dated 31.3.95 contained in page 12 of the service record of the applicant, are in the same handwriting using the same pen. There are corrections, overwritings and scoring of certain entries. There is not even any initial of anybody in the corrections or overwritings or scoring. Learned counsel appearing for the respondents submitted that the Divisional Personnel Officer (DPO for short) has signed at the bottom of page 12 of the service record and so, everything is in order. It is true that the DPO has signed at the bottom of page 12, but the entries relate from 31.3.79 to 31.3.95. According to the rules mentioned above, just one signature for all the entries from 31.3.79 to 31.3.95 by the DPO is not sufficient. It is not done in compliance with the rules. It is a case where the DPO has not understood the rules or has not cared to understand the rules. It is done more as an empty formality. Rules are made to be complied with and not to be flouted. In this case, the rules referred to above are very conveniently ignored by the persons concerned. For all the entries from 31.3.79 to 31.3.95, for a period of 16 years, the signature of the very same Permanent

Way Inspector is seen. It is very difficult to believe that the very same Permanent Way Inspector would have continued in that post for slightly about one and a half decades. It can be very reasonably stated that no reliance can be placed on the entries contained in pages 10 to 12 of the service record of the applicant which relate to the pension for more than one reason. The first reason is, as I have already stated, that the learned counsel for the respondents submitted that all the entries relating to the payment of pension to the applicant were made in the service record only at the time of the retirement of the applicant and the second reason is that it is in flagrant violation of the provisions contained in the rules mentioned above.

7. From A-1, the service record of the applicant, it is seen that the applicant was working as casual labourer in the construction line. Learned counsel for the respondents submitted that the applicant was working in the project. Apart from oral submission, there is no material in support of the same. In L.Robert D'Souza Vs. Executive Engineer, Southern Railway & Another, 1982 SCC (L&S) 124, it has been held:

"It is thus abundantly clear that if a person belonging to the category of casual labour employed in construction work other than work-charged projects renders six months' continuous service without a 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..".

There is nothing to show that the service of the applicant was not continuous for six months. That being so, by operation of statutory rules the applicant would

be treated as temporary railway servant after expiry of six months' continuous employment.

8. The Ministry of Finance in O.M.No. Fl1(3)-EB(A)/76 dated 28.2.1976 has stated that:

"specific entries in service records regarding non-qualifying periods would be taken note of and such periods excluded from the service. All spells of extraordinary leave not covered by specific entries would be deemed to be qualifying service".

The action of the respondents in treating the period in question as non-qualifying service is not in tune with the said OM.

9. There is no dispute that the applicant retired from service on superannuation on 31.5.1994. The service record of the applicant made available before me shows entries made in the same handwriting with the same pen from 31.3.79 to 31.3.95. So, it cannot be a case that these entries were made even immediately prior to the retirement of the applicant or at the time of retirement of the applicant, but it is made after the retirement of the applicant.

10. The learned counsel for the applicant submitted that even going by the case of the respondents, the applicant will be entitled to have the minimum period of 10 years of service as the period for qualifying the pension, if 50% of the applicant's casual labour service rendered between 28.1.73 and 22.10.78 is taken into consideration.

11. As no reliance can be placed in the entries made

in the service record of the applicant in pages 10 to 12 the period shown as non-qualifying service of the applicant can also be not relied on. Since the applicant by operation of statutory rules would be treated as temporary railway servant after the expiry of six months of her continuous employment, the applicant is entitled to reckon 50% of her casual labour service rendered from 28.1.73 to 22.10.78.

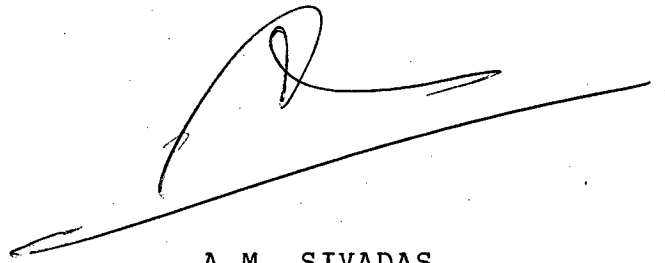
12. The respondents are accordingly directed to treat 50% of the applicant's casual service from 28.1.73 to 22.10.78 as qualifying for pension and other retiral benefits and grant pension and other retiral benefits to the applicant accordingly fixing the same in accordance with law within a period of four months from the date of receipt of a copy of this order. If any amount was paid to the applicant as service gratuity, it can be adjusted from out of the pension and other retiral benefits payable to her.

13. Before parting with I am constrained to observe that in spite of specific rules having been made in the Indian Railway Administration and Finance Code, the Trivandrum Division of the Southern Railway, as borne out from the service record of the applicant in this case, is more interested in not complying with the provisions than to comply with the provisions. This is a matter to be deprecated. The General Manager, Southern Railway, Madras shall take note of this aspect and give strict instructions to the Trivandrum Division and other divisions, if any, following the Trivandrum

Division in this aspect to see that this sort of practice is immediately stopped with.

14. Original Application is disposed of as aforesaid.
No costs.

Dated the 4th of August, 1997

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line extending to the right.

A.M. SIVADAS
JUDICIAL MEMBER

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