

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application NO. 273/2007

Dated the 15th January, 2008

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

S. Duraiswamy,
S/o Sudalaimadan,
Retd. Sr. Gate Keeper,
Under SE/ P.WAY/SR/ Nagercoil,
Residing at Near Pazhathottam,
Balasubramaniapuram, Kanyakumri Dist.
Tamilnadu.

Applicant

By Advocate : M/s. TC Govindaswamy, D Heera, Mr. PN Pankajakshan Pillai,
PV Abdul Samad, KC Sarala & RR Rejitha.

-Vs-

1. The Union of India,
represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town PO., Chennai.
2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Divisional Office,
Trivandrum-14.
3. The Senior Divisional Finance Manager,
Southern Railway, Trivandrum Division,
Thiruvananthapuram-14.

...Respondents

By Advocate: Mr. Varghese for Mr. T.M. Nellimoottil

This application having been heard on 15th January, 2008, the
Tribunal delivered the following -

ORDER

The applicant who is a retired senior Gatekeeper of
the southern Railway, Nagercoil Trivandrum has filed this original
application aggrieved by the refusal of the respondents to

to reckon a substantial part of his service for the purpose of his pension and other retirement benefits.

2] The applicant has stated his case thus:-

He was initially appointed as a casual labour Mate on and with effect from 1.9.1972 under the Inspector of Works/ construction/P.way/Southern Railway/ Nagercoil. He continued there without break and was finally regularized as a Gangman on and with effect from 27.9.1980. He finally retired on 31.1.2005. At the time of settlement of his pension, he was granted pensionary benefits only for the period of service between 27.9.1980 to 31.1.2005 for a total qualifying service of 24 years and six months. The applicant's service prior to 27.9.1980 was not reckoned at all. The applicant was also not granted gratuity for the period prior to 27.9.1980 under the payment of Gratuity act 1972.

3] The grounds on which the applicant rests his claim is that he was a casual labourer of the permanent establishment of the construction organization of the Southern Railway and he was not part of any project. Therefore in the light of para 2501 of the Indian Railway Establishment Manual read with the decision of the Hon supreme court in Robert D'souza's case, the applicant must be deemed to have attained the status of a temporary employee on and with effect from 25.5. 1973, from which date his service was unbroken and continuous. Therefore in the light of the existing Railway board orders, the applicant is

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entitled to reckon 50% of the service rendered between 25.5.1973 and 27.9.1980 which would come to about 3 years and six months. He has also produced a copy of the casual labour service card as Annexure- A1.

4] The respondents have filed reply and additional reply statements in which they dispute the assumption of the applicant that he is to be treated as temporary status attained with effect from 25.5.1973. They also do not accept the alleged casual labor service shown in Annexure-A1 on the ground that the entries are made at one stroke and that the applicant has not impleaded the said authorities who have made these entries. According to the respondents the service register of the applicant shows that he was appointed as a temporary Gangman on 27.9.1980 and these entries have not been disputed by the applicant for 25 years and he cannot raise such stale claims now. Further it is submitted that even if the alleged service in Annexure-A1 is accepted, it is seen to have been rendered in the Project of laying of new Railway line between Trivandrum and Tirunelveli which was then under the composite Madurai division. Trivandrum division was formed only in 1979. Since the applicant's services till he was empanelled and posted as Gangman in the Nagercoil section of the open line were under the project and hence the said service do not qualify for temporary status. Project casual labour were conferred with temporary status for the first time from 1.1.1981 or from subsequent dates pursuant

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to the decision of the Apex court in Inder pal Yadav's case. The applicant has been granted 24 1/2 years qualifying service and the permissible pensionary benefits have been granted to him . From these reasons the respondents submit that the OA is not maintainable.

5] The applicant has filed a rejoinder, submitting that the respondents cannot attribute delay in making his claim as the cause of action arose only at the time of calculation of retirement benefits. By referring to the service register which is opened only after regular appointment the respondents cannot wish away his casual labour service. The entries in the casual service cards are made by his supervisors and he cannot be faulted if they have made the entries in one stroke. He has enclosed A4, A5 documents to confirm his regular appointment as gangman which is not in dispute at all. The applicant has also refuted the claim of the respondents that he was a project casual labour. The applicant has also pointed out that an identical case of an employee who was working along with him has been allowed by this Tribunal in OA 238/07.

6] Heard the counsel on both sides and perused the records and the judgments referred to.

It is seen that the subject matter of OA 238/07 is exactly identical. The same grounds and rival contentions had been raised therein and this Tribunal had rejected the stand of the respondents that the applicant therein was a project

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employee and not entitled to temporary status. The main points considered by the Tribunal were that the casual labour certificate was issued by the IOW (construction) Southern Railway, Nagercoil and the regular appointment of the applicant therein preceded implementation of the Inderpal Yadav judgement. I find that all the ingredients listed in para 6 of this Tribunal's order in OA238/07 are satisfied in this case also. Annexure A5 filed by the applicant in this OA would further confirm this position as it shows that the appointment was made through the aegis of the Inspector construction who had relieved the applicant along with the applicant in OA238/07 duly mentioning their casual labour identity number etc. Being a similarly situated person as the applicant in OA238/07, this applicant is also entitled to the same reliefs as prayed for. Accordingly I allow this OA. The respondents are directed to treat the service rendered from 25.5.1973 to 27.8.90 as casual labour service rendered in the open line and 50% of that service shall be treated as qualifying service for pensionary purposes as per rules. The respondents shall recalculate the pensionary benefits due to the applicant and the differences payable may be arranged to be paid to him.. This exercise shall be completed in a period of four months from the date of receipt of this order. No costs.

Sathi Nair
(Sathi Nair)

VICE CHAIRMAN