

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.276/98

Thursday this the 8th day of April, 1999.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

V. Lakshmi,
W/o late Velayudhan,
Retd.Gang Woman, Southern Railway,
Office of the Permanent Way Inspector,
Kottayam residing at Planthadom,
Erumbayam Kara, Erumbayam Post,
Via.Thalayolaparambu, Kottayam Dt.Applicant

(By Advocate Mr. K.M.Anthru)

Vs.

1. Union of India, represented by
the General Manager, Southern Railway,
Headquarters Office,
Park Town PO, Madras.3.
2. The Divisional Personnel Officer,
Southern Railway, Madurai Division,
Madurai.10.
3. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum.14.
4. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division,
Trivandrum.14.Respondents

(By Advocate Mr. P.A.Mohammed)

The application having been heard on 8.4.1999, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant who allegedly commenced her casual service on 24.1.64 was regularly absorbed as a Gangwoman on 5.12.88. She retired on superannuation on 30.4.92. As she was not granted pension she filed O.A.1371/92 praying that the respondents may be directed to grant her pension taking into account that she had

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attained temporary status as a casual labourer with effect from 29.1.64. The application was disposed of permitting the applicant to make a representation and directing the first respondent, the Divisional Personnel Officer, Southern Railway, Trivandrum to take a decision.

2. In reply to the representation the applicant was told by the impugned order A7 dated 15.2.95 that the applicant was transferred to open line with effect from 23.10.78 consequent on the taking over of Trivandrum Ernakulam conversion by open line, that the casual labourers in project who are not entitled to temporary status prior to 1.1.81, that she has been granted temporary status with effect from the relevant date on her transfer to the open line and that she was not entitled to any further relief.

3. The applicant claiming that she had continuously worked under the Permanent Way Inspector, Southern Railway, Kottayam with effect from 24.1.64 with intermittent breaks, that she was treated temporary with effect from 23.10.1978 and utilised towards a regular vacancy thereafter has filed this application seeking to quash A7 and for a declaration that she is entitled to reckon whole of her service from 21.6.79 upto the date of her retirement ie., 30.4.92 as qualifying for pensionary benefits and for a direction to the respondents to pay to the applicant monthly pension accordingly.

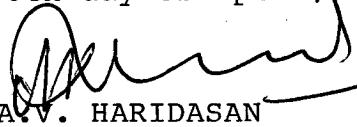
4. The respondents resist the claim of the applicant. They contend that the applicant has been granted temporary status with effect from 23.10.78, that she was never utilised towards the regular vacancy till she was absorbed as a Gangwoman ⁱⁿ *her claim* the year 1988, that her service from 23.10.78 till the year 1988 should be treated as regular service is inconsistent with her claim before the Authority Under the Payment of Wages Act, that she was a casual labourer during the period and that as 50% of the casual service of the applicant after attaining temporary status and the entire service after regular absorption fall short of the minimum period of ten years, the applicant is not entitled to pension.

5. I have perused the pleadings and the documents placed on record and heard the learned counsel for the parties. It is evident from Annexure.R.1, a copy of the Order of the Controlling Authority appointed under the Payment of Wages Act in an application G.A.No.1/95-ALC/CHN filed by the applicant that the service of the applicant from 1975 to 5.12.88 was treated as casual service and that she was paid service gratuity for that period. The claim of the applicant before the Authority under the Payment of Wages Act was that upto 1988 she was a casual labourer and that therefore, she was entitled to terminal gratuity. That case of the applicant has been accepted by the Authority and the order Annexure.R.1 has become final. It is therefore futile for the applicant to contend that from

23.10.78 onwards the applicant has been utilised against a regular vacancy, that she was therefore, a substitute and was entitled to have the entire period counted for pension.

6. Regarding the claim of the applicant for grant of temporary status with effect from an anterior date, when the applicant was granted temporary status from 23.10.78 and was not given the benefit earlier, she did not raise any dispute at the appropriate time. Further it has not been established from the documents on record that she has completed the required period of time for grant of temporary status earlier than the date on which the temporary status was granted to her. She is also barred by limitation from putting for such a claim at this distance of time. It is also worthwhile to mention that in O.A.1371/92 the applicant had specifically claimed that she was entitled to have 50% of her casual service from 24.1.64 to 5.12.88 taken as service for pension and that in the light of the above specific case the applicant is precluded from putting forth a claim that the entire service from 21.6.79 to 30.4.92 is to be treated as qualifying service for pension. The applicant has not approached the Tribunal with clean hands as she had suppressed the fact that before the Authority under Payment of Gratuity Act her claim was that she was a casual labourer till 1988 and has no legitimate grievance which calls for redressal. The application being devoid of any merit is dismissed leaving the parties to bear their own costs.

Dated the 8th day of April, 1999.


A.V. HARIDASAN
VICE CHAIRMAN

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List of Annexures referred to in the order:

Annexure A7: A true copy of the letter No.V/P/536/I/Engg/Vol.II(Pt) dated 15.2.1995 issued by the third respondent.

Annexure R.1: True photocopy of the order dated 19.12.95 in the proceedings initiated in GA No.1/95-ALC/CHN before the Controlling Authority under the Payment of Gratuity Act, 1972.

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