

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**O.A.No.280/2006
Dated this the 22nd day of November, 2007.**

CORAM :

**HON'BLE MRS SATHI NAIR, VICE CHAIRMAN
HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER**

P Chellappan Pillai.
Senior Track Man(Tenmalai)
Office of Section Engineer,
(Permanent way), Southern Railway,
Punalur residing at Railway Quarters,
No.115, Tenmalai, Quilon District. ... Applicant

By Advocate Mr.T.C.G.Swamy

V/s.

- 1 Union of India, represented by
the General Manager,
Southern Railway Headquarters,
Park Town PO, Chennai-3.
- 2 The Divisional Railway Manager,
Southern Railway, Madurai Division,
Madurai
- 3 Senior Divisional Personnel Officer
Southern Railway, Madurai Division,
Madurai ... Respondents

By Advocate Mr.Thomas Mathew Nellimoottil

The application having been heard on 13.11.2007 the Tribunal delivered
the following on 22/11/2007.

(ORDER)

Hon'ble Mr.George Paracken, Judicial Member

The controversy in this case is regarding the date of temporary
status granted to the applicant. The respondents have granted the

✓

temporary status to the applicant with effect from 23/6/1978. The applicant claims that the effective date should have been from 21/8/1973. The applicant had, in support of his claim produced the Annexure A-1 casual labour card according to which he was initially engaged as a casual labour on 23/11/1971 and intermittently worked for several years. According to the applicant, having initially joined on 23/11/1971 and having completed four months continuous service from 20/4/73 to 20/8/73, he attained the temporary status by operation of law as provided in para-2501 of Indian Railway Establishment Manual read with the decision of Hon'ble Apex Court in Robert D'Souza's case 1982 SCC L&S 124. Later on, his service was regularised as Gangman/Trackman with effect from 29/7/1987 and further promoted as Senior Trackman etc. However, the respondents have made entries regarding the date of temporary status granted to him in his service record only as 23/6/1978 and he came to know about it only very late and thereafter, he made the Annexure A-2 representation dated 14/12/2004 followed by Annexure A-3 and A-4 reminders dated 31/3/2005 and 15/11/2005 respectively. As the respondents have not taken any decision in the matter, he approached this Tribunal with the present OA to declare that he had attained the status of temporary employee with effect from 21/8/1973 and he is entitled to all the consequential benefits including the benefit of counting 50% of the applicant's service rendered by him for the period he worked with temporary status for the purpose of his pension and other retirement benefits.

2

2 He has also relied upon the order of this Tribunal in OA-1246/96 – T.Basheerkutty V/s. Union of India & Ors, wherein the applicant was initially appointed as a substitute mechanical khalasi on 16/6/1970 and granted temporary status w.e.f. 16/12/70 by an order dated 8/11/1973. When the seniority list of Carriage and Wagon Wing of the Mechanical department was circulated on 3/3/1993, he found that his date of appointment was wrongly shown as 5/11/1977 instead of 6/12/1970. Since the respondents have not categorically denied the status of the applicant as a substitute and the records of the respondents themselves showed to that effect, this Tribunal came to the conclusion that the applicant commenced his career as a substitute and he was granted temporary status from 16/12/1970. Therefore, the respondents were directed to change the date of appointment of the applicant from 5/11/1977 to 16/12/1970.

3 The respondents in their affidavit has, first of all, submitted that the Annexure A-1 Casual Labour card produced by the applicant for the period 21/3/1973 to 20/8/1974 could not be verified as the relevant records were not available at this distant point of time. The other contention of the respondents was that the applicant's belated claim to advance the date of temporary status to 21/8/1973 is barred by limitation as the applicant was already granted temporary status vide Annexure R-3 Office Order No.194/78/WP. dated 6/12/1978 and it was on the basis of the said Office Order that the necessary entry was made in the service record. According to the said office order, the date of continuous service of the applicant was

✓

only from 22/2/1978 and on completion of four months, he was granted temporary status on 22/6/1978. They have specifically denied that the applicant was in continuous engagement without any break from his initial engagement as casual labour with effect from 23/11/1971. They have produced a copy of the original casual labour card maintained by them according to which he was engaged from 23/11/1971 to 20/12/1971 for 27 days with absence on 28/11/1971 and the work assigned to him was "Painting rails." The next spell of work was only for four days and that too, after a gap from 24/12/71 to 20/1/72. Similarly, the further spells of engagement were only from 6/5/1972 to 20/5/1972 for 15 days, 21/5/72 to 20/6/72 for 31 days, 22/6/72 to 20/7/72 for 27 days, 5/8/72 to 20/8/72 for 16 days, etc. His services were terminated on 20/1/1977 and it was only from 22/2/1978, he was continuously engaged. They have also produced the extract of the service book at Annexure R-4(2), which indicated that he was medically examined and found fit on 21/12/1977 and vide the order dated 12/12/1978, he was granted temporary status with retrospective effect from 22/6/1978.

4 We have heard Advocate Mr.T.C.G.Swamy for the applicant and Advocate Mr.Thomas Mathew Nellimoottil for the respondents. Since the entries in the photocopy of the Annexure A-1 duplicate casual labour card produced by the applicant were disputed by the respondents and they were not tallying with the entries made in the Annexure R-1 photocopy of the original casual labour card produced by the respondents, we have called for the respective originals from the parties and compared them.

✓

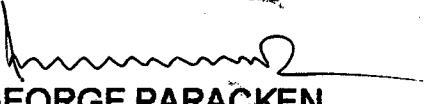
Though both the documents show that the applicant was initially engaged on 23/11/1971, there were number of discrepancies in the subsequent entries made in the labour card. For example, according to the original labour card, after the first spell of engagement from 23/11/1971 to 20/12/1971, he was engaged only on 24/12/1971 to 20/1/1972 for four days. According to the duplicate card produced by the applicant, the applicant has been re-engaged on 21/12/1971 itself without any gap. The next entry in the original card is that the applicant was engaged from 6/5/1972 to 20/5/1972 for 15days but in the duplicate card, the entries are from 21/1/1972 to 20/4/1972 nil number of days and 21/4/72 to 20/5/72, 15 days. In other words, entries in the duplicate casual labour card in possession of the applicant do not tally with the entries made in the original labour card maintained by the respondents. We do not have any reasons to disbelieve the correctness of the details entered in the original labour card by the respondents from time to time. Moreover, the respondents vide Annexure R-3 Office Order No.194/78/WP. dated 6/12/1978 had actually granted the temporary status to applicant and 21 others taking into consideration of their continuous service and also the medical fitness certificate. According to the said order, he was medically examined and found fit on 21/12/1978 and considering the fact that he was in continuous employment only from 22/2/1978, he was granted temporary status with retrospective effect with effect from 22/6/1978. The applicant has not challenged the aforesaid Annexure R-3 order dated 6/12/1978 for nearly 30 years. In the rejoinder also, the applicant has neither accepted nor

✓

disputed the receipt of the said office order but kept silent about it. We have also considered the order of this Tribunal in OA 1246/96 dated 11/2/1997 relied upon by the counsel for applicant. The facts in the said case are totally different and, therefore, in our considered opinion it is not relevant for the adjudication of the present case. While the applicant was well aware of the issuance of the aforesaid order, he has not explained the reasons for the delay in challenging the aforesaid order before this Tribunal. Therefore, this application has to fail first of all on the ground of limitation. Secondly, on merits also we have seen that there is lot of discrepancies in the duplicate card in possession of the applicant and the original casual labour card maintained by the respondents. There is no allegation from the part of applicant that the respondents have manipulated the entries in the original casual labour card maintained by them. On the other hand, it is the contention of the respondents that the casual labour card produced by them was genuine and he had his continuous service only from 28/2/1978 and the said fact was also borne out of the records maintained by them. At this belated stage, the applicant's contention that he had continuous service from 21/8/73 and in terms of provision contained in para 2501 of the IREM and by the operation of law as laid down in Robert D Souza's case (supra), he is deemed to have attained the temporary status with effect from 21/8/1973 cannot be accepted. In the



above facts and circumstances of the case, we do not find any merit in this OA and, therefore, the same is dismissed. There shall be no orders as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER

abp


SATHI NAIR
VICE CHAIRMAN