

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 284 OF 2008

Wednesday, this the 1st day of April, 2009.

CORAM:

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

K.N.Rajappan
(Retired Mechanical Fitter, Office of the
Deputy Chief Engineer (Construction)/Southern Railway/
Madras Central)
Residing at .. Alum Moottil Padinjattethil
Thekkumpkara, Pullichira P.O
Quilon ... Applicant

(By Advocate Mr. TCG Swamy)

versus

1. Union of India represented by the
General Manager
Southern Railway
Headquarters Office, Park Town P.O
Chennai - 3
2. The Chief personnel Officer
Southern Railway, Headquarters Office,
Park Town P.O, Chennai - 3
3. The Divisional Railway Manager
Southern Railway, Chennai Division
Park Town P.O, Chennai - 3
4. The Chief Administrative Officer (Constn)
Southern Railway, Egmore
Chennai - 8 ... Respondents

(By Advocate Mr.P.Haridas)

The application having been heard on 01.04.2009, the
Tribunal on the same day delivered the following:

ORDER

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

The applicant is aggrieved according to him, the respondents
have not given him the pensionary benefits on his retirement from

Railway service on 31.01.2007. The reliefs prayed for further is as under :-

- (i) "Declare that the applicant is entitled to be granted monthly pension and other retirement benefits on and with effect from 01.02.2007 as if the applicant had retired from service as a regular employee ;
- (ii) Direct the respondents to grant the applicant monthly pension, commuted value of pension, retirement gratuity, etc. subject to such adjustments as may be required in the light of some payments already made, as provided for under the Pension Rules, 1993 ;
- (iii) Direct the respondents to grant the applicant the arrears of pension, commuted value of pension etc. with 12% interest to be calculated on and with effect from 01.02.2007."

2. The applicant in this OA has annexed Annexure A-2 order dated 27.09.1999 which talks of the lien of the employees working in the Construction/MTP Organisation who have been empanelled as Gangman in scale of Rs. 2610-3540 as indicated against their names. In the said order the applicant's name has been reflected as the very first one.

3. Respondents have contested the OA. They have submitted the application is liable to be dismissed on the ground that the applicant was not given any orders for regularisation at any point of time as a regular employee after he declined the Group 'D' empanelment.

They also rebutted to the grounds stated in the OA as under :-

"7. As regards to ground 5 (A), it is submitted that the employee was given temporary status of PCL with effect from 01.01.1983 and since he refused to accept the empanelment as a Group 'D' employee his request to settle the retirement benefits as applicable to a regular employee is not acceptable.

8. As regards to ground 5 (B), it is submitted that the employee was not holding a pensionary post and therefore, he was not entitled for the benefits of pension and other benefits applicable to a regular employee and as provided in the Railway service Pension Rules, 1993."

4. The applicant has field his rejoinder reiterating the contention as give in the OA and also added that persons who are similarly situated like the applicant, like Shri Poulose and Shri P.Ramachandran Nair etc. were given pension and other benefits on their superannuation.

5. Counsel for applicant after narrating the facts of the case and grounds raised in the OA submitted that the case of Shri Poulose is identical to that of the applicant as admitted by the respondents in Annexure A-6. Referring to the case of Shri Poulose, the applicant submitted that the order in that case is as under :-

"8. Arguments were heard and document perused. The service record in clear and unequivocal term confirms the fact of the applicant's services having been regularised with effect from 10.3.97. The contention of the respondents that in view of the order dated 30th of August 2000 (Annexure R-4) the applicant's status was kept as casual cannot be accepted. For, even if one goes by way of Railway Board Circular dated 9.4.1997 (Annexure R3) the mandate of the Board was to consider all casual labour/substitute for Group C post but at the same time it has been clearly stated therein, "all casual labour may continue to be considered for absorption in Group D on the basis of number of days put in as casual labour in respective units." Regularisation of the applicant is in conformity with the above dictate of the Railway Board. Thus the recording by the Executive Engineer, dated 20.7.2006 that "the provisions of lien in TVC Division vide Sr. DPO/TVC memo No.V/P 564/1/EMP/TVC/Vol V (P1) dated 27.12.2004 will not apply to EC Poulose, Sarang" is thoroughly wrong.

9. In view of the above the OA succeeds. It is declared that the applicant is a regular employee of the Railways, having his regularisation effective from 10.3.97. He is therefore entitled to the pensionary benefits on the basis of total length of qualifying service both as a temporary status casual labour and regular Group D employee. Respondents are directed to calculate the extent of qualifying service and also work out his terminal benefits and pay the same to the applicant and whatever pension is admissible the same should also be paid to him from 1.8.2006 and continued to be paid in accordance with law. While formal orders in this regard should be passed within a period of two months, and payment of pension to the applicant shall follow immediately arrears of pension, and payment of other terminal benefits etc. should be made within a further period of two months from the date of issue of orders as mentioned above. No costs. "

6. Counsel for the applicant submitted that though the applicant had declined to accept regularization as Gangman nullifying his unwillingness for empanelment, respondents had issued the aforesaid order as seen from Annexure a-6 (Para 2) which reads as under :-

" In this connection it is stated that the above names was empanelled as Gangman in scale Rs.775-1025 in MAS Division vide Sr.SPO/MAS Office order dated 22.01.1997. However, as no entry to that effect was available in the SR of the retired employee, now, necessary entry has been made accordingly. Even though, the employee had expressed his unwillingness for empanelment in Group 'D' in the year 1997, the MAS Division had provided him lien as Gangman vide O.O.No.M/P (W) 207 (0) 99 dated 27.09.1999, which nullified his unwillingness for empanelment. Moreover the employee was allowed to continue in CN organisation as Fitter (ad-hoc) in scale Rs.3050-4590."

7. The aforesaid Annexure A-6 also states that the applicant's case is similar to one Shri Poulose and Shri P.Ramachandran Nair. In the very same Annexure respondents have also stated as under :-

"Taking into consideration the empanelment against Group 'D' posts and also for having permitted him in

Construction Organisation against Group 'C' post he is entitled for all the benefits which are applicable to a regular employee. In this connection, it is pertinent to point out that HQ has issued a direction that such employees are to be settled based on the last pay drawn as per the Pension Manual."

8. Hence the counsel stated that the relief as given to Shri E.C.Poulose should be extended to the applicant as well.

9. The applicant has also referred to another case in OA 196/08 decided recently on 19.02.2009 which was passed entirely on the above case of Shri Poulose. In the said order after extracting the operative portion of Para 6, the Tribunal has held in Para 4 as under :-

"4. I have heard Advocate, Mr B.V.Joy Shankar for the applicant and Advocate Mr Shyamraj G proxy counsel for Mr P Haridas for the Respondents. I have gone through the record. There is no doubt that the applicant Shri E.C.Poulose and Shri A H Ahmedkutty are similarly placed and therefore they have to be treated like. Otherwise it will amount to discrimination. The applicant's case is fully covered by the judgment of this Tribunal in OA 694/06 E.C.Poulose v/s. Union of India & Ors decided on 30.3.2007. In view of the above facts and circumstances of the case, I allow this OA and direct the respondents to pay pensionary benefits to the applicant on the grounds of continuous qualifying service in the Railways after making adjustments, if any, as he has already been paid the gratuity under the Payment of Gratuity Act 1972. He is also entitled to get interest @ 9% on the arrears of pension payable to him from the date of his superannuation 31.7.2004 till the date of payment. The respondents shall comply with the aforesaid directions within a period of three months from the date of receipt of copy of this order. There shall be no orders as to costs."

10. Counsel for respondents invited the attention of this Tribunal to the specific portion in the reply as extracted above.

11. Arguments were heard and documents perused. Admittedly, Annexure A-2 and A-6 when read together, the facts that emerge in this case are as under :-

- (a) The applicant's regularisation has taken place by virtue of Annexure A-2 order.
- (b) The applicant's case is identical to that of Shri Poulose.

12. In view of the above, there shall be no difficulty to take a firm conclusion that the applicant's case is identical to that of Shri Poulose and all the benefits that were made available to Shri Poulose shall equally be extended to the applicant taking into his temporary status prior to regularisation and service after regularisation and also keep in view the last pay drawn by the applicant as already stated by the DPO, MAS vide Annexure A-6 extracted above.

13. In view of the above, **OA is allowed.** Respondents are directed to act upon on the basis of period of regular service coupled with the temporary status prior to regularisation and also take into account the last pay drawn by the applicant as per Pension Manual to work out the terminal benefits and pension applicable to the applicant. This order shall be complied with, within a period three months from the date of communication of this order. No costs.

Dated, the 1st April, 2009.


Dr.K.B.S.RAJAN
JUDICIAL MEMBER