CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 292/2011

Thursday, this the 23rd day of February, 2012.

CORAM

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

K.Vasu, S/o Kuppayi,
Retired Senior Trackman,
Southern Railway, Tirupur,
Residing at "Navaneethanm", East Vidyanagar,
Akathethara Post, Palakkad, Kerala State. - Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by the
General Manager, Southern Railway,
Head Quarters Office, Park Town.P.O.
Chennai-3.

2. The Chief Personnel Officer,
Southern Railway,
Head Quarters Office, Park Town.P.O.
Chennai-3.

3. The Senior Divisional Personnel Officer,
Southern Railway,
Salem Division. Salem-680 001. ....Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 21.02.2012, the Tribunal on 23.02.2012 delivered the following:

ORDER

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

Six months shortfall in the qualifying service results in the deprivation of pension to the applicant, as the minimum period of qualifying service for pension is ten years, while the applicant possesses only nine years and six months. The contention of the applicant is that if half the period of casual labour service rendered by him is taken into account, the shortfall in qualifying service gets obliterated and the applicant would become entitled to pension. Hence this O.A.

2. Brief facts: The applicant initially joined the service of the respondents as a casual labourer on 14-05-1983 under the Inspector of Works, Construction, Ottappalam, Southern Railway and continued there till 17-08-1984. Thereafter, there was a substantial break and it was only from 24-02-1999 that he was regularly appointed and the applicant retired on superannuation on 31-08-2008. The service of regular appointment amounts to 9 years and six months. The applicant submitted before the respondents that his earlier casual labour service if taken into account for qualifying purpose, the same would offset the deficiency in the period of qualifying service. The claim of the applicant is that he belonging to construction Wing and that on the basis of the decision by the Apex Court in the case of Robert D'Souza his services are to be construed as Temporary service after 120 days of service and thus, the applicant is entitled to have half of his services from 14-09-1983 ~~should be~~ treated as

Temporary service. He has served upto 10-07-1984 vide Annexure A-5. His request, however, has been turned down, vide Annexure A6. Hence, this OA claiming the following reliefs:-

(i) Call for the records leading to the issuance of Annexure A-6 and quash the same;

(ii)Declare that the applicant is entitled to be treated as temporary on and with effect from 14.09.1983 and declare further that the applicant is entitled to be granted monthly pension on and with effect from 1.09.2008 with all consequential benefits arising therefrom and direct the respondents accordingly.

(iii)Award costs of and incidental to this application; and

(iv)Grant such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case including costs.

3. Respondents have contested the O.A. According to them, the applicant was initially engaged in the Project work and further on his retrenchment, his dues have also been settled on 17-08-1984. Work which is undertaken to improve the carrying capacity of Railways are Project works and work which is required for day to day running of Railway are Open line works. The works carried out by the Openline organization may either be openline work or Project work. Casual labourers engagd in open line work are called Openline Casual Labourers and those casual labourers engaged in the project work are called as Project casual labourers. As the applicant was engaged as casual labour by the construction organization, the applicant was only a Project Casual Labourer. The respondents have further submitted that pursuant to the judgment in **Inderpal Yadav** case, instructions were issued vide Annexure

R-1 letter dated 11-09-1986 to prepare list of Project Casual Labour who were in service as on 01-01-1981 with reference to each department in each Division and also in regard to each category namely skilled, semi skilled and unskilled for the purpose of subsequent engagement/reengagement/discharge of Project Casual Labour on the principle of Last come – first go and also for the purpose of absorption into service of these Project Casual Labourer with the longest service as per their seniority. At the direction of the Tribunal in the judgment dated 19-06-1996 in OA No. 1709/1994 combined Live Casual Labour Register was published on 17-09-1996 and the list contained as many as 2284 retrenched casual labourers. The applicant was one of the ex casual labourers from the combined Live Register who was to be absorbed on regular basis after certificate verification and medical examination. He was thus appointed on 24-02-1999. He having superannuated on 31-08-2008, his entitlement to pensionary benefits would be based on his qualifying service from 24-02-1999 to 31-08-2008. No further period would be counted for working the qualifying service. Though provision exists for counting of fifty per cent of the casual labour service on attaining regularization vide Rule 31 of the Railway Servants (Pension) Rules 1993, as such regularization has to be in continuation of casual labour service and in this case as the said condition has not been fulfilled, the period prior to regular service was not to be reckoned

4. Counsel for the applicant argued that casual labour services are of different types – Open line, Project casual labourers and Construction

Casual Labourers. Of these, while open line casual labourers are essentially entitled to temporary status after rendering 120 days of service , in so far as Project Casual Labourers, their entitlement to temporary status is purely based on the decision in the case of **Inder Pal Yadav** case and scheme framed in pursuance of the same. In so far as Construction casual labourers are concerned, these may fall in either of the category – open line or Project casual labour. The counsel invited the attention of the Tribunal to the decision in **Robert D Souza** (1982) 1 SCC 645, wherein the fine distinction between a casual labour engaged in construction wing and a casual labour engaged in purely Project work had been explained. At the time when the above case was considered, six months service was prescribed for temporary status, which, however, had been reduced to four months. Thus, the applicant is entitled to temporary status from September, 1983. Thus, half the service, for the period from this date till the date of absorption, as discounted by the period the applicant was not in service would reckon for qualifying services. The counsel also relied upon a recent decision of the Bench in OA No. 449 of 2011 delivered on 16th February, 2012, in which identical case has been allowed by the Tribunal.

5. Counsel for the respondents submitted that the applicant belongs to Project Casual labour.

6. Arguments were heard and documents perused. Robert D' Souza (supra) vividly deals with casual labourers and the following part of the

judgment is very much relevant to the facts of this case:-

11. Rule 2501 reads as under:

"2501. Definition.—(a) 'Casual labour' refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour.

(b) The casual labour on railways should be employed only in the following types of cases, namely:

(i) Staff paid from contingencies except those retained for more than six months continuously. Such of those persons who continue to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment.

(ii) Labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment.

(iii) Seasonal labour who are sanctioned for specific works of less than six months' duration. If such labour is shifted from one work to another of the same type, e.g., relaying and the total continuous period of such work at any one time is more than six months' duration, they should be treated as temporary after the expiry of six months of continuous employment. For the purpose of determining the eligibility of labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers.

* * *

Notes.— * * *

(2) Once any individual acquires temporary status, after fulfilling the conditions indicated in (i) or (iii) above, he retains that status so long as he is in continuous employment on the railways. In other words, even if he is transferred by the administration to work of a different nature he does not lose his temporary status.

* * *

(4) Casual labour should not be deliberately discharged with a view to causing an artificial break in their service and thus prevent their attaining the temporary status.

* * *"

Rule 2505 may as well be extracted. It reads as under:

"2505. Notice of termination of service.—Except where notice is necessary under any statutory obligation, no notice is required for termination of service of the casual labour. Their services will be deemed to have terminated when they absent themselves or on the close of the day.

Note.—In the case of a casual labourer who is to be treated as temporary after completion of six months' continuous service, the period of notice will be determined by the rules applicable to temporary railway servants."

12. In order to satisfactorily establish that the appellant belongs to the category of casual labour whose service by deeming fiction enacted in Rule 2505 will stand terminated by the mere absence, it must be shown that the appellant was employed in any of the categories set out in clause (b) of Rule 2501. What has been urged on behalf of the respondent is that the appellant was employed in construction work and, therefore, labour on projects irrespective of duration would belong to the category of casual labour. That, however, does not mean that every construction work by itself becomes a work-charged project. On the contrary sub-clause (i) of clause (b) of Rule 2501 would clearly show that such of those persons belonging to the category of casual labour who continued to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment. Similarly, seasonal labour sanctioned for specific works for less than six months' duration would belong to the category of casual labour. However, sub-clause (iii) of clause (b) of Rule 2501 provides that if such seasonal labour is shifted from one work to another of the same type, as for example, "relaying" and the total continuous period of such work at any one time is more than six months' duration, they should be treated as temporary after the expiry of six months of continuous employment. The test provided is that for the purpose of determining the eligibility of casual labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers. 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. It is equally true of even seasonal labour. Once the person acquired the status of temporary railway servant by operation of law, the conditions of his service would be governed as set out in Chapter XXIII."

7. The above would thus reveal that the decision of the Apex Court is 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. ~~From~~ the fact that the applicant joined the services under Inspector of Works, Construction, Ottappalam, Southern Railway would go to confirm that his services were not one of Project casual labour. Again in so far as the condition emphasized by the respondents that the the service paid from the contingencies has been continuous and followed by absorption in regular employment without a break, vide para 9 of the Counter is sought to be met with by the counsel for the respondents by citing a recent order of the Tribunal in OA No. 449 of 2011, wherein the Tribunal has held as under:-

"The claim of the applicant is reasonable and justifiable. The counsel submitted that from the total period from the beginning of casual labour service in 1978 till the date of regularization in 1992, the period of disengagement for four years be excluded and the balance worked out half of which would be treated as qualifying service. We direct that the respondents shall work out the accordingly and revise the total qualifying services for the purpose of pension and other terminal benefits."

8. In view of the above, it is declared that the applicant had acquired temporary service on completion of 120 days of service i.e. w.e.f. 14-09-1983. As per the Casual labour card, he had served for a total period of 459 days, of which, the period served from 14-9-1983 works out to 336 days, half of which works out to 168 days. This period of 5 months and 18 days if counted as qualifying service, would make the total qualifying service as 9 years 11 months and 2 days. This is rounded off to the figure of 10 years and thus, the applicant is entitled to minimum pension as per the latest and extant rules.

9. **The O.A. is thus, allowed**. Respondents are directed to work out pension admissible to the applicant and issue necessary PPO and also pay him the other admissible terminal benefits. This order shall be complied with, within a period of four months from the date of communication of this order. No costs.

Dr K.B.S.RAJAN
JUDICIAL MEMBER

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