

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 302
T. A. No.

199 0

DATE OF DECISION 31.1.92

V.K. Madhavan Applicant (s)

Mr. K. Ramakumar Advocate for the Applicant (s)

Versus

Union of India (General Respondent (s)
Manager, S. Railway, Madras)
and 2 others

Smt. Sumathi Dandapani Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Member (Administrative)

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

N.V. Krishnan, AM

The question that ultimately falls for determination in this case is whether ^{any part of} the service rendered by the applicant as a casual labourer in the Railways from the date of his first engagement, 5.3.1954, to the date on which he was granted temporary status on 23.2.79 should be taken into account for considering his entitlement to pension.

2. Briefly the facts are as follows:

2.1 The applicant was admittedly first engaged on 5.3.54. He contends that he was working intermittently from 5.3.54 to 8.8.73 and from 9.8.73 he ^{was} continuously engaged in open line and therefore he should have acquired temporary status

after 6 months from that date.

2.2 He was regularized as a gangman on 2.5.84 and he superannuated ^{on} 30.4.89. It was then that the respondents informed him by the Annexure-C letter dated 2.5.89 that he cannot get any pension because as shown in the service certificate dated 1.5.89 (Annexure-D) he did not have the minimum qualifying service of 10 years. According to the respondents he was granted temporary status on 23.2.79 and regularized as gangman on 14.4.84. Only half the service of these 5 years (i.e. around $2\frac{1}{2}$ years) will count as qualifying service, besides the service of about 5 years after regularization.

(Annexure-E)
2.3 His representation stating that his pension be reworked on the basis of his claim that he was working in the open line continuously from 9.8.73 was not disposed .

2.4 Hence ~~this~~ application with the prayer to direct the respondents to grant the applicant the pension and all other consequential benefits with effect from 30.4.89 with interest.

2.5 He strongly relies on the Annexure-B order dated 2.5.84 by which he was empanelled from that date against vacancies of 31.12.82. Inter alia, it is stated, he had a total aggregate service of 8759 days. The applicant contends that as such he should have been treated as having acquired temporary status from 9.8.73.

3. Respondents deny this claim. They state that the applicant was granted temporary status only from 23.2.79 (Exbt. R1). He was regularised on 2.5.84 (Ann.B). Under the Rules, admittedly, only 50% of the service between these dates can be taken as qualifying service. This comes to about $2\frac{1}{2}$ years. He retired only on 30.4.89 after rendering about 5 years regular service. Thus the total service is

only $7\frac{1}{2}$ years which does not qualify for pension.

That benefit is given only after rendering 10 years regular service.

4. This contention of the Respondents is admittedly valid and the applicant's claims would normally have been set aside. The applicant however gets strong support from Annexure-B. We wanted the respondents to show us the file from which Annexure-B was issued so as to verify how they, admittedly, arrived at a service of 8759 days. Though ~~a large number~~ ^{sufficient} of opportunities ^{it} was given to the respondents they have failed to explain how this service was computed, what is its break up ^{between} Construction and Open Line etc. Admittedly, service in Construction line does not count for declaration of temporary status. The applicant represented that he should be treated as being in continuous service from 9.8.73 (Annexure-E) in Open line.


5. A simple arithmetical calculation shows that from the first day of his engagement on 5.3.54 till 2.5.84 (i.e. the date of issue of Annexure-B) the total number of days is 10827. The applicant's service recorded in Annexure-B is 8759 ^{days}. The unaccounted number of days amount to 2068, i.e. about 6 years. This can be accounted in two ways:

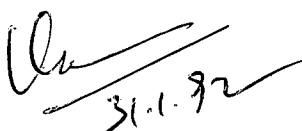
(i) The applicant's claim implies that he was ^{Wing} in Construction from 1954 to 1973 i.e. around 19 years. He might have been disengaged for those 2068 ^{about 6 years} days i.e. /

(ii) Alternately if 52 Sundays, 12 Saturdays and 12 General holidays are taken each year, i.e. 76 days per year, the total number of such holidays would have been around 2280 days in the 30 year period from 5.3.54 to 2.5.84, when, normally, casual labourers are not engaged. Therefore, the claim of the applicant that he had continuous service from 9.8.73 is not improbable on these facts.

6. As the respondents have not been able to explain the basis of the computation in Annexure-B and as we find for the reasons given in para 5, that the applicant could very well have been in the open line continuously from 9.8.73, we are of the view that the applicant could have acquired temporary status from 9.2.74. This date should be taken into account for reckoning pensionable service.

7. In the circumstances, we allow this application and direct the respondents to treat him as having acquired temporary status on 9.2.74 for pensionary benefits, notwithstanding Ann.R1 orders and grant him all consequential pensionary benefits within 2 months from the date of receipt of this judgement.


(N. Dharmadan) 31.1.92
Member (Judicial)


(N. V. Krishnan)
Member (Administrative)

31-1-92