

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.306/1996

Thursday this the 1st day of April, 1999.

CORAM

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN  
HON'BLE MR. B.N. BAHADUR, ADMINISTRATIVE MEMBER

K. Krishnankutty,  
S/o late V.M.Krishnan Kartha,  
Retired Inspector of Works,  
Grade II, Sakleshpur,  
Southern Railway,  
Mysore Division,  
residing at Thottipalmadom,  
Thottipal Post, Via.Parappukara,  
Trichur District-680 310. ....Applicant

(By Advocate Mr. T.C.Govindaswamy)

Vs.

1. Union of India through the  
Ex-Officio Principal Secretary,  
to the Government of India,  
Ministry of Railways,  
Rail Bhawan, New Delhi.
2. The General Manager,  
Southern Railway,  
Headquarters Office,  
Park Town PO, Madras.3.
3. The Chief Engineer,  
Construction, Southern Railway,  
Egmore, Madras.3.
4. The Divisional Personnel Officer,  
Southern Railway,  
Mysore Division.  
Mysore. ....Respondents

(By Advocate Mr. Mathews J Nedumapra)

The application having been heard on 31.3.99, the  
Tribunal on 1st day of April, 1999 delivered the  
following:

O R D E R

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN

In this Original Application the  
applicant has sought a direction to the respondents

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to reckon 50% of his casual service for the period 1.8.1957 to 30.9.1966 as qualifying service for pensionary benefits and accordingly to recalculate and pay his pension and other post retirement benefits.

2. Briefly stated, the applicant retired from Southern Railway on 31.8.1995 as Inspector of Works after having put in about 29 years of regular service with the Railways. He claimed that as per rules and relevant executive instructions, he was entitled to count 50% of his casual service from 1.8.1957 to 30.9.1966 towards his qualifying service for purposes of pension and on that basis, for pension at enhanced rate. The claim was denied. He, therefore, filed O.A.No.1378/95, which was disposed of on 6.11.1995 by directing the respondents to take a final decision in the matter within a specified time in the light of their admission that:

"....the factual details will have to be verified to ascertain the nature of service rendered and then it will have to be determined whether such service is liable to be counted as qualifying service for pension....the principles laid down in O.A.1251/94 (A.7) will be followed after ascertaining the factual detail."

The respondents, thereafter, considered the reliefs claimed by the applicant in O.A. No. 1378/95 and took a final decision to reject them and communicated to him by letter dated 18.1.1996 (Annexure.A9), issued from the Divisional Office of the Southern Railways. The applicant has, therefore, filed the present Original Application for the said relief. The application is resisted by the respondents.

3. After hearing the learned counsel for the parties and perusing the record, we find that the claim of the applicant was rejected by the respondents on the following grounds:

- i) The Casual Labour service rendered by the applicant in Construction Wing of the Southern Railway from 16.7.1958 to 30.9.1996 was Project Casual Labourer service and not Casual Labour Service in open line.
- ii) The scheme in respect of Project Casual Labour approved by the Supreme Court in Inderpal Singh Yadav's case for granting them temporary status was effective from 1.1.1981 and that the Project Casual Labour who "attained temporary status on and from 1.1.1981 are entitled for counting 50% of their service for retirement benefits, if followed with regular absorption."
- iii) The applicant was regularly absorbed as Gangman with effect from 1.10.1966, ie., before 1.1.1981 and, therefore, not entitled to the benefits of the said scheme approved by the Supreme Court.
- iv) And the decision of the Tribunal in O.A.No.1251/94, Parameswaran Pillai's case could not be followed as it was stayed by the Supreme Court in SLP filed by the Railway Administration, which was pending on the date of the present decision taken by the respondents in the case of the applicant.

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In the meanwhile the decision of the Supreme Court in Civil Appeal No.4643/92, Union of India Vs. K.G.Radhakrishna Panicker dated 28.4.1998 came into being where it was held that:

"As regards Project Casual Labour this benefit or being treated as temporary became available only with effect from 1.1.1981 under the Scheme which was accepted by this court in Inder Pal Yadav. Before the acceptance of that scheme the benefit of temporary status was not available to Project Casual Labour. It was thus a new benefit which was conferred on Project Casual Labour under the scheme as approved by this Court in Inder Pal Yadav and on the basis of this new benefit Project Casual Labour became entitled to count half of the service rendered as Project Casual Labour on the basis of the order dated October 14, 1980 after being treated as temporary on the basis of the scheme as accepted in Inder Pal Yadav. We are therefore, unable to uphold the judgment of the Tribunal dated February 8, 1991 when it holds that service rendered as Project Casual Labour by employees who were absorbed on regular permanent/temporary posts prior to 1.1.1981 should be counted for the purpose of retiral benefits and the said judgment as well as the judgment in which the said judgment has been followed have to be set aside."

Accordingly it was argued by the learned counsel for the respondents that the applicant was not entitled to count 50% of his casual service from 1.8.1957 to 30.9.1966 as qualifying service for pensionary

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benefits because the Casual Labour service rendered by the applicant in the Construction Wing of the Southern Railway during the said period was Project Casual Labour service and not Casual Labour service rendered in open line and further because the said scheme in respect of Project Casual Labour approved by the Supreme Court was effected from 1.1.81 and not applicable to persons who had acquired temporary status prior to 1.1.81. We find substance in this contention of the learned counsel for the respondents but according to the learned counsel for the applicant the decision of the Supreme Court in Civil Appeal No.4643 of 1992 was distinguishable. According to him, it was applicable in cases of Project Casual Labour and not applicable in cases of Casual Labour in Construction Wing of the Railways. It was submitted that the applicant in the present Original Application was in Construction Wing of the Southern Railway and therefore, he was entitled to count 50% of his Casual Service from 1.8.1957 to 30.9.1966 as qualifying service for pensionary benefits as a Casual Labour in open line. The contention deserves to be rejected. In Paragraph 6 of the judgment in Civil Appeal No.4643/92 it was specifically found by the Supreme Court similar employees found to be in the Construction Wing and as such were found to be Project Casual Labourers. Accordingly the applicant cannot be differentiated from similar employees on the ground urged by the learned <sup>counsel</sup> for the applicant. The alternative

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submission of the learned counsel for the applicant that during 16.7.1958 to 30.9.1966 the applicant had worked as substitute against regular vacancy was not considered by the respondents and, therefore, the respondents deserves to be commanded to reconsider his case in the light of the aforesaid fact, is liable to rejected as illfounded. Similarly reliance placed by the learned counsel for the applicant in decision of the Supreme Court in L.Robert D'souza Vs. Executive Engineer, Southern Railway and another 1982 SCC (L&S) 124 was misconceived and deserves no consideration.

4. For the forgoing reasons we find no merit in this O.A. and accordingly it is hereby dismissed but without any order as to costs.

Dated this the 1st day of April, 1999.

B.N. Bahadur

B.N. BAHADUR  
ADMINISTRATIVE MEMBER

K.M. Agarwal

K.M. AGARWAL (J)  
CHAIRMAN

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List of Annexures referred to in the Order:

Annexure A7: True copy of the Judgment in O.A.1251/94 dated 29.9.94 delivered by this Hon'ble Tribunal.

Annexure A9: A true copy of the letter No.Y/P 435/OA.378/1995 dated 18.1.96 issued by the 4th respondent.

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