

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.309/08

Monday this the 8th day of June 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

C.S.Narayanan Namboothiri,
S/o.Sankaran Namboothiri,
Retired Points Man Gr.II,
Southern Railway, Quilon,
Residing at Mudiyl Kizhakkathil,
Cheruvalli Illam, Muzhangodi, Thodiyoor P.O.,
Karunagappally, Kollam District.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
2. The Chief Engineer,
Construction, Southern Railway,
Egmore, Chennai – 8.
3. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 8th June 2009 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

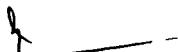
The applicant herein has retired as a Points Man Gr.II in the scale of Rs.2650-4000/- (pre-revised) with effect from 31.5.2007. He seeks a declaration that he is entitled to reckon 50% of the service rendered by him between 10.1.1973 and 1.1.1981 as qualifying for the purpose



.2.

of pension and other retirement benefits. He has also sought a direction from the respondents to recalculate/revise his pensionary benefits already granted after taking into consideration the aforesaid service rendered by him.

2. The brief facts as stated by the applicant are : he was engaged as casual labourer/Lascar/Khalasi under the Executive Engineer, Construction, Ernakulam with effect from 10.7.1972. He was later transferred to Quilon under the control of the Executive Engineer (Construction) where he worked continuously up to 20.1.1977. Thereafter, he was transferred to work under the control of the Inspector of Works Gr.II, Quilon. Then again to work under Chief Clerk, Stores, Ernakulam from 21.4.1978 onwards. He worked there till he was transferred to the control of DSK, Construction, Quilon on 30.4.1980. While working there, he was granted temporary status with effect from 1.1.1981 and later his services was regularised against a vacancy which became available on 31.12.1983. The applicant in support of his claim has produced the Annexure A-1 series of service cards indicating the casual labour service rendered by him with effect from 10.7.1972 onwards. He has also submitted that his service throughout was without any break. However, on the date of his superannuation on 31.5.2007, the respondents have not reckoned the services rendered by him prior to 1.1.1981. He has also stated that he has not been paid the gratuity for the period prior to 1.1.1981 under the Payment of Gratuity Act, 1982.



3. The applicant further submitted that in terms of Para 2501 of the Indian Railway Establishment Manual, a casual labourer other than Project casual labourer is entitled to be treated as temporary on completion of six months of continuous service. He has completed six months of continuous service as on 10.1.1973 and, therefore, his services from the said date till his date of regularisation is to be reckoned for the purpose of pensionary and other terminal benefits.

4. According to the applicant his case is squarely covered by the order of this Tribunal in O.A.253/04 – K.Sankaran Vs. Union of India & Ors – and as upheld by the Hon'ble High Court of Kerala in WPC No.33412/05 vide judgment dated 3.12.2007. The applicant therein was engaged as a casual labourer on 27.8.1972 under the Permanent Way Inspector, Trivandrum-Ernakulam Conversion, Southern Railway Construction Organisation, Quilon. He worked under the said authority up to 20.1.1975 and thereafter he was transferred to the control of the Permanent Way Inspector, Open Line, Mavelikkara, Southern Railways and was regularised on 22.8.1984 as Gangman. He completed six months of service on 26.3.1973 and therefore, he claimed benefits in terms of Para 2501 of the Indian Railway Establishment Manual to be treated as a temporary employee, so that 50% of his casual service from 27.3.1973 to 23.10.1978 should be reckoned for computation of pensionary benefits. However, the respondents railways submitted that the applicant was always in the project of conversion of Trivandrum-Ernakulam line from metre gauge to broad gauge. It would only show that he was a project casual labourer working in the project and the transfer was within the project and therefore he cannot claim that he was entitled to get temporary status on completion of six



months service from his date of initial appointment. The Tribunal granted him the relief by allowing the OA relying on the judgment of the Apex Court in L.Robert D'Souza Vs. Executive Engineer, Southern Railway and another [(1982) 1 SCC (L&S) 124] wherein the question of non transferability of project casual labourer and the distinction between project work and construction work was considered. The relevant portion of the Apex Court judgment was as under:

“ Rule 2501 (b) (i) clearly provides that even where staff is paid from contingencies, they would acquire the status of temporary railway servants after expiry of six months of continuous employment. But reliance was placed on Rule 2501 (b) (ii) which provides that labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment would be treated as casual labour. In order to bring the case within the ambit of this provision it must be shown that for 20 years, appellant was employed on projects. Every construction work does not imply project. Project is correlated to planned projects in which the workman is treated as work charged. The letter dated September 5, 1966, is by the Executive Engineer, Ernakulam, and he refers to the staff as belonging to construction unit. It will be doing violence to language to treat the construction unit as project. Expression 'project' is very well known in a planned development. Therefore, the assertion that the appellant was working on the project is belied by two facts: (i) that contrary to the provision in Rule 2501 that persons belonging to casual labour category cannot be transferred on innumerable occasions as evidenced by orders Ext.P-1 dated January 24, 1962 and Ext.P-2 dated August 25, 1964, and the transfer was in the office of the executive engineer (Construction); (ii) there is absolutely no reference to project in the letter, but the department is described as construction unit. If he became surplus on completion of project there was no necessity to absorb him. But the letter dated September 5, 1966, enquires from other Executive Engineers, not attached to projects, whether the surplus staff including appellant could be absorbed by them. This shows that the staff concerned had acquired a status higher than casual labour, say temporary railway servant. And again construction unit is a regular unit all over the Indian Railways. It is a permanent unit and cannot be equated to project. Therefore, the averment of the Railway Administration that the appellant was working on project cannot be accepted.”

5. The Hon'ble High Court upholding the aforesaid order of this Tribunal in O.A.253/04 held as under :-

"7. We considered the rival contentions. We notice that the applicant was transferred from Quilon to Mavelikkara. If he was a Project Casual Labourer there will normally be no such transfer. Project Casual Labourers are locally recruited and once the Project Construction Work is over, they will be retrenched. They have no right to absorption and they were not liable to be transferred also. In this case, we also notice that the applicant has been transferred to the control of the Permanent Way Inspector, Open Line, Mavelikkara, Southern Railways as evidenced from Annexure A-1 Service Card of the applicant produced along with the Original Application which gives the details of engagement of the applicant. If the applicant was a Project Casual Labourer, he would have continued as such and could aspire for temporary status or absorption only in the light of the judgment in Inder Pal Yadav Vs. Union of India (1985) 2 SCC 648. The construction work is available under the Construction Wing of the Railways and also in Projects. Engagement of the casual labourers for the construction work in projects will not be engagement under the Construction Wing. Going by the special facts of this case like the transfer of the applicant to the open line in 1975 and thereafter, absorption, we feel that the claim of the applicant that he was working in the Construction Wing and not employed in construction work in the Project Wing, has to be upheld. Learned counsel for the Railways took us through the decision of the Apex Court in Union of India Vs. K.G.Radhakrishana Panickar (1998) 5 SCC 111. Learned counsel pointed out that the casual labourers employed in construction work on Projects shall also be treated as Project Casual Labourer. But engagement of casual labourers in construction work on Projects and engagement of casual labourers under the Construction Wing are distinct and different. So, the above decision of the Apex Court cannot have any application to the facts of the present case. Further, the distinction between the facts of this case and the facts of Robert D'Souza's case which the learned counsel for the Railways has brought to our notice is not of much consequence. In Ext.P-1, though the applicant is described as a Project Casual Labourer working in a Project, the earlier actions of the Railways transferring the applicant to the open line Wing in Mavelikkara and thereafter his absorption, would belie the contentions of the Railways. The nomenclature given to the applicant in an order cannot take away the rights admissible to him on engagement under the Construction Wing of the Railways and later, in the Open Line. Therefore, we are of the view that on the facts of this case, the decision of the Central Administrative Tribunal has to be upheld.



8. In the result, the Writ Petition fails and it is dismissed."

6. In my considered view the present OA is exactly similar to the case of K.Sankaran (supra) decided by this Tribunal in O.A.253/04 and upheld by the High Court in WPC No.33412/05 (supra) vide judgment dated 3.12.2007. I, therefore, allow this OA and declare that the applicant is entitled to reckon 50% of the service rendered by him between 10.1.1973 and 1.1.1981 as qualifying for the purpose of pension and other retirement benefits. I further direct the respondents to recalculate/revise his pension and other retirement benefits duly reckoning 50% of the casual labour services rendered by him and grant the arrears of retirement gratuity, pension and other allowances on that basis. The aforesaid directions shall be complied with, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 8th day of June 2009)


GEORGE PARACKEN
JUDICIAL MEMBER