

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DA 315/92, DA 854/92 and DA 913/92

Date of decision: 23rd July, 1993

1 CT Mathechan
2 S Venkitachalam
3 K Venkitaraman
4 Jaya Kumar
5 A Manikantan Nair
6 P Chinnaswamy Pillai
7 Jayasenan N
8 P Vasantha Kumar
9 V Jayaprakash
10 P Ramadas
11 K Rajan
12 G Rajasekharan
13 K Thankappan
14 V Perumal
15 S Murugesan
16 K Padmanabhan
17 V Murugan
18 V Narayana Swamy
19 G Maria Soosai
20 R Mohanlal
21 V Sivagnanam
22 EA Prasad
23 S Radhakrishnan Achari
24 M Gajendran
25 T Philip
26 A Rajendran
27 Ramanathan Petty
28 Sudharsanan Thampi
29 Murali Das
30 Ramaraj
31 Gopi S
32 K Ahemmed Kabeer
33 NP Balakrishnan Nair
34 N Radhakrishnan
35 Jayaraj C
36 A Madhavan Pillai
37 Sunder Rajan

- Applicants in DA 315/92

1 TK Rajasekharan
2 Sivadasan Achary
3 J Francis
4 K Sreekantan Nair
5 P Charles
6 P Mahadevan
7 S Mohanan
8 KC Rajan
9 S Selvakumar
10 C Appukuttan
11 M Marialawrance
12 MR Mohanan
13 K Sreedharan
14 C Premachandran
15 P Christurajan
16 E Sudalai Mathu
17 N Raveendran
18 K Sreekantan Nair (II)
19 C Sathishkumar
20 V Gananasigamony

- Applicants in DA 854/92..
contd.

21 R Chandrasekharan
 22 C Iyyappan
 23 C Kanakaraj
 24 C Mohandas
 25 S Jagadeesh Babu
 26 GS Pushparajam

- Applicants in OA 854/92

1 B Radhakrishnan Nair
 2 C O Simon
 3 V Krishnan
 4 P Sivagami Sundaram
 5 KM Baby John
 6 P Selvaraj
 7 D Gnana Seelan
 8 C Ashok Kumar
 9 R Krishnamoorthy
 10 A Nazarudeen Koya
 11 PK Uma Maheswaran
 12 S Somasekharan
 13 P Mahalingam
 14 K Kumara Guruparan
 15 C Babu
 16 G Johnson
 17 M John
 18 PN Mohanan Nair
 19 N Durai Samy
 20 R Karthikeyan
 21 A Gopalakumar
 22 S Sukumaran
 23 PV Vinod Kumar
 24 T Thankaraj
 25 S Rajeev
 26 C Sundaram
 27 K Abdul Saleem
 28 S Sreekantan Nair
 29 V Thankappan
 30 Sundararaj
 31 V Ramaswamy
 32 P Retna Swamy
 33 C Rajendran
 34 N Kulathu Iyer
 35 R Sreedharan Nair
 36 N Sivathanu Pillai
 37 K Bhaskaran Nadar
 38 KK Samarajan
 39 K Arjunan
 40 Chella Durai
 41 A Punaseelan
 42 K Sasi
 43 D Jayarajan
 44 R Suresh Kumar
 45 L Rajendran Achari
 46 A John Rose
 47 P Moni
 48 M Maria Antony
 49 R Madhusoodhanan Nair
 50 T Vijayan
 51 T Gopa Kumar

- Applicants in OA 913/92

Mr P Sivan Pillai

- Advocate for applicants
 in all the O.As.

VERSUS

- 1 Union of India rep. the General Manager, Southern Railway, Madras-3
- 2 The Divisional Personnel Officer, Southern Railway, Trivandrum-14

3 The Divisional Electrical Engineer
(Construction)
Southern Railway, Ernakulam South.

4 Asstt. Personnel Officer,
Southern Railway, Trivandrum-14 - Respondents in DA 315/92

1 Union of India through
the General Manager
Southern Railways, Madras-3.

2 The Divisional Personnel Officer,
Southern Railway, Trivandrum-14.

3 The Divisional Electrical Engineer,
(Construction)
Southern Railway, Ernakulam South.

4 Assistant Personnel Officer
Southern Railway
Trivandrum-14.

5 Dy. Chief Electrical Engineer
(Construction), Southern Railway,
Moore Market Complex, Park Town P.O.
Madras-3 - Respondents in DA 854/92

1 Union of India through
the General Manager,
Southern Railway, Park Town P.O.
Madras-3.

2 The Divisional Personnel Officer
Southern Railway,
Trivandrum-14.

3 Divisional Electrical Engineer
(Construction)
Southern Railway, Ernakulam South.

4 Deputy Chief Electrical Engineer
(Construction), Southern Railway,
Moore Market Complex,
Park Town, Madras-3. - Respondents in DA 913/92

Mrs Sumathi Dandapani - Advocate for respondents
in all the D.As.

COURT

HON'BLE MR N DHARMADAN, JUDICIAL MEMBER
AND

HON'BLE MR R RANGARAJAN, ADMINISTRATIVE MEMBER

JUDGMENT

MR N DHARMADAN, J.M

These three cases are heard together on consent
of all parties, in view of the fact, that facts are same
and identical question of law arises for consideration. They
are also disposed of by this common judgment.

2 We are dealing only with the facts in OA 854/92 for passing this common judgment. The facts in other cases as indicated above are same.

3 Applicants are working as Electrical Khalasi Helpers under the Trivandrum Division of Southern Railway. They are aggrieved by the denial of grant of temporary status with effect from earlier dates applying the principles by which temporary status had been given to similarly situated casual labourers as shown in Annexure A1 in the Palghat Division.

4 According to the learned counsel for applicants, all the applicants were initially engaged in Electrical Construction Unit as casual labourers and later they were given temporary status on the assumption that Electrical Construction Unit is a project. They were also regularly absorbed in the Railways subsequently. Thus, they were treated by the Railways as Construction Project Labourers for the purpose of granting temporary status. But, they submitted that in Palghat Division similarly situated casual labourers were treated as casual labourers working in projects and they were granted temporary status with effect from earlier dates as shown in Annexure-I proceedings dated 5.2.85. According to them, if they were given similar treatment, they would have got the benefit of temporary status earlier and placements above the persons included in Annexure-I. Some of the casual labourers who were working with the applicants in the Electrical Construction Unit, but when they went to Palghat Division they got their temporary status reviewed treating them as casual

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labourers in Units other than project.

5 Applicant relied on Rule 2501 of the Indian Railway Establishment Manual and submitted that the concept of "project" is relevant and applicable to only Civil Engineering works and not to any other works or Department. The employees engaged in the Electrical Department whether in the construction or in the open line or in maintenance works are not project workers so as to disqualify them from the grant of temporary status under Chapter XIV of the Manual. They further submitted that Annexure-I order has been ~~issued granting temporary status~~ to casual labourers of Electrical Construction Unit under the rules.

6 Relying on some of the judgment of this Tribunal, they submitted that denial of temporary status to project casual labourers on completion of ~~four~~ months continuous service is arbitrary and illegal. The relevant portion in Annexure A5 judgment in OA 569/90 is extracted below:

"The definition of a 'temporary Railway servant' as given in para 2301 of the Indian Railway Establishment Manual excludes casual labour. The respondents have repeatedly stated in their counter affidavits that a casual labour even with 'temporary status' remains a casual labour. Thus, by introducing the words 'temporary status' after the Supreme Court had approved the Scheme for absorption of casual labour, the Railway Board has in effect deprived the project casual labour of the benefit of absorption as 'temporary Railway servant' as visualised in the Scheme placed before the Hon'ble Supreme Court. If the Railway Board had any doubt about the judgment of the Hon'ble Supreme Court, they should have sought clarification from the Court instead of unilaterally introducing the words 'temporary status' and thus, diluting drastically the benefits of that judgment.

14. In the above light, agreeing with the judgment of the Madras Bench of the Tribunal, we find that all the applicants before us, are entitled to count half of their casual service after completing six months of such service, for the purpose of pension.

15. A point which still remains to be considered is about the breaks in their casual service. In accordance with the Railway Board's letter dated 14.10.80 (Ext.R1 in DA 569/90) the benefit of counting half of casual service for pensionary benefits, as available to service paid from Contingencies vide the Ministry of Finance's OM of 14th May, 1968, was extended to casual labour who attained 'temporary status'. One of the conditions laid down in the Ministry of Finance's OM of 14th May, 1968 for the service paid from Contingencies counting towards pension is that "the service paid from Contingencies should have been continuous and followed by absorption in regular employment without a break". Accordingly, only that casual service put in by the project casual labour also after they attained temporary status shall be reckoned to the extent of 50% for pension, as was continuous and without break. For attainment of temporary status, however, casual service even though discontinuous can be taken into account. In their judgment in Ram Kumar and others vs. Union of India and others, AIR 1988 SC 390, the Hon'ble Supreme Court observed as follows:-

"6. Admittedly the petitioners have put in more than 360 days of service. Though counsel for the petitioners had pointed out that the Administration was requiring continuous service for purpose of eligibility, learned Additional Solicitor General on instructions obtained from the Railway Officers present in Court during arguments has clarified that continuity is not insisted upon and though there is break in such continuity the previous service is also taken into account. Learned Additional Solicitor General has made a categorical statement before us that once temporary status is acquired, casual employees of both categories stand at par."

(emphasis added)

Accordingly, the break in casual service is to be ignored for project casual labour for grant of temporary status. The period of breaks, however, when no casual service was rendered, will not count for reckoning six months of casual service for grant of temporary status."

7 According to the applicants, in the light of the law laid down by this Tribunal and the Hon'ble Supreme Court, they are eligible to get the benefit of temporary status on par with the casual labourers who are included in Annexure-I. In this line, the first applicant has filed Annexure A2 representation before the Divisional Personnel Officer,

Trivandrum Division, Southern Railway. All the other applicants have also submitted similar representations. Annexure 2 representation has been disposed of by an order dated 29.5.92 at Annexure A3 which is extracted below:-

"As per your service register, you were granted temporary status w.e.f. 24.5.1984 on having worked continuously for more than four months from 25.1.1984. Later in terms of Dy.CEE/CN/MMC/MAS Memo No.E 484/CN/MMC/MAS dated 10.4.1987, your date of granting temporary status was advanced to 1.1.1983 vide this office memorandum No.V/P 407/VIII/4 dated 10.11.1987.

No entry regarding your initial engagement in the construction unit is available in your service register. Hence your claim as explained in representation cited above cannot be agreed to."

8. According to applicants, they have filed this OA under Section 19 of the Administrative Tribunals Act for quashing Annexure A3 order and for a declaration that all of them are eligible to temporary status on completion of four months continuous casual service in the Electrical Construction Unit. They are also entitled to all other ancillary benefits, such as annual increment, scale of pay, etc., as provided in Chapter XXIII of the Manual.

9. Having heard/counsel on both sides, we are of the view that the impugned order cannot be sustained. First of all, it was not passed by the competent authority, who has the power and authority to pass such orders. DPO/TVM has no powers to pass the order. Secondly, even if it is considered that DPO before whom Annexure 2 was submitted, has the legal authority, he did not consider any of the contentions. There was no application of mind. It is a laconic order passed only to reject the request in an arbitrary manner.

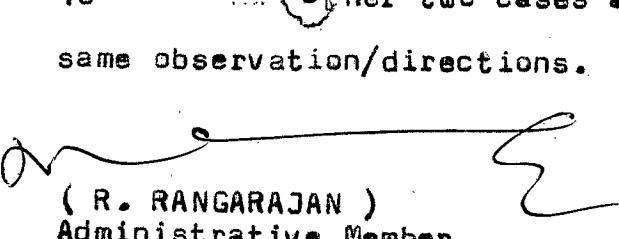
10. We are of the view that the applicants have made out a case based on para 2501 of the Railway Establishment Manual and read with Annexure A1 proceedings for serious consideration by the competent authority on the basis of the analogy

stated by this Tribunal in Annexure A4 and A5 judgements. The applicants strenuously contended that no distinction can be made with regard to casual labourers, like the applicant and the casual labourers included in Annexure-I whatever may the Divisions, either Trivandrum or Palghat. In this view of the matter, Annexure A3 is unsustainable and it is to be quashed.

11 Accordingly, having regard to the facts and circumstances of the case, we set aside the Annexure A3 order and dispose of the application with direction to the first respondent to consider afresh in detail all the aspects and the contentions raised by the applicants in this case and pass fresh orders. Before passing final orders, the first respondent shall give an opportunity of being heard the first applicant, who may appear before the first respondent representing all the applicants in response to the notice that may be issued to him in this behalf. While appearing pursuant to the notice, he has the freedom to produce whatever additional documents and materials available with him to prove the case of the applicants. The ² verification first respondent shall also call for/ from the concerned authorities including 5th respondent, all departmental documents relevant for determining the issues raised in this case. If the first applicant submits any request for summoning any additional departmental documents for proving the case of the applicants, the first respondent may entertain the same and summon them and examine the same before passing final order as directed above.

12 In view of what has been stated above, we dispose of this application with the above direction to the first respondent. He shall complete the proceedings and pass final orders within a period of six months from the date of receipt of a copy of this order. No costs.

13 ~~Other~~ Two cases are also disposed of with the same observation/directions. No costs.


(R. RANGARAJAN)
Administrative Member

23.7.93


23.7.93
(N. DHARMADAN)
Judicial Member

LIST OF ANNEXURES:

1. Annexure-A1 .. Copy of order dated 5.2.85 from APO, SR, Palghat.
2. Annexure-A2 .. Copy of representation dated 11.2.91 submitted by 1st applicant.
3. Annexure-A3 .. Copy of letter dated 29.5.92 from DPO, Trivandrum.
4. Annexure-A4 .. Copy of judgment dt. 30.4.92 in OA No. 443/91.
5. Annexure-A5 .. Copy of judgment dt. 5.2.93 in OA No.569/90 and connected cases.