

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 317 OF 2005

Wednesday this the 28th day of March, 2007

CORAM :

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.G. Bharathan,
Retired Welder (HS-I),
SE/Bridges/O/QLN,
Southern Railway, Quilon.
Residing at: Kottaramthoppil House,
Ponakam Muri, Mavelikkara.P.O.
Alappuzha District.

: Applicant

(By Advocate Mr M.P.Krishnan Nair)

Versus

1. Union of India rep. by
General Manager,
Southern Railway,
Chennai.
2. Senior Divisional Personnel Officer,
Southern Railway,
Thiruvananthapuram.
3. Senior Divisional Engineer,
Works Branch, Southern Railway,
Thiruvananthapuram.

: Respondents

(By Advocate Mr. KM Anthru)

ORDER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

In this O.A, the applicant Shri KG Bharathan seeks granting of pension with effect from an earlier date than what has been allowed.



2. The applicant joined as Blacksmith-cum-Welder in the office of the Inspector of Works, Hassan - Mangalore Railway Project with effect from 16.6.64. No records are available to sustain his claim. He claims to have gone through postings like Special Blacksmith (16.12.66 to 20.3.68), High Skilled Welder from 25.7.69 to 20.8.72 and in the same capacity under Chief Engineer Construction from 27.8.72. Vide A-5 order dated 9.1.80, he was appointed as Gateman with effect from 21.1.80. As per the said order, he was referred to as empanelled casual labourer and the appointment was being offered to him after he had accepted the terms and conditions set out in the offer of appointment letter dated 21.12.79. The order also contained certain conditions such as, appointment was temporary, entitling to no notice of termination and subjected to other general conditions of service. Vide A-6 order, he was promoted and fitted in higher grades along with others based on the passing of necessary trade tests for such promotion. He continued to work as a Welder Grade-I till his retirement on 30.6.2002. According to the applicant, vide A-7 order dated 28.12.93, his junior Shri V Chellappan, Revetter was promoted as Bridgmate. His grade as Welder was identical to that of Revetter and hence, he should have been promoted as Bridgmate like Shri Chellappan. He made representations on 20.1.96 followed by another one on 1.6.98, 18.9.2000 (A-8) and 18.2.2002 (A-9). He found that the retirement benefits were given to him only for the regular service from 21.1.80, (as ordered by A-5), ignoring the previous service under various officials from 16.4.64 to 20.1.80 and such benefits overlooked the promotion which was due to him. As regards the latter, his contention is that having been promoted, he would have received higher retirement benefits. Thus, he was put to cumulative loss arising from non-reckoning of his past services and denial of due promotion. After his retirement, he submitted a representation on 1.3.2003 (A-10) to which a negative reply was sent vide A-11. He also suffered inexplicable deduction from his pay during the period



commencing from July 1999 to February 2000. He filed a Original Application No.855/2003. This was dismissed vide order dated 5.11.2003 (A-13). In the said order, reference was made to his prayers for considering his service from 16.6.64 to 21.1.80 for pensionary benefits and for a direction to declaration of his entitlement to get promotion as a Bridgemate from 28.12.93, the date from which his junior was promoted. (It may be noted that these two prayers are being sought in this O.A as well). The operative portion of the above order reads as follows:

"3. In the conspectus of the facts and circumstances emerging from the documents on record and the statement of the counsel, we find that the applicant does not have a subsisting cause of action regarding the claim for promotion because the applicant's cause of action, if any, had arisen in 1993 and he having not agitated the issue within one year he is barred by limitation according to Section 21 of the Administrative Tribunals Act, 1985 in putting forth that claim after nearly a decade. Regarding the claim of the applicant for reckoning the period from 16.4.1964 to 20.1.1980 as qualifying service for pension, there is no case for the applicant that he has ever been granted temporary status. The concept of temporary status of having been extended to project casual labours only with effect from the year 1981 before which the applicant had already been appointed on regular service, his claim for reckoning the period of service of project casual labour is based on no rule or instructions. Therefore, he has no legitimate cause of action on that claim also.

4. In the light of what is stated, we do not find any subsisting cause of action for the applicant. The application is therefore rejected under Section 19(3) of the Administrative Tribunals Act, 1985."

3. This was challenged before the Hon'ble High Court who, in their order dated 17.12.2004, directed the respondents to consider the appeal pending before the respondents de hors the impugned orders of the Tribunal and untrammelled by any finding of observation in the said order. Vide A-7 order



dated 11.4.2005, the respondents after considering A-13 representation, rejected the same. More specifically, on the promotion issue, the promotion given to Shri V Chellappan was based on the seniority as reflected in A-6, no one junior to him were promoted and promotion to Bridgemate was to be made from the grade of Revetter Grade-I. As regards the question of non-consideration of the service rendered prior to 20.1.80, it was found that following the judgment of the Hon. Supreme Court in Inderpal Yadav's case, there was no provision for counting project casual labour service for the period prior to 1.1.81. The applicant has come before this Tribunal challenging the A-17 order.

4. He seeks the following reliefs:

- i) Quashing of A-17 order.
- ii) A declaration entitling him to be granted family pension considering his service with effect from 16.6.1964 to 21.1.1980.
- iii) The arrears resulting from such declaration.
- iv) A declaration of entitlement of promotion to the higher grade of Bridge Mate MCM from 28.12.93 the date of promotion of his juniors, a notional promotion and possible arrears consequent to such promotion.

5. The following grounds are adduced.

- i) His various representations were not adequately considered.
- ii) His qualifying service was not properly assessed.
- iii) Promotion was unduly denied to him, which if properly given would have enhance his pension amount.

6. Respondents, resisting the claim point out that:

- i) as admitted by the applicant himself, the application contains multiple prayers with no causal effect between the prayer for promotion and revision of pension,
- ii) claim for promotion from 28.12.93 is barred by limitation,



iii) in any case, there is no impleadment of Shri V Chellappan whom the applicant claims to be his junior but still promoted,

iv) In any case, Shri Chellappan, the applicant belong to two different categories with separate seniority lists,

v) the service from 16.6.64 being project service is not countable for pension as service rendered prior to 1.1.81 are barred from such reckoning.

7. Heard the learned counsel and perused the documents.

8. The point for decision essentially revolves around the low levels of pension the applicant is receiving than what he is entitled to. The reason for such low receipts as averred by him are:

i) He did not get his due promotion like his junior Shri V Chellappan and had he got promotion, his higher pay scales resulting therefrom would have entitled him to a higher pension benefits.

ii) His services from 16.4.64 to 20.1.80 were not counted as pensionable services.

9. Considering the question of promotion, the applicant has not been able to produce any records to show how he is senior to Shri V Chellappan. No seniority list has been produced by him to sustain such a claim. Shri Chellappan was promoted on 28.12.93 vide A-7 order. Vide representations A-8 and A-9, no doubt, the applicant had made requests for his own promotion but did precious little to enforce his claim of promotion. He ought to have agitated to enforce his claim of promotion within time without crossing the limitation period. This was commented upon by this Tribunal in O.A.No. 855/2003 that the applicant had agitated his claim nearly a decade later than within the allowed period of one



year. The applicant's claim is that when the Hon. High Court passed an order directing the respondents to consider his representation, that amounted to overlooking of the limitation period. This is not acceptable as the Hon. High Court had made it clear that they had not considered the merits of the claim and the General Manager was free to decide the matter in accordance with law. Another important point is that the promotion of Shri Chellappan had not been challenged even in this application nor has he been impleaded. Learned counsel for the respondents has elaborately dealt with the question as to how the applicant and Shri Chellappan belong to two different categories. I am convinced that the applicant has not been able to make a strong case about his unduly missed promotion, affecting his pensionary benefits.

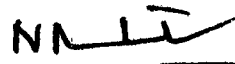
10. That leaves us the question of examining whether he has a case about getting the services prior to 20.1.80 counted for pension. The applicant has relied upon Railway Board's orders contained in the circular No.ENG/II/78/CL/12 dated 14.10.80 to sustain the case of entitlement for the above period. The applicant has not produced a copy of the said circular but the respondents have produced the same vide R-1. A reading of the above circular shows that it was dealing with the demand of the labour unions etc. for counting as qualifying service put in by casual labourer other than casual labour employed on projects. There is a specific provision in the said circular, "2 Daily rated casual labour or labour employed on projects will not be brought under the purview of the aforesaid orders". The applicant had relied on the circular both when outlining the grounds and when submitting his additional rejoinder. The applicant is a project casual labour as seen from A-2, A-3 and A-4 documents produced by the applicant himself. Hence, R-1 circular does not cover his case. As pointed out by the learned counsel for the respondents, the question whether employees who were initially engaged as Project Casual Labour by the Railway



Administration and were subsequently absorbed on a regular/temporary permanent post are entitled to have the service rendered as Project Casual Labour prior to 1.1.1981 counted as part of qualifying service for the purpose of pension and other retiral benefits is well settled by a decision of the Hon. Supreme Court in the case of Union of India v. K.G.Radhakrishna Panicker & others etc. report in JT 1998(3) SC 680 (R-9). Another document relied upon by the applicant is A-15 which actually is for the purpose of ACP, totally unconnected with the present averment. The applicant also relies upon orders of this Tribunal in O.A.879/97 (A-17). Prima facie this is not adoptable by the applicant for the simple reason that the applicant therein was a casual labourer in the open line as distinct from the present applicant being one in project work as mentioned above. Under these circumstances, the inevitable conclusion is that the applicant has not been able to make a convincing case about his entitlement to count his service from 16.4.64 to 20.1.80 for the purpose of pensionary benefits.

11. Based upon the above findings, the O.A. is dismissed. No costs.

Dated, the 28th March, 2007.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER