

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.331/98

Friday this the 5th day of June, 1998

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

C.Viswanathan, Retd.Ambulance Driver,
Health Unit, Carriage Repair Shop,
South Central Railway,
Tirupati,
residing at Palakkal KunnathuHouse,
Keraladeswarapuram Post, Tirur,
Malappuram Dist.

...APPLICANT

(By advocate Mr. M.P. Varkey)

Vs.

1. Union of India represented by the
General Manager, Southern Central Railway,
Secunderabad.500371.
2. The Workshop Personnel Officer,
Carriage Repair Shop,
South Central Railway,
Tirupati (A.P)-517520.
3. The Assistant Workshop Accounts
Officer, Carriage Repair Shop,
South Central Railway,
Tirupati (A.P). 517520.

...Respondents

(By Advocate Mr. K.Karthikeya Panicker)

The application having been heard on 5.6.1998, the tribunal
on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant who commenced his career in the
Railways as a Casual Labour under the Executive Engineer
(Doubling), Southern Railway, Renigunta with effect from
2.9.74 was empanelled and absorbed as a Gangman with effect
from 1.5.82. By order No.P.407/DL/GTL/Ty.Status/Project CL
dated 16.1.88 the applicant was granted temporary status
with retrospective effect from 1.1.81. A copy of the order
by which he was granted temporary status is A4. The
applicant retired from service on superannuation on

31.7.97. His grievance is that in the Pension Payment Order (PPO) (A6) and the details of the entitlement of the applicant (A7) the Railway Administration has not reckoned any part of his casual service for computing the net qualifying service for the purpose of pension. The applicant claims that he is entitled to have half the period of his casual service after 1.3.75 for the purpose of computation of the qualifying service for pension. The applicant, has therefore, filed this application seeking to quash the PPO and the details of entitlement (A6 and A7) and for a declaration that he is entitled to be granted temporary status with effect from 1.3.75 and he is entitled to have half the period of his casual service after temporary status reckoned as service for the purpose of pension and to direct the respondents to recompute his retiral benefits accordingly and to pay him the arrears resulting therefrom.

2. The respondents in their reply statement have contended that the applicant is not entitled to claim 50% of the service after 1.3.75 to be reckoned as qualifying service for pension because as Project Casual Labourer in view of the circular of the Railway Board issued pursuant to the decision of the Supreme Court in Inderpal Yadav's case a project casual labourer is entitled to be granted temporary status with effect from 1.1.81 if he had put in five years of service before that date. As the applicant has been granted temporary status only with effect from 1.1.81 as is seen from A4, the respondents contend that the claim of the applicant for counting half the period from 1.3.75 is unfounded. The respondents further contend that as the records in relation to the service of the applicant after 1.1.81 are not available, the period between 1.1.81

and 1.5.82 has not been reckoned for the purpose of computing the qualifying service for pension. They also have stated that the applicant has not made any representation in that regard. The respondents therefore, contend that the impugned orders A6 and A7 have been prepared in accordance with the rules and no interference is called for.

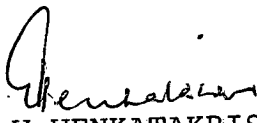
3. The applicant in his rejoinder has contended that in **K.G.Radhakrishna Panicker Vs. Union of India and others**, ATR 1991 (1) CAT 578 it was held that no distinction can be made between a project casual labourer and the open line casual labourer in regard to the eligibility for grant of temporary status and that therefore the contention of the respondents is untenable.

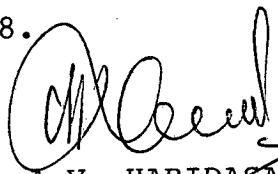
4. We have heard the learned counsel for the parties and have perused the pleadings in this case. The claim of the applicant for half the period of his casual service from 1.3.75 basing on the ruling of the Madras Bench of the Tribunal in Radhakrishna Panicker's case (supra) is no more tenable in view of the fact that this ruling has been reversed by the Hon'ble Supreme Court in the decision reported in JT 1998(3) SC 680 (**Union of India and others Vs. K.G.Radhakrishna Panicker and others**). The applicant therefore is entitled to have half the period of his casual service after 1.1.81 till 1.5.82 ^{counted} in computing net qualifying service for pension. The respondents obviously have not reckoned this period in preparing the A6 and A7 orders. The contention of the respondents that records were not available is no reason to deny to the applicant a benefit which he has earned on account of his

service. Therefore, the impugned orders A6 and A7 which are defective to that extent have to be set aside.

5. In the light of what is stated above, we set aside the impugned orders A6 and A7 and direct the respondents to recompute the retiral benefits of the applicant including leave salary reckoning half the service rendered by him between 1.1.81 and 1.5.82 and add this period also as the qualifying service for pension. In case the respondents are not able to trace out the records relating to the applicant's service between 1.1.81 and 1.5.82 half of the entire period between the two dates should be counted as qualifying service because it is the duty of the respondents to preserve the records. The revised PPO as aforesaid shall be prepared and the monetary benefits arising therefrom made available to the applicant within a period of three months from the date of receipt of a copy of this order. While issuing the PPO, the respondents shall take into account that w.e.f. 1.1.96 the pay of the Railway Servants have been revised on acceptance of the report of the Vth Central Pay Commission. There is no order as to costs.

Dated the 5th day of June, 1998.


P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

|ks|

LIST OF ANNEXURES

1. Annexure A4: Extract of memorandum No.P.407/DL/GTL/
Ty.Status/Project CL dated 16.1.88 issued by Executive
Engineer, Doubling, Southern Railway, Guntakal.
2. Annexure A6: Pension payment Order No.591011 00058
dated 31.7.97 issued by the 3rd respondent on 30.9.97.
3. Annexure A7: "Details of settlement claims passed" Memo No.
A/PEN/CRS/RLYS/O 108 in favour of the applicant, dated
31.7.97 issued by the 3rd respondent.

.....