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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.334/09

Friday this the 11th day of June 2010

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

N.Kumaraswamy,
S/o.Neelakanta Pillai,
(Retd. Motor Vehicle Driver Gr.I/
General Branch/Southern Railway/
Trivandrum Divisional Office/Trivandrum)
Residing at Kasthuri Bhavan, Enkara,
Kumara Koil Junction, Thakkala PO,
Kanyakumari District.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town PO, Chennai – 3.
2. The Divisional Personnel Officer,
Southern Railway, Trivandrum Divisional Office,
Trivandrum – 14.
3. The Senior Divisional Finance Manager,
Southern Railway, Trivandrum Divisional Office,
Trivandrum – 14.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimootttil)

This application having been heard on 11th June 2010 the Tribunal
on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has filed this Original Application seeking the following
reliefs :-



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1. Declare that the respondents are bound to reckon 50% of the applicant's service between 24.1.1973 and 1.6.1974 and the whole of his service from 1.6.1974 to 21.1.1980 for the purpose of his pension and other retirement benefits and direct the respondents accordingly ; or in the alternative,
2. Declare that the applicant is entitled to reckon 50% of his service from 24.1.1973 to 21.1.1980 for the purpose of his pension and other retirement benefits and direct the respondents accordingly ;
3. Direct the respondents to re-calculate and pay the applicant's pension and other retirement benefits based on the declaration para 8 (i) or (ii), as the case may be, and direct further to grant the same with all arrears of pension and other retirement benefits ;
4. Direct the respondents to pay the applicant interest @ 9% per annum on the arrears of pension and other retirement benefits payable in terms of para 8(iii) above calculated from the date from which the arrears fell due, month after month, up to the date of full and final settlement of the same.

2. According to the Annexure A-2 Casual Labour Service Card produced by the applicant which has not been disputed by the respondents, he joined the Railways initially as a Extra Labour (ELR for short) Khalasi with effect from 24.7.1972 under the Inspector of Works-II, Construction, Southern Railway, Nagercoil. Since then he has been continuously working as a ELR Khalasi till he was appointed as a Casual Labour Jeep Driver with effect from 1.6.1974 against the regular post of Jeep Driver in the scale of pay of Rs.260-350 and paid at the rate of Rs.10.40 per day vide XEN/CN/PWO Office Order No.36/74 dated 13.9.1974. He continued working in the said capacity till his services were regularised vide Annexure A-1 Memorandum dated 15.2.1980 wherein it has been stated that he was working as Casual Driver in the Project from 16.12.1972 to 20.1.1980 and later as Casual Labour Driver manning

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AEN/CN/KZT Jeep No.TMP.2651 before absorption as Bricklayer Labourer in the scale of pay of Rs.196-232 under the control of IOW/CN/ERL at NCJ. He superannuated from service on 30.6.2007 as a Motor Vehicle Driver Gr.I.

3. The contention of the counsel for the applicant is that in terms of Rule 3 (26) of Railway Services (Pension) Rules, 1993 the applicant is to be treated as Substitute with effect from 1.6.1974 as he was appointed against a permanent post of Jeep Driver from that date. The said rule reads as under :-

"Substitutes" means a person engaged against a regular, permanent or temporary post by reason of absence on leave or otherwise of a permanent or temporary railway servant and such substitute shall not be deemed to be a railway servant unless he is absorbed in the regular railway service.

He has also submitted that once he is treated as Substitute, his entire period of service rendered as a Substitute is liable to be counted for the purpose of pensionary benefits in terms of rule 32 of the Railway Services (Pension) Rules, 1993 which reads as follows :-

32. Counting of service of a Substitute – Service rendered as substitute shall be counted for pensionary benefits from the date of completion of three months in the case of teachers and four months in other cases of continuous service as substitute followed by absorption in a regular Group 'C' or Group 'D' post without any break.

4. Counsel for the respondents have, however, denied the claims of the applicant and submitted that being a Project Casual Labourer he has never



been granted temporary status. The Project Casual Labourers became entitled for temporary status only with effect from 1.1.1981 ie. after the judgment of the Indra Pal Yadav & ors Vs. Union of India & ors [1985 (2) SCC 648]. However, in the present case the applicant has already been absorbed ie. with effect from 21.1.1980. He has also denied that the applicant was a Substitute or he is to be treated so.

5. We have heard Shri.T.C.Govindaswamy for the applicant and Shri.Thomas Mathew Nellimoottil for the respondents. From the record it is very clear that the applicant was a Project Casual Labourer. Annexure A-1 Memorandum dated 15.2.1980 produced by the applicant himself shows that he was working in the Project till 21.1.1980. Therefore, there is no question of granting any temporary status to him on expiry of six months as claimed by the counsel for the applicant. However, the fact that the applicant has worked as a substitute, even though the word 'substitute' has not been mentioned in any of the orders issued to him is an undisputed fact as he had worked with effect from 1.6.1974 against the regular post of Jeep Driver in the scale of pay of Rs.260-350 and the said appointment was followed by his regularisation in service with effect from 21.1.1980. Going by the definition of the word "Substitute" as contained in Rule 3(26) of the Railway Services (Pension) Rules, 1993, (supra) being a person engaged against a regular post of Jeep Driver, on his absorption he is to be treated as Substitute. Again, in terms of the provisions contained in Rule 32 of the said rule (supra), he is entitled to count the service rendered by him as 'Substitute' after the completion of four months for the purpose of

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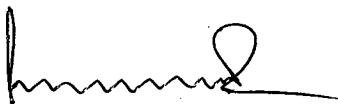
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pensionary benefits.

6. In view of the above facts and circumstances of the case, though we cannot allow the reliefs sought by the applicant in this OA in toto, yet we are convinced that he deemed to have worked as "Substitute" with effect from 1.6.1974 in terms of the Rule 3(26) and Rule 32 of the Railway Services (Pension) Rules, 1993. Therefore, his service from 1.10.1974 till 21.1.1980 shall be counted for the purpose of pensionary benefits. We order accordingly and the respondents shall revise the applicant's pension suitably and necessary payment shall be made to him 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 11th day of June 2010)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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