

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 337 OF 2008

Wednesday, this the 5th day of August, 2009.

CORAM:

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

N. Sundaresan Nair (Retd. Mate),
Southern Railway/Construction/Trivandrum,
residing at Leela Bhavan, TC 54/838,
Ponnumangalam, Nemom P.O., Trivandrum ... Applicant

(By Advocate Mr. T.C.G. Swamy)

versus

1. Union of India represented by
General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai-3.
2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum-14.
3. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14.
4. The Senior Divisional Finance Manager,
Southern Railway, Trivandrum Division,
Trivandrum-14. ... Respondents

(By Advocate Mr. Sunil Jose)

The application having been heard on 05.08.2009, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

According to the Annexure A1 copy of the Casual Labour Card produced by the applicant, he was initially engaged as a Man Mazdoor (Casual Labourer) for the doubling work of track between Malloorkarai (MUC) and Wadakkancherri (WKI) section with effect from 16.04.1973. Thereafter,



he was engaged as Store Watchman with effect from 21.10.1975 at Wadakkancherri on daily wage basis, as Store Mate of IOW/D/SR/SRR for doubling of track between Shoranur (SRR) and Mallorkarai (MUC) from 21.05.1978, as Store Mate for the work of doubling of track between Chalakudi(CKI) and Angamaly (AFK), as Store Mate from 21.10.1979, as P.Way Mate from 21.11.1980 at Rs.13.31 per day with effect from 21.10.1980 vide Executive Engineer's letter No.W 407/CN/ERS dated 17.10.1980 and as Skilled Mistry in the scale of Rs.260-400 from 21.3.1983 vide Executive Engineer's letter No.P/407/CN/ERS dated 25.3.1983. Later on, vide office order No.E(NG)II/84/CL/41 dated 1.6.1984, he was granted temporary status with effect from 1.1.1984 by the respondents. By a subsequent office order No.CL/25/86 dated 10.10.1986, the aforesaid order was superseded and the effective date of granting temporary status was preponed to 1.1.1981.

2. He was regularized in service by an order dated 10.03.1997 and retired from Service on 31.01.2008. The respondents have reckoned 50% of the service rendered by him as a temporary status casual labourer from 1.1.1981 to 10.3.1997 and full service rendered on regular basis till 31.1.2008 for retirement benefits.

3. The applicant's contention in this O.A. is that in terms of Para 2501 of the Indian Railway Establishment Manual read with the decision of the Hon'ble Supreme Court in the case of L. Robert D' Souza Vs. Executive Engineer, Southern Railway and another (1982) 1 SCC (L&S) 124, he deemed to have attained the temporary status with effect from 16.10.1973, that is on completion of six months of continuous service, by operation of law. The operative portion of the aforesaid judgment is 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

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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."

4. The learned counsel for the applicant has also argued that, his case is squarely covered by the order of this Tribunal in O.A.253/04 – K.Sankaran Vs. Union of India & Ors – 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 and the transfers were 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. This Tribunal allowed the OA relying on the judgment of the Apex Court in L.Robert D'Souza's case (supra) wherein the

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question of non transferability of project casual labourers and the distinction between project work and construction work were considered. The Hon'ble High Court has also upheld the order of the Tribunal in O.A. 253/2004 (Supra), vide its judgment dated 3.12.2007 in W.P.(C). No.33412/2005 wherein it has been 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

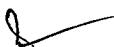
the Construction Wing and not employed in construction work in the Project Wing, has to be upheld. Learned counsel for the Railways took us through the decision of the Apex Court in Union of India Vs. K.G.Radhakrishna Panicker (1998) 5 SCC 111). Learned counsel pointed out that the casual labourers employed 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."

5. The applicant's counsel has also relied upon another order of this

Tribunal in O.A. No. 309/2008 of C.S. Narayanan Namboothiri Vs. Union of India represented by the General Manager, Southern Railway, Chennai dated 08.06.2009 in which the order of this Tribunal in O.A. 253/2004 (Supra) was followed. In O.A. No. 309/2008 also, the applicant was engaged as Casual Labourer/Lascar/Khalasi under the Executive Engineer, Construction, Ernakulam with effect from 10.07.1972. He was later transferred to Quilon under the control of the Executive Engineer (Construction) where he worked continuously upto 20.1.1977 and thereafter, under the control of the Inspector of Works, Gr.II, Quilon and then under the control of the 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 were regularized against a vacancy which became available on 31.12.1983. The contention of the applicant therein was also 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. After the consideration of the facts in that case, the Tribunal held that the applicant was not a project casual labourer and therefore he was entitled for the deemed temporary status after six months continuous service as casual labourer. Accordingly, the O.A. was allowed declaring that the applicant is entitled to reckon 50% of the service rendered by him between 10.1.1973 and 1.1.1981 as qualifying service.

6. Applicant's counsel further relied upon the judgment in W.P.(C). No.21602/2005 arising out of O.A. No.17/2004, Union of India represented by General Manager, Southern Railway, Chennai Vs. K. Thankachan and others. Inviting attention to para 5 of the said judgment, learned counsel argued that if



the worker was only a Project causal labourer, there would not have been any transfers like the one ordered therein as the Project causal labourers are locally recruited and once the Project Construction work is over, they will be retrenched and they have no right to get absorption and they were not liable to be transferred also.

7. Respondents on the other hand has submitted that the Casual labour service rendered by the applicant in this O.A. was in Project and accordingly, the service prior to 1-1-1981, i.e., the service prior to the date of temporary status is not to be counted for pensionary benefits. They have also produced a copy of the Office Order No.CL/25/86 dated 10.10.1986 issued by the Office of the Executive Engineer, Doubling, Thrissur. Alongwith the said office order, a list of 183 Project casual labourers who were granted temporary status from 1.1.1984, 1.1.1985 and 1.1.1986 were mentioned. Applicant's name appeared at Sl. No.115, showing that he was granted temporary status with effect from 1.1.1981. The said Office Order is reproduced as under:-

" SOUTHERN RAILWAY

OFFICE ORDER NO.CL/25/86 OF 10-10-'86.

In supersession of the orders issued in terms of Rly. Bd's letter No.E(NG) II/84/CL/41 of 1-6-84 granting Ty. status to project casual labourers from 1-1-84, 1-1-85 and 1-1-86, the casual labourers mentioned in the enclosed list working in this unit are now treated as temporary as noted against each.

Authority : Rly. Bd's letter No.E(NG) II/84/CL/4 of 11-9-86.

Note : These labourers are eligible for the rights and privileges admissible to temporary

Railway employees as laid down in Chapter XXIII of the Indian Railway Establishment Manual but will not, however confer any title or claim for absorption in regular establishments unless they are selected by a duly constituted screening committee by the process of empanelment.

Sd/-
Executive Engineer.

Office of the Executive Engineer,
(Doubling), Trichur.

No.W.407/CN/ERS/Ty. status dt. 10-10-86.

8. I have heard the learned counsel for the applicant Shri. T.C.G Swamy and Shri. Sunil Jose, learned counsel for the respondents alongwith Mr. Govind Karnavar, Senior Divisional Personnel Officer, Southern Railway, Trivandrum. They have also produced the Service Register of the applicant and I have perused the same. A perusal of the Annexure A1 order shows clearly that the applicant has initially engaged as a Man Mazdoor for the doubling work between Malloorkarai (MUC) and Wadakkancherri (WKI). Thereafter, he was engaged for the doubling work between Shoranur (SRR) and Mallorkarai (MUC). He worked in the said capacity till he was promoted as P.Way Mate at the daily rate of Rs.13.31 per day with effect from 21.10.1980 vide Executive Engineer (Construction) letter No.W 407/CN/ERS dated 17.10.1980. Thereafter, he has given temporary status with effect from 1.1.1981 as per the records. From the office order dated 10.10.1986, it is crystal clear that even as on 10.10.1986 the applicant was treated as a Project casual labourer alongwith several similarly placed persons. The facts in O.A. No.309/2008 (supra) are different. The applicant therein was working under the control of the Executive Engineer, Construction, Ernakulam and he



has been transferred to work under the control of the Inspector of Works, Gr.II, Quilon. Again he was transferred to work under the Chief Clerk, Stores, Ernakulam. This Tribunal found that he was granted such transfer only because he was merely under the Construction wing not in the Projects. Therefore the said O.A. was allowed. The judgment of the Hon'ble High Court in W.P.(C). No. 21602/2005 (supra) is also on similar lines.

9. In view of the above circumstances, I find no merit in the contentions of the applicant and accordingly this O.A. is dismissed. There shall be no order as to costs.

Dated, the 5th August, 2009.



GEORGE PARACKEN
JUDICIAL MEMBER

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