

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 364 of 2004

Thursday, this the 12th day of October, 2006

C O R A M :

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

R. Gopalakrishna Pillai,
S/o. Raman Pillai,
Retired Senior Gate Keeper,
Southern Railway, Perinad,
Residing at : Keeshoothumelathil,
Edavattom, Vallimon Post,
Perinad, Kollam 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 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.

... Respondents.

(By Advocate Mr. P. Haridas)

The Original Application having been heard on 12.10.06, this Tribunal
on the same day delivered the following:



ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

The applicant seeks the period from 27-01-1964 to 26-05-1976 spent as a Khalasi in Construction Organization to be counted (at 50%) as qualifying period for pension purposes. Reluctance of the respondents is on account of their contention that the said period was spent in a Project work. The hesitation of the respondents is also on account of another contention that the casual labour card does not reflect the details of work performed by the applicant month-wise but at irregular intervals. The applicant had retired w.e.f. 31-05-2000 and for the purposes of pension, the respondents have taken into account a total of 26 years of qualifying service. If 50% of the period spent as Khalasi (with temporary status) is added, the same would be increased to 31 years. Hence this OA.

2. Respondents have contested the OA on the aforesaid twin grounds - (a) the period of casual labour service is in a project (vide para 5 of the reply, wherein it has been contended "*In the case of the applicant herein, there is no temporary status since the alleged service period prior to 21-06-74 is not in Open Line but in Project and that he was appointed as a Gangman on 21-06-74.*" and (b) the genuineness of the C.L. Card is doubted as "*the entries of the casual labour service rendered are to be entered in the Casual Labour Cards month-wise. In*




Annexure A-1 the entries for years together are seen entered at one stroke."

3. Applicant's counsel submitted that Project work is different from Construction Organization and the fact that the applicant had been transferred during the period of his casual labour service would go to prove that he had not been in the Project Work. The counsel relies upon the decision in the case of **L. Robert D'Souza v. Executive Engineer, S. Rly., (1982) 1 SCC 645.**

4. Counsel for the respondents submitted that the casual labour service had been rendered in Project.

5. Arguments were heard and documents perused. It is not disputed that the applicant was working in the Construction posted as Khalasi under Head Clerk, Stores, Mangalore-Madras Railway, Mangalore. The Casual Labour Card also goes to show that he was even transferred in that capacity in 1972. The respondents have taken the services of the applicant as a Khalasi in Project. The question then is whether the post of Khalasi attached to Construction is a Project Khalasi. This question is answered in the case of **L. Robert D'Souza v. Executive Engineer, S. Rly., (1982) 1 SCC 645,** wherein the Apex Court has held as under:-



11. Rule 2501 reads as under:

"2501. Definition.—(a) 'Casual labour' refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour.

(b) The casual labour on railways should be employed only in the following types of cases, namely:

(i) Staff paid from contingencies except those retained for more than six months continuously. Such of those persons who continue to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment.

(ii) Labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment.

(iii) Seasonal labour who are sanctioned for specific works of less than six months' duration. If such labour is shifted from one work to another of the same type, e.g., relaying and the total continuous period of such work at any one time is more than six months' duration, they should be treated as temporary after the expiry of six months of continuous employment. For the purpose of determining the eligibility of labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers.

* * *

Notes.— * * *

(2) Once any individual acquires temporary status, after fulfilling the conditions indicated in (i) or (iii) above, he retains that status so long as he is in continuous employment on the railways. In other words, even if he is transferred by the administration to work of a different nature he does not lose his temporary status.

* * *

(4) Casual labour should not be deliberately discharged with a view to causing an artificial break in their service and thus prevent their attaining the temporary status.

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21. 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, the appellant was 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 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. He belonged to the construction unit. He was transferred fairly often and he worked continuously for 20 years and when he questioned the bona fides of his transfer he had to be re-transferred and paid wages for the period he did not report for duty at the place where he was transferred. Cumulative effect of these facts completely belie the suggestion that the appellant worked on project. Having rendered



continuous uninterrupted service for over six months, he acquired the status of a temporary railway servant long before the termination of his service and, therefore, his service could not have been terminated under Rule 2505."

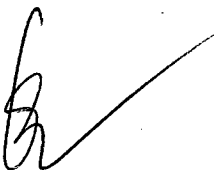
6. The case of the applicant is also that he had worked in Construction as a Khalasi. Thus, the above decision of the Apex Court completely goes in favour of the applicant.

7. As regards the entry in temporary cards, the counsel for the applicant had made available original cards of certain other casual labourers also and these also do not have entries month-wise as contended by the respondents. Thus, by practice, entries are made at an interval of more than one month or even as total period. Hence, the mere fact that entries are not month-wise cannot be a reason for doubting the bonafide of the service card.

8. This Court has earlier dealt with an identical case vide order dated 12.12.2005 in OA No. 269/04 wherein it has been held as under:-

9. While considering an identical matter in O.A.253/04 this Court has also gone through the decision in O.A.808/97 dated 17.2.1999, P.M.Sreedharan Vs. UOI & Ors. Para 6 & 7 of the said order is reproduced as under:

"Learned counsel appearing for the respondents, relying on UOI & Ors. Vs. KG Radhakrishna Panicker & ors, 1998 SCC (L&S) 1281, submitted that the applicant was only a Project Casual Labourer and therefore, he is not entitled to the reliefs sought for. If Radhakrishna Panicker's case holds the field, no doubt, the applicant is not entitled to any relief. Learned



counsel appearing for the applicant submitted that L. Robert D'souza Vs. Executive Engineer, Southern Railway & another 1982 SCC (L&S) 124, will squarely apply to the facts of the case and that the applicant is entitled to the reliefs claimed for. D'souza's case is left untouched in Radhakrishna Panicker's case. The question that arose for consideration in Radhakrishna Panicker's case was that whether the employees who were initially engaged as Project Casual Labourers by the Railway Administration and were subsequently absorbed on regular/permanent post are entitled to have the services rendered as Project Casual Labourers prior to 1.1.1981 counted as part of qualifying service for the purpose of pension and other retiral benefits. In D'souza's case it has been clearly held that every construction work, does not imply project, that project is correlated to planned Projects in which workman is treated as work-charged, that it will be doing violence to language to treat the construction unit as project, that expression 'Project' is very well known in a planned development, that if a casual labourer becomes surplus on completion of project, there was no necessity to absorb him, that construction unit is a regular unit all over the Indian Railways, that it is a permanent unit and cannot be equated to project and that if a person belonging to the category of casual labour employed in construction work other than work-charged projects renders six month's continuous service without break, by the operation of statutory rule the person would be treated as temporary railway servant after the expiry of six months of continuous employment. So, the arguments advanced by the learned counsel for the respondents that there are only two types of casual labourers, one casual labourer, Open line and the other casual labourer, Project cannot be accepted in the light of the findings in D'souza's case.

It is also seen from the documents produced in this case that the applicant was transferred on various occasions. Since the applicant was transferred on innumerable occasions and the transfer was issued by authorities concerned in the construction Wing, the arguments advanced by the learned counsel for the respondents that the applicant was in Project Line cannot be accepted. If the applicant was Project casual labourer, there was absolutely no necessity to absorb him on completion of the project since he became surplus. If the case of the applicant is to be brought within the ambit of Rule 2501 (P)(ii) of I.R.E.M., it must be shown

that for 18 years the applicant was employed on Projects. The burden to prove this is on the respondents. The respondents have not discharged the burden of proving that the applicant was working for 8 years on projects."


10. The Hon'ble High Court in O.P.No.20772 of 1999(S) dated 19.11.2003 has upheld the decision of this Tribunal on the same issue and observed as follows:

"His claim was contested by the Railways contending that he was not in Construction Wing but in Project Wing. The Tribunal examined the issue and taking into account his subsequent transfers from one project to another, it was found that he really worked in Construction wing and not in Project wing. The Tribunal also took note of the contention in the reply statement of the Railways that the petitioner was in the construction wing posted under the Executive Engineer, Construction, Southern Railway, Sakleshpur and was absorbed while working so.

Thus, the employment under the Executive Engineer (Construction) is directed to be taken as employment in construction wing. That finding cannot be stated to be a faulty to invite interference by exercising the supervisory jurisdiction vested in this court."

11. In an identical matter **UOI Vs. R.Arjun Chettiar & anr.**, (O.P.6066/69(S)) the Hon'ble High Court has accepted the same ratio and granted the relief."

9. In view of the above, the OA is allowed. It is declared that the applicant is entitled to have 50% of the period spent as casual labourer treated as qualifying service for the purpose of terminal benefits in accordance with the extant rules and Railway Board notification and add the same with the regular service for the purpose of working out the pensionary benefits accrued to the applicant. The difference in the terminal benefits including the arrears of pension shall be worked out by the respondents and paid to the applicant. In addition, the future monthly pension would also be



as per the revised calculation.

10. The above drill shall be complied with, within a period of three months from the date of communication of this order.

11. No costs.

(Dated, 12th October, 2006)



K B S RAJAN
JUDICIAL MEMBER

CVR.