

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.366/04

FRIDAY THIS THE 8TH DAY OF JULY, 2005

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HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

P.A.Sankaranarayanan,
 S/o Ayyan, Retd.Motor Vehicle Driver,
 Southern Railway, Office of the Executive Engineer/
 Construction, Ernakulam Junction,
 residing at Pullath House, Thannurkara PO
 Via. Chelakara, Trichur.Applicant

(By Advocate Mr.T.C.Govindaswamy)

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1.Union of India, represented by the General Manager,
 Southern Railway, Headquarters Office,
 Park Town PO, Chennai.3.

2.The Executive Engineer/Construction,
 Southern Railway, Ernakulam Junction.

3.The Senior Divisional Personnel Officer,
 South Western Railway, Mysore Division,
 Mysore.

4.The Senior Divisional Accounts Officer,
 South Western Railway,
 Mysore Division,
 Mysore.Respondents

(By Advocate Mr.P.Haridas)

The application having been heard on 1.7.2005 the Tribunal on 8.7.2005 delivered the following:

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

1. The grievance of the applicant in this O.A is that his service in the Railways from 1.3.64 to 10.3.69 was not reckoned by the respondents

for the purpose of pensionary benefits. According to the applicant he joined Railways as a casual labourer with effect from 22.12.60 and while working as a casual labourer he was posted as CL Lascar with effect from 1.7.63 against a post of Lascar in the scale of pay of Rs. 70-85 vide order at Annexure.A.1. From there he was posted as C.L.Lorry Attendant against a vacancy and he was regularized as Gangman with effect from 10.3.69. He continued in the construction organization and was later posted as a Motor Vehicle Driver and finally superannuated from service on 31.3.98. The applicant's contention based on order dated 8.5.02 (A2) is that only part of his service from 10.3.69 to 31.3.98 has been reckoned by the respondents for pension and though he submitted a representation on 25.3.99 for reckoning the whole of his service from 1.3.64 there was no response to the same. He had filed OA 1652/98 before this Tribunal which was allowed. He submitted another representation on 15.7.02 but there was no response from the respondents. He then filed OA 754/03 praying for a declaration that he is entitled to get the whole of the service for pensionary benefits and it was disposed of by order dated 5.9.03 with a direction to the third respondent to consider his representation. Now the applicant's representation has been rejected vide Annexure.A6 issued by the third respondent. Hence the applicant is constrained to approach this Tribunal again as he has been subjected to substantial hardship. The applicant has prayed for the following reliefs:

- (a) Call for the records leading to the issue of Annexure.A6 and quash the same.
- (b) Declare that the applicant is entitled to reckon the whole of his service from 1.3.64 to 10.3.69 as qualifying for the purpose of pensionary benefits and direct the respondents accordingly.

© Direct the respondents to recalculate and grant the applicant's pension and other retirement benefits as per declaration in para 8(a) above with consequential arrears thereof.

(d) Direct the respondents to grant interest @ 9% per annum on the arrears of pension and other retirement benefits from the date from which the said arrears fell due.

(e) Award costs of and incidental to this application

(f) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The respondents have filed a reply statement and additional reply statement denying the averments in the O.A. According to the respondents the applicant was initially appointed as temporary Gateman with effect from 10.3.69 only in the scale of Rs. 70-85 vide Office Order No.21 of 1.3.69. An entry to this effect is also available in the service register (Annexure.R.1). There is no record of the casual service said to have been rendered by the applicant prior to 10.3.69 in the service register. Even if the contention of the applicant that he was engaged as CL Laskar on daily rated wages with effect from 1.7.63 is accepted, the order (Annexure A.1 would show that the applicant was engaged in a project and not in the open line organization of the Railways and the applicant entered the service in the open line only on 10.3.69 when he was appointed temporarily against a permanent post of Gateman. The Casual Labourers engaged in projects such as construction are being granted temporary status only with effect from 1.1.81. Therefore even according to his averment the period prior to 10.3.69 when he was working in the Railway project would not be counted as qualifying service for the purpose of pensionary benefits. His contention also that he was a substitute with effect from 1.11.63 is not at all acceptable in the absence of any evidence to that effect. The applicant's entire service from 10.3.69 to 31.3.98 has been taken into account and pensionary benefits paid accordingly. Therefore all the contentions in the

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Original Application are untenable and liable to be dismissed.

3. The applicant filed a rejoinder stating that he is not aware of the entries in the service register because none of the entries were shown to him or his acknowledgment obtained. Therefore he cannot be faulted for the absence of entries or wrong entries in the service register. A reading of Annexure.A.1 would show that he was in fact a substitute within the meaning of the rule as contained in the Railway Service (Pension) Rules, 1993.

4. I have heard the learned counsel on both sides. The learned counsel for the applicant based his entire argument on the ground that the applicant's appointment as a C.L. Laskar was in the nature of a substitute because the applicant was working against a sanctioned post with effect from that date. He drew my attention to Rule 32 of the Railway Service Pension Rules, 1993.

"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 posts without any break."

Therefore according to the counsel, the applicant is entitled to reckon the whole of his service as a substitute from 1.3.64 to 10.3.69 for the purpose of calculating his pensionary benefits. From the respondents' side it was argued that even if the contention of the applicant have to be accepted that he was employed as a Casual Labour prior to 1969, Annexure.A1 order produced by the applicant reveals that the applicant was posted by the Executive Engineer of Salem Bangalore Railway Project and not by the open line organization. Even the note incorporated in Annexure.A1 reveals that for posting the applicant sanction of the Chief Engineer Section Madras, Egmore was taken. Therefore, it is evident that

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till the regular appointment was made in the open line in the work section, the applicant was in a project construction organization. Hence there was absolutely no basis for the claim made by the applicant.

5. The short question before us is whether the service rendered by the applicant from 1.3.64 to 10.3.69 in a project construction organization was in the nature of a substitute or casual labour service. An annexure A.1 order appointing the applicant as a C.L. Lascar issued by the office of the Executive Engineer, Salem Bangalore Railway Project reads as follows:

"OFFICE ORDER NO. OO/63 OF 31.10.63.

Sri P.A. Sankaranarayanan, ELR mate is posted as C.L. Lascar at Rs. 3.25 per day with effect from 1.11.68 under DSK/Omalur.

Note: His salary and allowances are chargeable against the post of Lascar in scale Rs. 70-85 sanctioned in CE/CN/HS No.P.135/1/20/CN of 11/17-4/68.

Office of the Executive Engineer,
Salem Bangalore Railway Project,
Salem Junction/Salem.5.

EXECUTIVE ENGINEER

No.P.407/CN/SA-SBC.

Copy to: SAO/CN/BAC
AEN/SA
DSK/GHL
Party through DSK./OML
O.O. Book PCF and Bills."

6. It is clear from the above that the posting of the applicant was as C.L. Lascar on daily wage basis. The applicant has claimed that the note in the above order stating that his salary and allowances are chargeable against the post of Lascar implies that he was posted as a substitute against the post of Lascar. This argument is unacceptable as the order clearly shows that he was posted on daily wages as a casual labour. The fact that his salary and allowances came from the source mentioned therein does not lead to the conclusion that he is posted as a substitute, in

which case it would have been specifically mentioned in the order itself. His subsequent appointment on 10.3.69 as a Gateman (A7) also shows that he was at that time continuing as a C.L.Lascar only. If he were appointed as a substitute in the post of Laskar in the construction organization he could not have been absorbed in a different post of Gangman in the open line. It is therefore, clear that the Annexure.A7 order was an independent appointment order and not necessarily a continuation of a substitute appointment of the applicant as alleged. No other documents have been produced before us to prove that the service rendered by the applicant for the period 1.3.64 to 10.3.69 was in the nature of a substitute engagement though the learned counsel for the applicant vehemently argued to that effect. I am, therefore, of the view that the applicant has not made out a case for the reliefs asked for and the O.A. is devoid of any merit. Accordingly the O.A. is dismissed. No costs.

Dated this the 8th day of July, 2005


SATHI NAIR
VICE CHAIRMAN

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