

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 377 of 2012

Wednesday, this the 30th day of September, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

N. Balachandran, aged 58years, S/o. Narayanan, Peon,
O/o. The Assistant Divisional Engineer, Southern Railway, Quilon,
Residing at Balachandra Bhavanam, Vadakkevila PO, Pattathanam,
Kollam - 691 010. **Applicant**

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

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 Division, Trivandrum-14.
3. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum - 14. **Respondents**

[By Advocate : Mr. T.M. Nellimoottil]

This application having been heard on 18.9.2015, the Tribunal on
30.09.2015, delivered the following:

ORDER

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member -

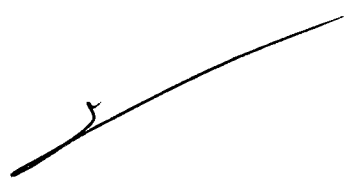
The applicant who was working as a Peon in the office of the Assistant Divisional Engineer, Southern Railway has approached this Tribunal complaining of refusal of his claim for 3rd MACP with effect from 2.11.2010.

2. The contention raised by the applicant can be summarized as follows:

2.1. The applicant was engaged against the vacancy of a Gangman under PWI in 1980. He was granted temporary status with effect from 2.11.1980. He continued against a vacancy of Gangman as 'Substitute Gangman'. He was finally regularly appointed against the same post and he continued as such till 1996. In 1996 the applicant was medically rendered unfit to hold the post of Gangman and was later granted an alternative appointment as a Peon of the Personal Branch of Trivandrum Division. Since his pay was not correctly fixed and financial upgradation was not duly granted he submitted Annexure A2 representation. Subsequently an order was passed granting the 1st and 2nd financial upgradation under the MACP with effect from 1.9.2008 and 3rd MACP with effect from 2.11.2010. Vide Annexure A3 he was given the 1st MACP with the Grade Pay of Rs. 1,900/-, the 2nd MACP with the Grade Pay of Rs. 2,000/- and the 3rd MACP with the Grade Pay of Rs. 2,400/-. The respondents wrongly relied upon Annexure A4 Railway Board order but in fact the Railway Board order which is applicable is Annexure A5 since the applicant worked as a Substitute Gangman and not as a Casual Labour. Thus, the applicant seeks quashment of Annexure A1 and also seeks a direction to be given to the respondents, to grant all consequential benefits as if Annexure A1 had not been issued at all. As per Annexure A1 the respondents directed recovery of certain amount alleged to be overpayment made in favour of the applicant.

3. The respondents refuted the allegations and contended as follows:

3.1. The applicant was working as a casual labour with temporary status




with effect from 2.11.1980 vide Annexure R1. He was not working as a substitute and so Annexure A5 is not applicable to him. The order granting him temporary status with effect from 2.11.1980 was not challenged. The 3rd financial upgradation originally granted with effect from 2.11.2000 was found to be a mistake and so it was to rectify that mistake Annexure A1 was issued. He was absorbed as a Gangman on empanelment with effect from 23.4.1993. While continuing so he was medically de-categorized to hold the post of Gangman on 9.10.1996 and thereafter he was absorbed as a Peon on alternative appointment. The applicant's pay on introduction of VIth CPC was correctly fixed. Thus, the respondents contend that the applicant is not entitled to get any relief in this Original Application.

4. We have heard the learned counsel for the applicant and the respondents and we have also gone through the pleadings and Annexures/documents.


5. The point for consideration is whether the applicant was a Substitute Gangman; whether he is entitled to have his 3rd MACP with effect from 2.11.2010 and whether Annexure A1 order is liable to be set aside?

6. Annexure R1 has been pressed into service by the respondents to contend that the applicant was a casual labour of Permanent Way Inspector and that he was conferred with temporary status with effect from 21.11.1980. It was also stated that "he is eligible for the rights and privileges as admissible to the temporary employees.....". The original




service records have not been produced. What is produced is stated to be the copy of the 3rd page of his service register. It is pointed out that the entries in Annexure R1 are seen scored or overwritten. The original entry was to the effect that the 1st increment was given to him with effect from 21.11.1981. That was scored and above the same it is written as 6.3.1982. Such uncertified corrections and over-writings cannot be accepted unless the original itself is produced and plausible reasons are stated for the same. It is pointed out by the respondents that there is an entry that the applicant was empaneled and posted as Gangman against the vacancy as per order dated 31.12.1992. The proceedings is shown to be of the date 20.4.1993. As stated earlier there are so many corrections and over-writings which are not certified at all to show that those corrections were authenticated then and there by the competent officer.

7. The applicant would contend even if he was treated as a casual labour prior to 2.11.1980 he was thereafter utilized against a regular vacancy of Gangman without break until he was regularized against the same post under the same Permanent way Inspector. Therefore according to the applicant he was a Substitute from 2.11.1980. That must precisely be the reason why the original entry was made to the effect that his increment/pay is revised with effect from 20.11.1981. In other words, it would show that for the purpose of service/increment his full service was counted and not 50% of his service as in the case of a casual labour. Though the respondents pointed out the words employed in Annexure R1 to the effect that the applicant was a casual labour and that he is eligible only for the rights and



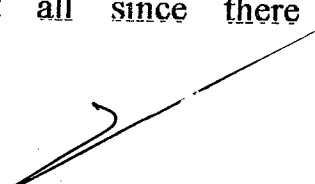
privileges as admissible to the temporary employees, that cannot be accepted at all. It is contended by the applicant that he was granted all the benefits as if he was a substitute. The documents relating to the service rendered by the applicant would certainly be available with the respondents. Annexure R1 which contains uncertified entries cannot come to the rescue of the respondents to contend that the applicant was not treated as a Substitute Gangman during the relevant period.

8. If the applicant was treated as a Substitute Gangman during 1980 then the contention raised by the respondents that he was entitled to reckon only 50% of the service till he was regularized cannot be accepted. Though the respondents contend that the applicant was served with the order to the effect that he was treated only as a casual labour and subsequently he was conferred with temporary status, there is no evidence to show that the applicant was served with any such order. In the absence of any other document it is difficult to accept Annexure R1 to reject the claim preferred by the applicant, particularly because the respondents themselves granted the 3rd MACP with effect from 2.11.2010 on completion of 30 years. The 1st and 2nd financial upgradations under the MACP were given to the applicant with effect from 1.9.2008 after the MACP Scheme was introduced. Since the respondents themselves took the entire service rendered by the applicant for the grant of 3rd MACP, unless it is satisfactorily proved that it was an inadvertent or a mistaken order, it is difficult to accept the plea raised by the respondents that the applicant is not a Substitute Gangman but only a casual labour as pleaded by them.



9. It is also pertinent to note that the applicant retired from service subsequently. Therefore, the order passed by the respondents to recover the overpayment or the alleged excess payment also cannot be sustained in the light of the decision rendered by the Supreme Court in *State of Punjab & Ors. v. Rafiq Masiah* – 2014 (8) SCC 883.

10. It is not disputed that the applicant was a Substitute Gangman and not a casual labour. His entire service has to be counted for the purpose of MACP and also for the pensionary benefits. The learned counsel for the applicant has relied upon paragraph 1228 of IRAF which states that every step in a Railway Servant's official life must be recorded in his service record and each entry in the service records must be attested by a gazetted officer. As regards class-IV staff it is stated that every incident in the service of such employees which may affect the amount of their gratuity/special contribution to provident fund or pension must be carefully entered. It is also stated that entries related to the commencement and termination of service and the recommendations for gratuity/special contribution to provident fund or pension shall be attested by a gazetted officer and other entries may be attested by a senior subordinate authorized by the head of the department. It is specifically mentioned that the head of the office must see that all entries are duly made and attested and the records contain no eraser or overwriting and that all corrections being neatly made and properly attested. This has been relied upon by the learned counsel for the applicant in support of his submission that Annexure R1 cannot be accepted at all since there are so many unattested



corrections/over-writings. Rule/Paragraph 1234 of IRAF mandates that it is the duty of every head of office to initiate action to show the service books to Railway servants governed by pension rules under his administrative control every year and to obtain their signature therein, in token of their having inspected the service books. It is also stated that a certificate to the effect that he has done so in respect of the preceding financial year should be submitted by him to his next superior officer by the end of every September. The said Rule/Paragraph further provides that the Railway servant shall *inter alia* ensure before affixing their signatures that their services have been duly verified and certified as such. There is nothing in Annexure R1 to indicate that the entries were shown to the applicant and his signature was obtained.

11. Considering all the aspects the objection raised by the respondents is found to be untenable. Annexure A1 order cannot thus be sustained. The applicant must be deemed to have completed 30 years of service by 2.11.2010 as ordered by them earlier. The applicant is also entitled to get all consequential benefits.

12. Original Application is allowed accordingly. No order as to costs.


(P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

“SA”

**Central Administrative Tribunal
Ernakulam Bench**

CP(C)/180/00085/2016
in OA/180/00377/2012

Monday, this the 6th day of November, 2017

CORAM

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

HON'BLE Mr. E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

N. Balachandran, age 62 years

Peon

S/o Narayanan

O/o The Assistant Divisional Engineer

Southern Railway, Quilon.

Residing at : Balachandra Bhavanam,

Vadakkevila P.O., Pattathanam,

Kollam-691 010.

Petitioner

(By Advocate: Mr.T.C.Govindaswamy rep by Ms.Sreekala)

Versus

1. Sri Siddarth K.Raj
Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum-695 014

2. Sri Sunil Bajpai
Divisional Railway Manager
Southern Railway,
Trivandrum Division
Trivandrum-695 014.

Respondents

(By Advocate: Mr. Thomas Mathew Nellimoottil, Sr.PCGC)

This CP(C) having been taken up on 6th November, 2017, the Tribunal delivered the following order on the same day:

ORDER (oral)

By U.Sarathchandran, Judicial Member


Learned standing counsel for Railways submitted that the pension payment order in respect of the petitioner has been revised and it has been

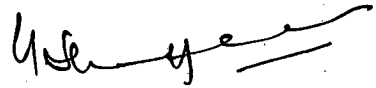
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noted therein that his qualifying service is 33 years. A copy of the revised pension payment order No. P500/TVC/PEN/0604210350 dated 24.4.2017 was produced by the learned counsel for the respondents.

2. Ms. Sreekala submitted that in spite of contacting the petitioner, there was no response or instruction from him.

3. In the circumstances, we are inclined to close the CP. We do so. Notices shall stand discharged.


(E.K. Bharat Bhushan)
Administrative Member


(U. Sarathchandran)
Judicial Member

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Annexures in the CP(C)

Annexure A1: Copy of the order in OA No.377/2012 dated 30.9.2015 rendered by this Tribunal.

Annexure A2: Copy of the Lawyer notice dated 25.1.2016, addressed to the 3rd respondent.

Annexures with compliance report

Annexure R1: Copy of memorandum No.V/P 536/XII/peons/Vol.VII dated 11.5.2016.

Annexure R2: Copy of revised pension payment order dated 23.9.2016.