

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.387/2002
AND
O.A.No.782/2002

Tuesday this the 5th October 2004

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

O.A.No.387/2002

Appukuttan, (Retired Senior Gangman), Santhi Bhavan
Panamannara, Valakkod Post, Punalur-691331, Kerala.

Applicant

(By Advocate Mr.Subhash Chandra Bose)

Vs.

1. Union of India represented by the General Manager, Southern Railway, Chennai.
2. The Divisional Railway Manager, Southern Railway, Madurai.
3. The Divisional Personnel Officer Southern Railway, Madurai.
4. Section Engineer (permanant way) Southern Railway, Punalur.

Respondents

(By Advocate Mrs Rajeshwari Krishnan)

O.A No.782/2002

K.Vidhyadharan, Vinu Mandiram,
Avaneeswaram S.P.O, Kunnicode, Kollam.

Applicant

(By Advocate Mr.Subhash Chandra Bose)

Vs

1. Union of India represented by the General Manager, Southern Railway, Chennai.
2. The Divisional Railway Manager, Southern Railway, Madurai.
3. The Divisional Personnel Officer Southern Railway, Madurai.
4. Section Engineer (permanant way) Southern Railway, Punalur.

Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

These Original Applications having been heard on 5.10.2004 and on the same day the Tribunal ordered as under:

ORDER

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The issue involved in both these cases being similar and the claim of the applicants in both these cases is based on one document i.e. Office Order No.25/64/Works/P.3 of the Divisional Office, Personnel Branch, Madurai dated 20.2.1964, these two cases are being heard and disposed of by this common order.

2. The facts of the cases are stated as follows:

O.A.No.387/2002: The applicant commenced his service as casual labour on 21.3.1963. He commenced his service as Khalasi. On completion of 6 months continuous service he was granted temporary status as seen from Annx.A1. He was appointed as a permanent employee and retired on superannuation on 30.11.2000. His grievance is that while his service from 20.9.1963 should have been reckoned for the purpose of terminal benefits, his service from 21.7.1975 alone was taken into account (Annx.A2). The applicant coming to know from judgment in O.P.No.1922/1976 (A3) that in the case of P.Thankappan, similarly situated the benefit of service from the date of temporary status had been counted for retiral benefits filed a representation Annx.A7, seeking that he be given the pensionary benefits relating to the service after the date of temporary status. In reply to the representation, the applicant was informed vide letter dated 9.1.2002 (Annx.A8) that since his service register clearly showed that he was granted temporary status w.e.f. 21.7.1975 and he was empaneled for the post of Gangman and appointed as temporary Gangman w.e.f. 26.2.1982 no relief can be granted.

It was also indicated in the letter that the judgment in O.P No.1922/1976 being only a judgment in personam, the applicant was not entitled to any relief basing on that. Aggrieved by that the applicant has filed this application seeking to set aside Anxx.A8 as it deprives the applicant's retiral benefits due to him in terms of Anxx.A1 and paragraph 2511 of the Indian Railway Establishment Manual and a direction to the respondents to reckon the service of the applicant w.e.f. 20.9.1963 as stated in Anxx.A1 and declaring that the applicant is entitled to the service benefits by reckoning the temporary status granted by Anxx.A1.

3. In the reply statement, the respondents contend that the service record of the applicant showed that the applicant was granted temporary status only from 21.7.1975 and 50% of the temporary service has already been reckoned for computing the retiral benefits as per rules. Further, the O.P No.1922/1976 filed by P.Thankappan, being only a judgment in personam and not in rem the applicant is not entitled to any benefit thereunder contend the respondents.

4. To establish the claim of the applicant that he was working from 1963 and onwards, the applicant has stated in the rejoinder that at that time he worked under one Shri Sadasivan Nair.

O.A.No.782/2002

5. The applicant who claims that he has been working continuously as casual labourer Khalasi from 21.11.1962 and that

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temporary status was granted by Annx.A1 issued by the 3rd respondent on expiry of 6 months continuous service w.e.f. 20.5.63. He was later appointed in regular establishment and retired on superannuation on 28.2.2002. Coming to know that in computing qualifying service his services from 23.11.1973 alone was reckoned instead of 20.5.1963 in terms of Annx.A1 and his representation for revision of terminal benefits reckoning that period pointing out the rulings of the Hon'ble High Court of Kerala in O.P.No.1922/1976 was not considered, the applicant has filed this application for direction to the respondents reckoning the service from 20.5.1963 for retirement benefits declaring that he is entitled to have the said period reckoned with consequential benefits.

6. The respondents contend that the verification of his service record showed that the applicant was granted temporary status only w.e.f. 23.11.1973. The judgment in O.P.No. 1922/1976 in P.Thankappan's case being not a judgment in rem, the applicant is not entitled to the relief sought for contend the respondents.

7. The O.As came up for hearing on 22.7.04 we directed the respondents to verify the authenticity of Office Order No.25/64/ Works/P.3(Annx.A1) and to see whether the dates of temporary status granted to all the 197 persons have been accepted and acted upon and to produce the file No.U/P.407/III/1/P.3 dated 20.2.1964 of the Divisional Superintendent, Madurai, of the Personnel Branch. When these applications further came up today for hearing, the learned counsel for the respondents stated that the file could not be traced. Therefore, we are, left with no alternative but to consider these applications on the basis of the materials available.

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8. The only issue that arises for consideration in both the cases is whether the applicant in O.A No.387/2002 and applicant in O.A No.782/2002 are entitled to have half of the period of service from 20.9.1963 and 20.5.63 reckoned respectively as qualifying service for pension. The learned counsel of the applicant in both these cases with considerable tenacity argued that the respondents cannot seriously dispute the genuineness of Anxx.A1 which was produced before the Hon'ble High Court of Kerala in O.P No.1922/1976 and considered by the Hon'ble High Court for holding that P.Thankappan, the petitioner in that case had acquired temporary status w.e.f 20.5.1963. The learned counsel argued that the contention based on the service register maintained by the respondents but never shown to the applicant after the same was opened has only to be rejected.

9. The learned counsel of the respondents on the other hand argued that the applicants in these cases have affixed their signatures/thumb impression in the first page of the service register which showed the date of grant of temporary status and therefore, the applicant is estopped from claiming that they had been granted temporary status w.e.f. an earlier date.

10. We have considered the rival claims in the light of the facts and circumstances revealed from the materials on record and the submissions made by the learned counsel.

11. The disputed question is whether Anxx.A1 can be accepted as a genuine document. If Anxx.A1 can be accepted as a genuine document, there cannot be any doubt of the fact that the applicants in these cases had been granted the temporary status

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in the year 1963 because it is stated in para 2 of Annx.A1 that 'on and from the date of grant of monthly rate of pay they will be eligible for the rights and privileges admissible to temporary Railway employees as laid down in Chapter XXIII of the Indian Railway Establishment Manual and that their services prior to that date will not count for any purpose like reckoning of retirement benefits, leave, seniority, etc'. The learned counsel of the applicants produced for our scrutiny the originals of Annx.A1 in both the cases. It is seen that the documents contained the signature of an officer for and on behalf of Divisional Superintendent and it contains the seal of Permanent Way Inspector, Thenmalai. Further this document is seen to have been produced and accepted before the Hon'ble High Court of Kerala in O.P.No.1922/76 and also seen that the Hon'ble High Court of Kerala relying on the said document observed as follows:

"Though it is disputed that the petitioner has any such status, and the conferment of such status as per Ext.P1 was wrongly done, and further that such conferment has been cancelled, there is no material before me to establish the same except the assertion to that effect in the counter affidavit. In this connection it is necessary to note that the petitioner has a case that to his knowledge no such cancellation has been effected. If so I do not think that any reliance can be placed on the averments in the counter affidavit that the conferment of temporary status on the petitioner as per Ext.P1 has been cancelled. Shortly put, therefore, I will have to proceed in this case on the basis that the petitioner has acquired temporary status with effect from 20.5.1963."

12. Exhibit P1 marked before the court was Annx.A1 in this case. We, therefore, do not find any substance in the arguments advanced on behalf of the respondents that no reliance can be placed on what is contained in Annx.A1. The contention on behalf of the Railway Administration that Annx.A1 order was



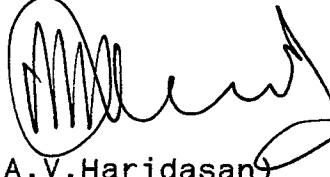
recalled by a subsequent order was not accepted by the Hon'ble High Court of Kerala. It is, therefore, evident that Annx.A1 order was issued showing that various dates on it 197 persons were granted the benefit of temporary employees with effect from different dates. Against the name of the applicant in O.A 387/02 is at Sl.No.128 the date on which the applicant would be treated as temporary shows as 20.9.1963 and against the name of applicant in OA 782/02 is at Sl.No.15 the date on which the benefit was granted on him is 20.5.1963. We have perused the copy of the service record in the case of K.Vidhyadharan produced by the respondents and marked as Annx.R1 while the signature/thumb impression of Vidhyadharan is seen only in the first page i.e. the date on which the service register was opened. There is no evidence that it was periodically shown to him and his signature obtained. By an order dated 29.9.75 it is recorded that the applicant was granted temporary status w.e.f 23.11.1973 on completion of 4 months continuous service. When did the applicant commence his service there is no indication in the document. We, therefore are not able to place any reliance on what is stated in Annx.R1 especially in the light of order Annx.A1 accepted by the Hon'ble High Court of Kerala in OP No. 1922/76. The same is the situation in the case of Appukuttan applicant in O.A No.387/2002. We have gone through the service register produced for our perusal. Here again on 13.5.76 he has been granted temporary status w.e.f. 21.7.75 without any indication as to when the applicant commenced his service. If the applicant was not in service prior to that his name would not have been figured in Annx.A1. There is no case for the respondents that the applicants had ever discontinued their service after treating them as temporary servants. We,

therefore, find that the contention raised on behalf of the Railway Administration is totally untrue and to be rejected.

13. In the result, ~~while~~ rejecting the contention on behalf of the respondents, we allow both these applications and direct the respondents to reckon half the period of service rendered by the applicants in both these cases, after 20.9.1963 in the case of Appukuttan, applicant in O.A No.387/2002 and after 20.5.1963 in the case of K.Vidhyadharan, applicant in O.A 782/2002 as qualifying service for pension and to revise their terminal benefits and pension accordingly and make available to them the monetary benefits flowing therefrom within a period of 3 months from the date of receipt of a copy of this order. No order as to costs.

H. P. Das
(H.P.Das)
Administrative Member

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(A.V. Haridasan)
Vice Chairman.