CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 395/2007

Friday, this the 16th day of November, 2007.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.Hamsa,
S/o Bava,Retired Tintal HS I,
Bridge Erection,
Southern Railway, Madras Division,
Residing at: Kaliyadan House,
Kainikkarrai,
Post Payalacherry, Tirur. ....Applicant

(By Advocate Mr Martin G Thottan)

V.

1 Union of India represented by
the General Manager,
Southern Railway,
Park Town.P.O.
Chennai-3.

2. The Divisional Railway Manager,
Southern Railway,
Madras Division,
Madras. ....Respondents

(By Advocate Mr. P Haridas)

This application having been finally heard on 24.10.2007, the Tribunal on 16.11.2007 delivered the following:

*ORDER*

***HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER***

The applicant in this O.A has sought a direction from this Tribunal to the respondents to reckon 50% of casual service rendered by him from 28.5.1969 to 1.9.1971 for pensionary benefits. According to his submissions, he was initially engaged as an open line casual labour with effect from 28.11.1968 and had an

uninterrupted service in that capacity till his regularisation on 21.12.1992. The A-1 casual labour card issued to him by the respondents covers the period of casual service from 28.11.1968 to 20.12.1972 and the A-2 certificate from the respondents shows that he was employed in the Engineering Department as "Tindal HS I/SSE/BR/0/MSB from 1.9.1971/21.12.1992 to 30.6.2000". His contention is that by the operation of law, he attained temporary status on completion of six months continuous service as on 28.5.1969 and as per the existing instructions/rules in force, he was entitled to reckon 50% of casual service i.e. From 28.5.1969 to 20.12.1992 for pensionary benefits consequent upon his regularisation with effect from 21.12.1992. He retired from service on 30.6.2000. The respondents have, however, paid him the pensionary benefits calculated only for the period from 1.9.1971 completely ignoring the casual service rendered by him from 28.5.1969 to 1.9.1971. According to him, the aforesaid denial of pensionary benefits to him was illegal and his case is squarely covered by the order of the Madras Bench of the Tribunal in O.A.34/2006, P.M.Sebastian v. Union of India and others decided on 7.12.2006 (A-3). He submitted that Shri Sebastian was his former colleague and he was not aware of the aforesaid order in his case earlier and as such he could not approach this Tribunal earlier though he had made the A-4 representation dated 25.1.2007 without any success. He relied upon Rule 2501(i) of the IREM in support of his claim which provides as under:

> *"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."*

2. The first contention of the respondents is that the applicant's claim for additional pensionary benefits made through the present O.A is barred by the principles of limitation as the same has been made after a lapse of seven years from the date of his retirement on superannuation. On merits, they have submitted that the casual labourers are divided into 3 categories in the Railways, viz, (1) staff paid from contingencies except those who are retained for more than 6 months continuously known as Open Line Casual Labour, (2) Labour on Projects irrespective of duration known as Project Casual Labour and (3)) Seasonal Labour who are sanctioned for specific works of less than 6 months duration. The open line casual labourers used to be granted temporary status after expiry of 6 months of continuous employment but the said period was subsequently reduced to 120 days as per the Railway Board's letters dated 12.7.1973 and 14.10.1980 respectively. They have further contended that the applicant was a casual labour by the Bridge Inspector, Perambur in the year 1968 but his continuous service was only from 1.3.1971 for a period of six months from that date to 31.8.1971. Thereafter he was granted temporary status in accordance with the rules with effect from 1.7.1991 and later absorbed as Tindal/Bridge Erector in the scale of Rs.950-1500 with effect from 21.12.1992. He retired on superannuation on 30.6.2000. Therefore, the casual service put in by him with effect from 1968 to 1971 was not taken into account for calculating the qualifying service in terms of Rule 14(ii) of Railway Services (Pension) Rules, 1993, according to which the employment in the capacity "..at casual market or daily rates" will not constitute service for pensionary benefits. Their contention was that the applicant was only a casual labour as referred to in para 2001(1) of the IREM, Vo.II which stipulates that:

> "Casual labour refers to labour whose employment is intermittent,sporadic or extends over short periods or continued from one work to another. Labour of this kind is normally recruited from the nearest available source. They are not ordinarily liable to transfer. The conditions applicable to

permanent and temporary staff do not apply to casual labour."

According to them, since the applicant was appointed as a casual labour in the year 1968 and he was granted temporary status only with effect from 1.9.1971 and later absorbed on regular basis with effect from 21.12.1992. 50% of the service rendered by him from the date of granting him the temporary status till he was permanently absorbed against regular post which he was paid from contingencies was counted towards pensionary benefits in terms of Rule 31 of the Railway Services (Pension) Rules, 1993, which provides as under:

*"In respect of a Railway servant in service on or after the 22nd day of August, 1968, half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment, subject to the following conditions namely:*

*i) the service paid from contingencies has been in a job involving whole time employment;*

*ii) the service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned such as posts of malis, chowkidars and khalasis;*

*iii) the service should have been such fro which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly basis and which though not analogous to the regular scales of pay, borne some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period by staff in regular establishments;*

*iv) the service paid from contingencies has been continuous and followed by absorption in regular employment without a break.*

*Provided that the weightage for past service paid from contingencies shall be limited to the period after 1st January, 1961, subject to the condition that authentic records of service such as pay bill, leave record or service book is available."*

[Emphasis supplied]

4. They have also relied upon the judgment of the Apex Court in Union of India v. K.G.Radhakrishna Panicker and others [1998 SCC (L&S) 1281] which have laid down that rules for calculating pensionary benefits of open line casual labourers as well as project casual labourers, which reads as follows:

> *"12. In its judgment dated 8.2.1991 the Tribunal has held that exclusion of period of service rendered as Project Casual Labour before they were regularly absorbed prior to 1.1.1981 results in such employees being discriminated against as compared to Project Casual Labour who were employed subsequently and whose service as Project Casual Labour prior to absorption is counted for the purpose of qualifying service. The said finding of the Tribunal is based on the decision of this Court in D.S.Nakara. In this regard, it may be stated that the tribunal was in error in invoking the principle laid down in D.S.Nakara in the present case. The decision in D.S.Nakara has been considered by this Court in subsequent decisions and it has been laid down that the principle laid down in D.S.Nakara can have application only in those cases where there is discrimination in the matter of existing benefit between similar set of employees and the said principle has no application where a new benefit is being conferred with effect from a particular date. In such a case the conferment of the benefit with effect from a particular date cannot be held to be violative of Article 14 of the Constitution on the basis of a particular date. (See: Krishena Kumar v. Union of India, State of W.B. v. Ratan Behari Dey and State of Rajasthan v. Sevanivatra Karamchar Hitkari Samiti). In the present case, the benefit of counting of service prior to regular employment as qualifying service was not available to casual labour. The said benefit was granted to Open Line Casual Labour for the first time under order dated 14.10.1980 since Open Line Casual Labour could be treated as temporary on completion of six months' period of continuous service which period was subsequently reduced to 120 days under para 2501(b)(i) of the Manual. As regards Project Casual Labour this benefit of being treated as temporary became available only with effect from 1.1.1981 under the scheme which was accepted by this Court in Inder Pal Yadav. Before the acceptance of that scheme the benefit of temporary status was not available to Project Casual Labour. It was thus a new benefit which was conferred on Project Casual Labour under the scheme as approved by this Court in Inder Pal Yadav and on the basis of this new benefit Project Casual Labour became entitled to count half of the service rendered as Project Casual Labour on the basis of the order dated 14.10.1980 after being treated as temporary on the basis of the scheme as accepted in Inder Pal Yadav. We are, therefore, unable to uphold the judgment of the Tribunal dated 8.2.1981*

*when it holds that service rendered as Project Casual Labour by employees who were absorbed on regular permanent/temporary posts prior to 1.1.1981 should be counted for the purpose of retiral benefits and the said judgment as well as the judgment in which the said judgment has been followed have to be set aside. The judgments in which the Tribunal has taken a contrary view have to be affirmed.*

*13. In the result, the appleals filed by the Railway Administration are allowed and the judgments of the Tribunal impugned in these appeals are set aside. The appeals arising out of Special Leave Petitions © Nos.26790of 1991 and 3423 of 1997 filed by the employees are dismissed. No order as to costs."*

5. I have heard the arguments of the counsel on both sides and have perused the pleadings. The objection regarding limitation raised by the respondents has to be considered first. Payment of pension is a recurring cause of action. On merits as well as on limitation, the applicant has mainly relied upon the order of Madras Bench of this Tribunal in O.A.No.34/2006 (supra). The applicant in this O.A retired from service on 30.6.2000. His colleague got an order from the Madras Bench of this Tribunal in his favour. The applicant therein superannuated on 3.9.1994 but instituted the O.A only in the year 2006. This O.A has been filed after the order in the aforesaid O.A came to his knowledge. Both the applicants are similarly situated and they cannot be discriminated. In the said case, the applicant was appointed as Skilled Casual Labourer under the Bridge Inspector, Carriage & Wagon, Southern Railway, Chennai on 16.1.1962, granted temporary status with effect from 21.12.1970, empanelled as a regular artisan Grade-III in 1992 and retired on superannuation on 30.9.1994. His grievance was that the respondents have ignored the period from 16.1.1962 to 21.12.1970 and for the remaining period from 1970 to 1992, only 50% have been taken into consideration for the purpose of declaration of the qualifying service. There also, the respondents contested case both on limitation as well as on merit. As regards his claim to count the service from 1962 to 1970, after perusing the original casual labour card produced by the

applicant, the Tribunal found that from 16.1.1962 to 31.7.1962, from 21.2.1964 to 30.11.1964, 11.12.1964 to 31.12.1964 are continuous service and in terms of Rule 31 of Railway Service (Pension) Rules, half of the service paid from the contingencies should have been be taken into account for calculating the pension benefits. The specific case of the applicant therein was that as per Establishment Rules, casual labourers other than those who were employed on project were granted temporary status on completion of 4 months continuous service either in the same work or in other work of the same type to which the work shifted and the rule regarding acquiring temporary status after completion of 4 months continuous service came into effect vide the Railway Board's letter dated 12.7.1973. Considering the above facts, the Tribunal directed the respondents to calculate the pension and other retiral benefits as prayed for by the applicant taking into account the total period from 16.1.962 to 30.9.1994 and pay the same within a period of three months.

6. During the course of the argument, the applicant's counsel has also relied upon a recent order of this Tribunal in O.A.77/2007, K.Saraswathy v. The Senior Divisional Personnel Officer, Southern Railway, Thiruvananthapura & another. Following the principles laid down by the Apex Court in L Robert D'Souza v. Executive Engineer [1982 SCC (L&S) 124], it was ordered that the applicant therein should be treated as casual labourer who attained the temporary status by the operation of Rule 2001 of the IREM and Note 8 thereunder. The relevant portion of the aforesaid judgment reads as follows:

> *"8 I have heard Shri PC Sebastian for the applicant and Shri K.M.Anthru for the respondents. The only dispute is regarding the counting of past service rendered by the applicant as a casual labourer from 3.9.75 as qualifying service for the purpose of determination of the applicant's pensionary benefits. The applicant's contention is that during her first spell of engagement as casual labourer w.e.f.3.9.75 to 11.5.76 itself she had put in 182 days of continuous service in the open line at Mavelikkara and attained temporary status by the operation of*

*Rule 2001 of the IREM (supra). Thereafter, she worked continuously from 6.12.76 to 20.1.77, 27.1.77 to 19.12.77 and 2.2.78 to 5.8.81. On the other hand, the contention of the respondents is that during the spells of engagement from 3.9.75 to 27.11.76 and from 27.1.77 to 19.12.77, the applicant had never put in the required minimum service of 120 days continuously without even a single day's break. Though the respondents have no documentary evidence to prove their contentions, they submitted that by applicant's own admission as evidenced from the Annexure.A1 Labour Service Card, she had worked only for 243 days out of the 252 days available between the period from 3.9.75 to 11.5.76 and, therefore, the service during the said period was not continuous. As regards the other spells of service were concerned, they were rendered in projects and project casual labourers were not entitled for temporary status prior to 1.1.81. The principle has already been laid down by the Apex Court in L.Robert D'Souza Vs. Executive Engineer, 1982 SCC (L&S) 124 as under:*

*"It is thus abundantly clear that if a person belonging to the category of casual labour employed in construction work other than work-charged projects renders six months' continuous service without a 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. it is equally true of even seasonal labour. Once the person acquired the status of temporary railway servant by operation of law, the conditions of his service would be governed as set out in Chapter XXIII."*

For the sake of convenience para 1 of Rule 2001 of IREM and the Note 8 thereunder are reproduced below:

*"2001 (i) Definition of Casual Labour:- Casual labour refers to labour whose employment is intermittent,sporadic or extends over short periods or continued from one work to another. Labour of this kind is normally recruited from the nearest available source. They are not ordinarily liable to transfer. The conditions applicable to permanent and temporary staff do not apply to casual labour.*

*Casual labour on Railways should ordinarily be employed only in the following types of cases:*

*(a) **Casual Labour (Open line)**- Casual Labour are primarily engaged to supplement the regular staff in work of seasonal or sporadic nature, which arises in the day today working of the railway system. This includes labour required for unloading and loading of materials, special repair and maintenance of tracks and other structures, supplying drinking water to passengers during summer months (recoupment of man days lost on account of absenteeism) patrolling of tracks etc. Casual labour*

*so engaged in the operation and maintenance of railway system is referred to as open line casual labour, as distinct from Project Casual Labour described in para (b) infra.*

*(b) **Casual Labour (Project)**: Casual Labour are also engaged on Railways fore execution of railway projects, such as new lines, doubling, conversion, construction of buildings, track renewals,. Route Relay Interlocking Railway Electrification,setting up of new units etc. Casual labour so engaged are referred to as "Project Casual Labour."*

*Such of those casual labour engaged on open line (revenue) works, who continue to do the same work for which they were engaged or other work of the same type for more than 120 days without a break will be treated as temporary (ie., given "temporary status") on completion of 120 days of continuous employment.*

*Casual labour on projects who have put in 180 days of continuous employment on works of the same type are entitled to 1/30th of the minimum of the appropriate scale of pay plus Dearness Allowance.*

*Before giving regular scale of pay or 1/30th of the minimum of the scale plus Dearness Allowance on completion of 120 days or 180 days continuous employment as the case may be,a preliminary verification in regard to age and completion of requisite number of days of continuous service should be done by the Assistant Officer and the person should also be got medically examined and only if found fit he should be granted regular scales of pay.*

*(ii) Grant of temproary status to Project casual labour is regualted by instructions separately issued by the Railway Board. As far as possible, casual labourers are required for new projects must be taken from amongst those casual labourers, who have worked on the open line/projects in the past in preference to outsiders.*

*(iii) Seasonal labour sanctioned for specific works of less than 120 days duration: If such labour is shifted from one work to another of the same type and the total continuous period of such work at any time is more than 120 days duration, they should be treated as temporary (ie., granted "temporary status") after the expiry of 120 days continuous employment."*

***Note (8)**: Once an individual acquires temporary status after fulfilling the conditions indicated in para(i) or (iii) above, he retains that status so long as he is continuous employment on the railway. In other works, even if he is transferred by the administration to work of a different nature, he does not lose the temporary status."*

7. In my considered opinion, this case is squarely covered by the orders of the Madras Bench of this Tribunal in O.A. 34/2006 (supra) and this Bench in O.A.77/2007. The judgment of the Apex Court in Union of India v. K.G. Radhakrishna Panicker & others has no application in this case. It only says that the period of service rendered by the Project Casual Labourers who were absorbed on regular/permanent/temporary posts prior to 1.1.1981 cannot be counted for the purpose of pensionary benefits as the said benefits were made eligible to them only with the judgment in the case of Inderpal Yadav v. Union of India & others [(1985) 2 SCC 648]. The A-1 Casual Labour Card produced by the applicant clearly shows that the applicant's service as casual labourer from 28.11.1968 to 8.10.1069 was continuous. He was again re-engaged on 1.11.1969 and continued till the time he was finally absorbed in regular term on 1.19.1971. In the result the O.A is allowed. The respondents are directed to reckon 50% of the casual service from 28.5.1969 to 1.9.1971 for pensionary benefits and to pay the benefits thereon to the applicant. The aforesaid direction shall be complied with within a period of two months from the date of copy of this order. No costs.

Dated, the 16th November, 2007.

***GEORGE PARACKEN***
***JUDICIAL MEMBER***

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