

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.403/04

Wednesday this the 23rd day of February 2005

C O R A M :

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

K.T.Onan
Pothiparambath House,
Midayikunnam P.O., Thalayolaparambu. ..Applicant

(By Advocate Mr.P.C.Sebastian)

Versus

1. The Senior Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram.
2. The General Manager,
Southern Railway, Chennai.
3. The Union of India represented by
the Chairman, Railway Board,
Rail Bhavan, New Delhi. ..Respondents

(By Advocate Mr.P.Haridas)

This application having been heard on 23rd February 2005 the
Tribunal on the same day delivered the following:

ORDER

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

The applicant commenced service as a casual labour under Permanent Way Inspector, Southern Railway, Kottayam on 25.8.1966. He claimed to have been continuously worked as Khalasi/Gangman for the maintenance of traffic up to 21.11.1972 and thereafter transferred to the control of Permanent Way Inspector TVC ERS conversion Quilon and was entrusted the work of Khalasi. He was retransferred to the jurisdiction of PWI Kottayam on 6.7.1976. The applicant was granted temporary status with effect from 23.10.1978 and was appointed as Gangman with effect from 21.7.1979. Ultimately he retired as Senior Trackman on 31.3.2001.

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His service as casual labour has been recorded in casual labour card (Annexure A-2). His grievance is that on his retirement on 31.3.2001 he has been granted pension taking into account his service from 23.10.1978 only and that although he had attained temporary status on continuous service from 25.8.1966 he was not granted the benefit of counting of half the service with effect from the date of attainment of temporary status contrary to the decision of the Apex Court in L.Robert D'Souza Vs. Executive Engineer (1982 SCC 645) as also the provisions contained in 2001 of the Indian Railway Establishment Manual. Projecting the grievance the applicant had earlier filed O.A.461/02 which was disposed of by judgment dated 17th July 2003 directing the applicant to produce the original casual labour card before the respondents and directing the respondents to verify the same and if found that the applicant had become entitled to temporary status on any day prior to 23.10.1978 to recompute his terminal benefits accordingly. Pursuant to the above direction the applicant produced the original casual labour card and the 1st respondent has issued Annexure A-5 order turning down his claim on the ground that the applicant was a project casual labour, that the work which he performed till 20.11.1972 was not generally in the open line but was in the nature of project work, that even if it is presumed that during the period between 25.8.1966 to 20.11.1972 he was attached to open line he having not completed 180 days during the period continuously he is not entitled to the relief sought. The applicant aggrieved by the impugned order (Annexure A-5) has filed this application seeking to set aside the same, for a declaration that the applicant acquired temporary status on completion of 120 days of service from the date of his initial appointment i.e.25.8.1966 and for a direction to the respondents to issue revised pension payment orders reckoning 50% of the casual service rendered by the applicant from the date on which he completed 120 days of service from 25.8.1966 till

23.10.1978. It is alleged in the application that the contention of the respondents in the impugned order that the applicant has not completed the requisite number of days for attaining temporary status between 25.8.1966 to 20.11.1972 is a traversity of truth and that he having worked under PWI Kottayam which was very much in the open line and was entitled for grant of temporary status.

2. The respondents have filed a reply statement. The respondents in paragraph 3 of the reply statement have conceded that during the period between 25.8.1966 to 20.11.1972 the applicant has not put in continuous service of 180 days or 120 days at any point of time and therefore he was not entitled to the grant of temporary status during the period. They contend that the applicant's service was transferred to project on 20.11.1972 and he was granted temporary status with effect from 23.10.1978 on being taken over by open line in the year 1976. They contend that as the applicant was a project casual labour and as he has not put in 180 days of service prior to 20.11.1972 in any case the claim of the applicant for the benefit of temporary status prior to 23.10.1978 is unsustainable.

3. I have with meticulous care gone through the entire materials placed on record and have heard Shri.P.C.Sebastian learned counsel of the applicant and Shri.P.Haridas learned counsel of the respondents. If the applicant had been working in the open line prior to 20.11.1972 and had completed the continuous service of 180 days during the period continuously in terms of para 2001 of IREM is entitled to the benefit of counting half the period of service after continuous service of 180 days as qualifying service for pension. This aspect is not under dispute. The case of the respondents is that the applicant being a project casual labour he

was not entitled to the benefit of temporary status prior to 23.10.1978 when it was granted to him and that in any event he having not completed 180 days of continuous service without break in open line his claim is not sustainable. The contention of the respondents in the reply statement as also in the impugned order that before taking over to the open line in 1976 the applicant was a project casual labour is inconsistent because in paragraph 3 of the reply statement the claim of the applicant for the benefit of temporary status for the period between 25.8.1966 to 20.11.1972 is disputed on the ground that he did not have continuous work for 180/120 days. The respondents have in other paragraphs of the reply statement stated that the applicant was performing work not generally of open line but of project. They have stated that the applicant was utilised for insertion of stone ballast, to remove speed restriction, screening ballasts, packing sleepers etc. I am not impressed with the argument of the respondents that these work are exclusively in project and not in the open line, for, maintenance, insertion of stone ballast, to remove speed restriction, screening ballasts, packing sleepers etc. are also incidental to the maintenance of traffic and the contention of the respondents in this regards appears to be totally evasive one. Further a careful look at the casual labour card would clearly establish that the applicant was during the period between 25.8.1966 to 20.11.1972 attached to PWI Kottayam who is an official in the open line. The nature of work also appears to be that of open line and not project. The contention of the respondents that the applicant was a project casual labour during these period therefore has to be rejected. Coming to the question whether the applicant had completed at any period between 25.8.1966 to 20.11.1972 a continuous service of 180 days, I have very carefully perused the casual labour card. From Annexure A-2, a photo copy of the casual labour card, a perusal of the entries between Serial No.34 and 42 for the period from 22.4.1969 to

20.1.1970 it is seen that the applicant had continuous service of eight months except for absence of ten days on different occasions. Learned counsel for the respondents argued that it is evident that the above ten days of absence in the case of the applicant were unauthorised absence because it has been so recorded in the casual labour card. Learned counsel of the applicant, on the other hand, argued that during the entire period of his service from 25.8.1966 to 20.11.1972 the respondents have not shown even a single day of absence as authorised absence and therefore what is recorded in the casual labour card as unauthorised absence the absence cannot be taken for its face value. I find considerable force in this argument. It cannot be accepted when the respondents contend that during the entire period there was not even a single day, on which date, the applicant has to remain absent authorisedly for personal reasons, the absence during the period of eight months from 22.4.1969 to 20.1.1970 being only ten days I am of the considered view that these absence cannot be treated as a break in service. Regarding the effect of absence during casual service on question of grant of temporary status the Apex Court has in Ramkumar & Ors. Vs. Union of India & Ors reported in AIR 1988 Supreme Court 390 has observed as follows :-

"Admittedly the petitioners have put in more than 360 days of service. Though counsel for the petitioners had pointed out that the Administration was requiring continuous service for purpose of eligibility. Learned Additional Solicitor General on instructions obtained from the Railway Officers present in Court during arguments has clarified that continuity is not insisted upon and though there is break in such continuity the previous service is also taken into account. Learned Additional Solicitor General has made a categorical statement before us that once temporary status is acquired, casual employees of both categories stand at par. Keeping the prevailing practice in the Railways in view, it is difficult for us to obliterate the distinction between the two categories of employees till temporary status is acquired."

4. Ten days of absence during the continuous service of eight months can only be considered as artificial or authorised one which cannot be

allowed to stand in the way of the applicant getting the benefit of temporary status for the continuous service. I, therefore, on the basis of the material available find that the applicant has attained temporary status on 20.1.1970 on completion of 180 days of continuous casual service in the open line under the PWI Kottayam.

5. In the light of what is stated above the impugned order Annexure A-5 is set aside declaring that the applicant has attained temporary status on 20.1.1970. The respondents are directed to revise the terminal benefits of the applicant reckoning half the period of service from 20.1.1970 till 23.10.1978 also as qualifying service for pension, issue revised PPO and to make available to the applicant the consequential arrears of pension and other entitlement within a period of three months from the date of receipt of a copy of this order.

(Dated the 23rd day of February 2005)



A.V.HARIDASAN
VICE CHAIRMAN

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