CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 410 of 2005

Wednesday., this the 19th day of July, 2006.

C O R A M :

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

M. Sethuraman,
S/o. A. Manicham,
Electrical Signal Maintainer Gr.I,
Southern Railway, Erode,
Residing at Poyyur Village,
Karuppur Senapathi Post,
Ariyalur Taluk, Perumballoor District,
Tamil Nadu. ... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
General Manager, Southern Railway,
Headquarters Office, Park Town Post,
Chennai 03

2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.

3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.

4. The Divisional Signal and
Telecommunication Engineer (Works),
Southern Railway, Poddanur,
Coimbatore District (Tamil Nadu). ... Respondents.

(By Advocate Ms. P. K. Nandini)

This application having been heard on 6.7.06, the Tribunal on 19-7-06 delivered the following:

O R D E R
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

If option is available and the same is exercised in a particular fashion, can the optee choose to reschedule the option so availed of, is the question in this case. The applicant insisted upon payment of gratuity under the Payment of Gratuity Act and when at that time, the respondents in their reply stated that the applicant the applicant would be given DCRG at the time of superannuation taking into consideration 50% of his service rendered during temporary status, he had not cared to accept the same.

2. Brief Facts as contained in the OA are as under:-

(a) The applicant was initially appointed on 23.3.67 as a casual labourer on the rolls of the Divisional Signal and Telecommunication Engineer (Works) which is a non-project permanent establishment of the Southern Railway Administration and he continued in service without any break till his services were regularised with effect from 17.8.1978, as a flagman. Promoted from time to time, he finally superannuated from service on 30.9.2002, as Electrical Signal Maintainer Grade-I in scale Rs. 4500-7500.

(b) The question whether the Divisional Signal and Telecommunication Engineer (Works) Podannur was a project organisation was considered by this Tribunal by its judgement in OA No.

849/90 dated 27.1.92. The SLP filed against this order was dismissed both on delay and merits. The applicant submitted a representation dated 1.3.95, praying inter alia for the grant of benefits of judgement. This was rejected by letter dated 5.4.95 on the ground that the benefit of judgement in O.A. No. 849/90 is admissible only to the applicants therein.

(c) Since the applicant was also entitled for the payment of gratuity under the Payment of Gratuity Act, 1972 for the period upto 17.8.1978, he approached the controlling authority for the grant of gratuity. The Controlling Authority by its order dated 31.5.2002 was pleased to recognise the applicant's services and to order payment of gratuity as claimed.

(d) By this time, the applicant was informed that he could choose either to receive the benefit under the Gratuity Act, 1972 or reckon 50% of his services rendered for the purpose of pension an other retirement benefits as per the provisions contained in the Railway Services Pension rules, 1993. Therefore, requesting to treat the period of 50% of the services as qualifying service and to determine the gratuity under the Railway Services Pension Rules, the applicant submitted a representation dated 15.7.2002.

(e) However, in purported implementation, by order dated 20.7.2002 the applicant was directed to appear before the Office of the Deputy Chief Engineer Construction, Poddannur to receive a Demand Draft drawn in the applicant's favour.

(f) When there was no response to the representation dated 15.7.02, the applicant was compelled to receive the amount of

Rs. 2723/- which he finally received on 19.8.2002.

(g) The applicant came to know that by a decision in V.J. Ealy and Ors. vs. Senior Divisional Personnel Officer and Ors., 2002 (2) ATJ 623, this tribunal held that the Railway servants who had received gratuity under Payment of Gratuity Act, 1972 for their casual labour services will also be entitled to reckon 50 per cent of the services rendered by them from the date of attainment of temporary status upto the date of regularisation for the purpose of pension and other retirement benefits. The applicant again submitted a representation dated 16.12.03 praying inter alia, to deem the applicant to have attained the status of a temporary employee with effect from 23.9.67 and reckon 50% of the service rendered by him upto 17.8.78 for the purpose of pension and other retitrement benefits.

(h) There is no response to this representation at all. At the time of the retirement of the applicant, his qualifying service, for the purpose of pension, was calculated from 17.8.1978 to 30.9.2002, and the total qualifying service came to 23 years 9 months and 4 days (24 years as rounded off) as against his actual entitlement of 28 years, 3 months and 22 days (to be round off to 28 years and 6 months).

3. The relief sought by the applicant is as under:

(i) To declare that the applicant is entitled to be treated as temporary with effect from 23.9.1967 and for all consequential benefits emanating therefrom as ordered in Annexure A1 judgement of this Tribunal;

(ii) To direct the respondents to grant the benefits of declaration in para 8 (a) above and direct further to reckon fifty per cent of the service rendered by the applicant with effect from 23.9.67 to 17.8.78 for the purpose of pension and other retirement benefits and to recalculate the applicant's pension and other retirement benefits and to grant the consequential arrears arising therefrom.

4. Respondents have contested the OA and their version is as under:-

(a) There is no basis or justification for claiming temporary status from 1967 after an inordinate delay of nearly 40 years. Even the judgement based on which the calim is made is dated 27.1.92. The project casual labourers like the applicant were not entitled for temporary status until the Inder Pal Yadav's case. According to the Scheme formulated by the Railway and approved by the Hon'ble Supreme Court, the project casual labourers were entitled for temporary status on and after 1.1.81 only subject to the other conditions. It can be seen that the applicant has been absorbedmuch before 1.1.81 and hence the question of grant of temporary status from an earlier date does not arise. The judgement (A/1) dated 27.1.92 does not cover the engagement under the first spell whereas in the second spell the alleged service is under DSTE/W/PTJ according to the statement of the applicant. The findings in that judgement are applicable only to the applicants therein and the applicant was not a party to the said proceedings. In fact, O.A. No. 175/94, 178/94 etc. filed by casual labourers of Sr. DSTE/W/PTJ for similar reliefs were dismissed by this Tribunal. Subsequently, in the batch of O.As – O.A. 1502/92, 12/93, 30/93, 81/93, 135/93, 183/93, 236/93, 257/93, 258/93 and 426/93, this Tribunal held that it is the duty of

the Railway to examine the grievance of the applicant and take a decision in the matter. Accordingly, the applicants in those O.As who were also casual labourers under DSTE/W/PTJ were advised that they are not entitled for temporary status and other benefits. In identical matter, the Apex Court has directed the Railway Administration to examine individual cases and take decision. Accordingly, the issue was considered by the competent authority and orders were passed holding that DSTE/W/PTJ is not a open line establishment. The decision of the Administration in the above matter was challenged by the applicant therein in Madras bench of the Tribunal, and the Tribunal dismissed the said O.A. Hence the applicant who was working in the Project cannot claim temporary status and other benefits based on the above referred judgement. The contention that the applicant was initially engaged under DSTE/W/PTJ from 1967 and continued till 1978 in the same establishment is utterly false. Even according to the applicant, he has submitted representation in 1995 and the applicant was advised that the earlier order dated 27.1.92 is applicable only to the applicants therein. If he was aggrieved by the decision, he could have moved this Tribunal or any other appropriate forum for remedy. Having not done so, his claim is hypothetical and barred by estoppel and acquiescence.

5. Arguments were heard. The counsel for the applicant submitted that the labour court's order is relied upon to the extent that it had given a finding as to the total period of casual service and well before the payment of gratuity by the respondents to the applicant he had requested for consideration of his case for counting 50% of his casual labour period for the purpose of pension and other benefits. The applicant had also relied upon the fact that in accordance with the

order dated 27-01-1992 in OA No. 849/90, the unit where the applicant had worked (i.e. DSTE (W) Poddanur) was held to be a non project unit and as such, under the existing provisions, he is entitled to have 50% of his casual labour service counted for the purpose of terminal benefits. The applicant had also relied upon the decision reported in 2002(2) ATJ 623 and in particular para 7 thereof. The said decision states as under:-

> "7. The respondents did not dispute the factual averments that the applicant joined service as a casual labourer on 14.7.75, that the temporary status was granted on 1.3.80, that she was regularly appointed on 29.1.90, that she superannuated on 31.8.2000. That as per the provisions of the Indian Railway Establishment Manual as also the Railway Services (Pension) Rules half the period of casual service after attaining temporary status is to be reckoned as qualifying service for pension in the case of casual labourers and subsequently absorbed in regular service is also not disputed by the respondents. The only contention of the respondents is that as the applicant has filed Application GA 17/96 before the Assistant Labour Commissioner (Central) and Controlling Authority under the Payment of Gratuity Act, 1972 claiming gratuity for the period from 14.7.75 to 28.1.91 and had obtained award for Rs. 8160/- which is pending in OP before the High Court of Kerala, the applicant should be deemed to have opted to receive gratuity for the entire casual service including the period after attainment of temporary status i.e., one of the two options of the Railway Board letter dated 30.6.2000, the applicant is not entitled to superannuation pension as the period of her regular service is less than ten years."

6. The above said order also refers to two judgments of the Apex Court in regard to the ratio that double benefits are not barred.

7. The question for consideration is whether the applicant is entitled to count

the benefit of past service @ 50% of the casual labour service. This calls for adjudication on the following legal issues:-

(a) Whether the applicant who had once opted for Gratuity under the Gratuity Act, can be permitted to change his option.

(b) Whether the unit where the applicant had been engaged as a casual labour belonged to Project or Non project Unit? For, the applicant would be entitled to his claim, subject to other conditions, only if the unit be non project one.

(c) If he be so permitted under law, whether he could claim the benefit of his C.S. services which related to the period of about two scores of years anterior to the date of filing. In other words, whether limitation is not staring at him.

(d) Even if limitation be not affecting his claim, what is the extent of casual labour service put forth by the applicant and how to verify the same.

8. The first issue could be now analyzed. It is true that the department had in their reply before the Labour Commissioner clearly stated that the applicant would be eligible for certain DCRG and also that part of the services rendered as a casual labourer would count for pension purposes. In this regard the relevant portion from the labour court order dated 31-05-2002 is extracted as hereunder:-

"4. The representative of the respondent stated that the application filed by the applicant is stale and liable to be dismissed as no proper explanation has been given by the

applicant to condone the delay and the application is also against the provision of payment of Gratuity. The representative of the respondent also denied the statement made by the applicant and deputed the claim of the applicant regarding the continuous casual employment. He further stated that as evident from the casual labour card the applicant has not rendered continuous service and there are lot of breaks in his service. Further, since the applicant is still in service he is not entitled to demand gratuity as the same is premature. The applicant will also be given DCRG at the time of superannuation taking into consideration 50% of his service rendered during temporary status and the applicant will get better gratuity amount at the time of his superannuation. Being a Railway servant, he is governed by the provisions of Railway Service (Terms & Rules). Hence, the provision of Payment of Gratuity Act is not applicable to the applicant. The applicant initially engaged as as a casual labourer and later on he was absorbed as a regular employee and there is no termination of service involved on the change of status from the daily rated casual labourer to that of a regular Railway servant. He, therefore, requested the Controlling Authority to dismiss the application"

9. The Labour court framed two questions, one of limitation and the other the entitlement of the applicant to the claim of DCRG and held that there being a notional termination of casual labour service when the applicant was absorbed in to regular service in the Railways and thus, that part of his service would make him entitled to the Gratuity. It was on this ground that the Labour Court had directed the respondents to make necessary payment. The applicant on his part, notwithstanding the order in his favour with a direction by the Labour Court to the respondents to make the payment, requested for counting of the past service to the extent admissible for pension purposes. In other words, he was prepared to waive the benefit that the Labour Court has given him but at the

same time wanted to make use of the Labour Court's order limited to the findings that the total service of the applicant was about 11 years as casual labour. Respondents' contention is that the applicant cannot be permitted to split the order of the Labour Court into two and rely upon the order for one aspect and waiving the other one. Here comes the general principle relating to gratuity or pension. In ***Kerala SRTC v. K.O. Varghese, (2003) 12 SCC 293,*** the Apex Court has held :

> *"13. A political society which has a goal to set up a welfare State, would introduce and has, in fact, introduced as a welfare measure wherein the retiral benefit is grounded on consideration of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age.... .....*
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> *15. Let us, therefore, examine; as was done by this Court in D.S. Nakara v. Union of India as to what are the goals that any pension scheme seeks to subserve. A pension scheme consistent with available resources must provide that the pensioner would be able to live: (i) free from want with decency, independence and self-respect, and (ii) at a standard equivalent at the pre retirement level..... .....*
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> *18. Summing up, it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the foil of life when physical and mental powers start ebbing corresponding to the aging progress and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the heyday of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to an employee is earned by rendering long and sufficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most*

practical raison d'être for pension is the inability to provide for oneself due to old age."

10. Thus, the purpose of pension having been crystallized on the basis of the Apex Cort judgment, it is to be seen as to how a welfare legislation should be interpreted. Any welfare legislation shall receive liberal construction, as for example the ESI as held in the case of ***Harihar Polyfibres v. Reg. Director, ESI Corpn., (1984) 4 SCC 324*** *"Even if any ambiguity could have been suggested, the expression must be given a liberal interpretation beneficial to the interests of the employees for whose benefit the Employees' State Insurance Act has been passed."* Again, in the case of ***National Insurance Company vs Swaran Singh, (2004) 3 SCC 297,*** *" A beneficent statute, as is well known, must receive a liberal interpretation. (See Bangalore Water Supply & Sewerage Board v. A. Rajappa(1978) 2 SCC 213 , Steel Authority of India Ltd. v. National Union Waterfront Workers(2001) 7 SCC 1, ITI Ltd. v. Siemens Public Communications Network Ltd. (2002) 5 SCC 510, Amrit Bhikaji Kale v. Kashinath Janardhan Trade (1983) 3 SCC 437and Kunal Singh v. Union of India (2003) 4 SCC 524).* At the same time, as held in the case of ***S.R. Radhakrishnan v. Neelamegam,(2003) 10 SCC 705,*** "Liberal interpretation does not mean that benefit can be given contrary to the basic provisions of the Act or in violation of the statutory provision."

11. In the instant case, the department was ready to consider the case of the

applicant for counting the services as casual labour, when the applicant approached the Labour Court for his gratuity. Though the applicant had not immediately accept the same whereby he could have withdrawn his claim from the Labour Court, he had, immediately on receipt of the order did make a request that he be not paid any gratuity. For, his very approaching the Labour Court itself was after his request to consider his case for counting of casual labour service in the wake of the judgment dated 27-01-1992 in OA 840/90 was rejected by the respondents vide order dated 05-04-1995 (Annexure A-3). Instead, he pursued his claim for gratuity. But, when initially the claim of the applicant for counting of casual service was rejected stating that the judgment is case be considered for counting of 50% of the casual labour service for the purpose of pension. In this regard, his letter dated 15-07-2002, Annexure A-7. However,without referring to the said letter of the applicant, the respondents had advised the applicant to collect the amount of gratuity, as fixed by the Labour Court, vide letter dated 20-07-2002.

12. The conduct of the respondents gives a feeling that the sole aim is that indiscriminately, the claim of the applicant should be opposed. The following would confirm the same:-

(a) When the applicant asked for extension of the benefit of the judgment of the Tribunal in OA 849/90, respondents refused to extend the same to him.

(b) Taking the view of the respondents as legally valid, when he

approached the Labour Court, respondents resisted his claim there and stated that the applicant could well have his services counted as per rules for pension purposes.

(c) And now, when the applicant wanted the service to be counted and was prepared to forego the benefit of the Labour Court's order in respect of gratuity, the respondents have come forward to pay him the gratuity..

13. Though the applicant had received the gratuity, he is prepared to refund the same to the Railways.

14. Considering the overall conspectus of the case, the spirit behind the scheme of pension and taking into account the decision of this Tribunal in OA 849/90 (and the averment made by the respondents before the Labour Court, as contained in the order dated 31-05-2002 of the Labour Court), this court comes to the irresistible conclusion that the claim of the applicant to count a part of his services rendered as casual labour for the period from 1967 to 78 as legally valid. Since the applicant retired only in 2002 the factum of his past period being counted for pension purposes would arise only in 2002. Thus, the contention of the respondents that the claim of the applicant is 40 years old cannot be accepted. The contention of the respondents about limitation based on the decision in AIR 1990 SC 10 also cannot be accepted in view of the fact that there is no formal denial of the respondents to the request of the applicant for counting of the past services, vide letter dated 15-07-2002. Letter dated 20-07-2002 cannot be considered as a rejection by implication as the same does

not have any reference to the aforesaid letter of 15-07-2002 and is independent of the same. The applicant obviously had been hoping for a plausible reply to his representation and on his not getting the same approached the Tribunal.

15. Feeble attempts were made to press into service the legals aspect of res judicata and acquiescence inasmuch as the applicant had already received the payment of gratuity. This of course, could have weighed well, but for the fact that the general principle of pension as contained in one of the earlier paragraphs as enunciated by the Apex Court eclipses the above objections.

16. Now coming to the extent of the period for counting, though the Labour Court has held that the applicant was entitled to gratuity on the basis of his past service from 1967 to 1978, there has been a clear mention in the order that the service of the applicant was with interruptions. Such interruptions cannot qualify for the purpose of counting of the past service. True, the Labour Court ignored the interruptions on the ground that the applicant cannot be faulted with for the same. But, for the purpose of calculation of qualifying service in connection with payment of pension, which is a recurring aspect unlike payment of gratuity, which is a one time aspect, it is for the applicant to prove the total period of service as he claims as casual service. If the applicant does not establish his claim by documentary evidences, the period as worked out by the respondents as casual labour service rendered by the applicant during the period from 1967 to 1978 has to be accepted and the same would form the basis for working out

the period to be counted as qualifying services for purposes of pension.

17. In view of the above, the OA is allowed. The applicant is entitled to count his past service rendered by him as casual labour during 1967 to 1978 for the purpose of pension but the same is subject to the following conditions:-

(a) That the applicant refunds the extent of gratuity drawn by him to the department on their demand.

(b) That the extent of period of casual service as claimed by the applicant should be proved by him with necessary documentary evidences. If he fails to prove so, the department is entitled to work out the same on the basis of the documents held by them and consider the same as the service as casual labour rendered by the applicant and on the basis of the same the respondents shall work out the qualifying period.

17. Once the qualifying period is worked out, the same shall be added to the already available qualifying service of the applicant and his terminal benefits and pension shall be worked out and the difference in terminal benefits and pension shall be paid to the applicant.

18. Needless to mention that to complete the above task, the same would warrant sufficient time. A period of six months from the date of receipt of this order being felt as reasonable, the same period has been calendared for compliance of this order. Time taken by the applicant in proving his case shall

have to be excluded while working out the time consumed by the respondents for compliance of this order.

Under the above circumstances, there shall be no orders as to costs.

(Dated, this the 19th July, 2006)

K B S RAJAN
JUDICIAL MEMBER

cvr.