

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

411/91

199

DATE OF DECISION 20.2.92

V. Chellappan _____ Applicant (s)

Mr.M.V.Thamban _____ Advocate for the Applicant (s)

Versus
The Divisional Personnel Officer,
Madurai Division, _____ Respondent (s)
Southern Railway,
Madurai and 3 others.

Mr.P.A.Mohamed _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? M
4. To be circulated to all Benches of the Tribunal? Y

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 13.3.1991 the applicant a retired Shed Sweeper who had been working in the Southern Railway, has prayed that the respondents be directed to grant him pension by counting his entire period of 33 years of service as qualifying and disburse the same along with 18% penal interest. He has also prayed that the balance amount of Provident Fund as also the leave encashment salary accumulated to his credit should also be directed to be paid.

2. According to the applicant he joined the Railway service as a Substitute Mechanical Khalasi in 1954 and subsequently confirmed in the regular service with effect from 16.12.57 and was in receipt of all benefits including free passes, Provident Fund contribution as admissible to a regular Railway employee. In 1978 while doing his duties of loading coal he sustained an eye injury and was declared medically unfit. He was thereafter transferred as a Shed Sweeper in 1978 and continued to hold the post till he retired on 31.8.90. He has produced photocopy of his service particulars to indicate that he was

regularly appointed with effect from 6.12.57. His grievance is that instead of granting him pension on the basis of his 33 years of service from 1957 to 1990, the respondents originally recognised his pensionable service for 17 years and now they have accepted it for 26 years. He has produced a photocopy of the rate book at Annexure-II which indicate that as a Shed Sweeper he has been contributing to the Provident Fund from 6.12.57. He has not been paid any retirement benefit so far despite his frequent visits to the office of the first respondent. He has alleged that he was summoned to the office and was forced to affix his left thumb impression on certain papers wherein his total service was recorded as 17 years but he declined.

3. In the counter affidavit the respondents have stated that the applicant was engaged as a Casual Labourer only on 6.12.1957 and was given temporary status on 6.6.1958 on completion of six months continuous service. He retired on 31.8.1990. They have stated that the first volume of his Service Register could not be traced out after a fire accident in the Railway Divisional Office and a new Service Register was opened on the basis of the entries in the basic records. As per the new Service Register he attained temporary status on 6.6.58 which is the same as given by the applicant. Deductions from salary under Provident Fund contribution commenced one year after that. In accordance with the orders of the Railway Board half of service rendered by Casual Labourers after attaining temporary status till regular absorption is taken as qualifying service for pension. The delay in granting the provisional pension was due to repeated refusal of the applicant to affix his left thumb impression and signature in the Service Register. They have stated that he was given the privileges of leave, free passes, annual increments, contribution to Provident Fund with effect from 6.6.1959 and he was regularly absorbed on 1.2.72. They have computed the total qualifying service excluding the period of unauthorised absence as 23 years 3 months and 6 days. His qualifying service prior to regular absorption has been reckoned as 5 years 6 months 15 days being half of the total

service between 1.1.61 and 1.2.72. They have denied that the applicant was being forced to give his left thumb impression. He was granted a provisional pension of Rs.375/- per month on 13.6.1991.

4. In the rejoinder the applicant reiterated that he was working as a Substitute Mechanical Khalasi from 1954 and given Ticket No.R7 and Staff No. as UM-1118 and that he had wrongly indicated in para 4.1 of the O.A. that he was granted temporary status on 6.6.1958. As a Substitute Mechanical Khalasi he was a member of the Southern Railway Co-operative Credit Society and in that connection he has produced a photocopy of the letter issued by the Secretary of Co-operative Credit Society dated 3.4.1957 in which he has been mentioned with his Staff Number, Ticket Number and Provident Fund Account Number. He has argued that the membership of the Society is granted only to regular employees and Annexure-X clearly shows that he was a member of the Society and contributing to Provident Fund much before 6.12.57 when according to the Railways he was employed for the first time as Casual Labourer. He has denied specifically that he was never a casual labourer ~~as such he was~~ but only a Substitute Khalasi from 1954. He has also pointed out that there is no explanation as to how the respondents have taken his date of regularisation to be 1.2.72 which is without any basis.

5. In the reply to the rejoinder the respondents have reiterated that the applicant was engaged as a Casual Labourer on 6.12.1957 but again stated that Part I of the Service Register was destroyed in a massive fire. They have referred to the Service Registers of two officials senior to the applicant and one official junior to him who were empanelled along with the applicant. In their cases they were engaged as Casual Khalais during 1957-58 and given temporary status between December 1957 and August 1958. The applicant was granted temporary status on 6.6.58. Thus the applicant could not have been appointed as a Substitute Khalais from 1954. The respondents have also produced an affidavit dated 17.8.90 at Ext.R6 duly attested by a Notary Public in which

by the applicant on oath

it has been clearly stated that his date of engagement was 6.12.57 as Khalasi and he became Temporary Khalasi on 6.6.58. They have specifically denied that he was engaged as a Substitute Mechanical Khalasi from 1954 in view of what he had originally stated in para 4.1 of the O.A and in the affidavit on 17.8.90. They have clarified that he was regularly absorbed as Mechanical Khalasi with effect from 1.2.72 after empanelment vide the order dated 8.2.72 at Ext.R.V. He was given the staff No.UM.1118 at the time of his regular absorption on 1.2.72. They are not able to explain how the staff No. has been indicated in the Certificate at Annexure -X dated 3.4.1957. They have doubted the authenticity of Annexures -XII and XIII which are certificates obtained by the applicant from two retired drivers. As regards photocopy of the document at Annexure-X dated 3.4.57 issued by the Co-operative Credit Society, they have stated that on enquiry from the Chief Executive of the Society he informed the respondents at Ext.R7 that no document relating to the period in dispute is available. Accordingly they have doubted the authenticity of Annexure-X letter also.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. While the applicant avers that he has been working as a Substitute Mechanical Khalasi from 1954, the respondents are insisting that he was appointed on a casual basis on 6.12.57 and given temporary status with effect from 6.6.58. Originally also the applicant had mentioned in para 4.1 of the O.A that "he was granted temporary status with effect from 6.6.58". Later he deleted this sentence. The word 'Substitute' also was handwritten in that para. The affidavit filed by the applicant on 17.8.90 duly verified by the Notary Public also reads as follows:-

" I, V.Chellappan S/O K.Velu of Quilon No.930, Puthuvayal purayidam, Mundekkal west, Quilon-1, now working as shed sweeper in Loco shed Southern Railway, Sengottai, residing at 15 D Rly Colony/Sengottai, hereby swear that I had joined in Railways as Khalasi at Quilon and my date of engagement was 6.12.57 and my date of appointment as Temporary khalasi on 6.6.58."

In the photocopy of the rate book at Annexure A2 produced by the applicant, his date of appointment has been shown as 6.12.57 as a casual employee and not as a Substitute. The only document which may go in his favour to some extent is the photocopy of the Southern Railway Employees' Co-operative Credit Society's letter dated 3.4.57 in which it was stated that the applicant should contribute to the Provident Fund from April 57. His staff No. and ticket No. have been given in that communication. The respondents have doubted the authenticity of this document because the staff No. was assigned to him along with others ^{for the first time} vide the Office Order No.12/72 dated 8.2.72. The learned counsel for the applicant could not produce the original of the Credit Society's communication in spite of the fact that the respondents produced a letter of the Chief Executive of the Society indicating that no document relating to the period in dispute was available with the Society. On a closer scrutiny of the date '3.4.1957' on the photocopy of Annexure-X, it appears to us that the figure '7' was added later after the full stop which occurs immediately after the figure 5. There is a vague impression of the figure '7' preceding the figure '5' of 1957. It may well be that the original date of 3.4.1975 has been changed to '3.4.195.7'. We have considerable reservations in accepting the authenticity of Annexure-X.

7. The only document which supports the applicant to some extent is the empanelment order dated 8.2.72 at Annexure R5 produced by the respondents by which 51 "Substitute Mechanical Khalasis" in the scale of Rs.70-85 were empanelled for regular absorption with effect from 1.2.72. The applicant's name figures at Sl.No.6 in the panel. This means that prior to 8.2.72 the applicant had been elevated from the position of a Casual Labourer with temporary status which he had attained on 6.6.58 to that of a Substitute Mechanical Khalasi. ^{service} Substitute in accordance with the Railway Board's letter dated 14.10.80 at Ext.R1 ^{in full} counts for pensionary benefits from the date of completion of six months continuous service provided it is followed by absorption in regular service.

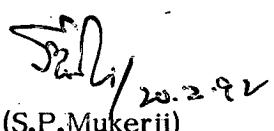
Para 3 of the aforesaid letter of 14.10.80 reads as follows:-

" As regards "Substitute Service", the service as Substitute counts for pensionary benefits from the date of completion of six months'(3 months' in the case of teachers) continuous service as substitute provided it is followed by absorption in regular class III/Class IV service without break, as already provided in Railway Ministry's letter No. F(E) III-69 PN-I/21 dated 22.7.70."

The question is from which date should the applicant be deemed to have attained the status of a Substitute. The respondents have stated that Part I of the Service Register of the applicant is untraceable after a massive fire accident. In the interest of justice, therefore, it will suffice if the period between 6.6.58 when he attained temporary status and 1.2.72 is divided equally between service as temporary status and service as Substitute. This period covers service of 13 years 7 months 24 days. Half of it, i.e, 6 years 9 months and 27 days commencing from 6.6.58 and ending on 3.4.65 would be taken as service put in after attaining temporary status and the period from 4.4.65 to 1.2.72 would be taken as service put in as Substitute. Consequently in accordance with the Railway Board's order at Ext.R1 half of the applicant's casual service with temporary status from 6.6.58 to 3.4.65 and his full service as Substitute from 4.4.65 to 31.1.72 also will count as qualifying service in addition to his regular service from 1.2.72 to 30.8.90. This will be subject to marginal accounting variations of a few days more or less.

8. In the facts and circumstances, we allow the application and direct the respondents to compute the qualifying service and pensionary benefits on the lines indicated above and to disburse the arrears of pension, Provident Fund and leave encashment salary as due to the applicant along with 12% rate of interest from the date of retirement to the date of payment within a period of three months from the date of communication of this order. There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

R.A.80/92 in

D. A. No.
~~XXXXXX~~

411/91

~~302~~

DATE OF DECISION 03-07-1992

V. Chellappan

Applicant (s)

Mr. M.V.Thampan

Advocate for the Applicant (s)

Versus

Divisional Personnel Officer Respondent (s)
Madurai Division, S.Railway and others

None

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

&

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement? ✗
4. To be circulated to all Benches of the Tribunal? ✗

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

We have carefully gone through the R.A. and connected documents. The Review Applicant has questioned the finding of the Tribunal on merits by raising the same issues which have been dealt with in the judgment. This cannot be done in a Review Application. No error apparent on the face of records or new material has been brought out. Accordingly we see no merit in the Review Application, which is dismissed by circulation.


8/7/92
(A.V. HARIDASAN)
JUDICIAL MEMBER


3.7.92
(S.P. MUKERJI)
VICE CHAIRMAN

03-07-1992

ks1792.

30-7-92
(27)

CCP-93/92 in OA-411/91

Mr MV Thampan for petitioner
Mr PA Mohamed for respondents

Issue notice to Shri Mohan A Menon, Divisional Personnel Officer, Southern Railway, Bangalore and also to the Divisional Personnel Officer, Southern Railway, Madurai to appear before us in person on 20.8.1992, to explain/^{why} action under the Contempt of Courts of Act be not initiated against them for non-compliance of our interim order dated 8.8.1991 in OA-411/91 and the final order dated 20.2.1992 in the same case.

List on 20.8.1992

Alleged

(AV Haridasan)

J.M.

Soh
(SP Mukerji)
V.C.

30-7-1992

20-8-92

(11)

Mr MV Thampan
Mr PA Mohamed

Neither Shri Mohan A Menon, DPO, Southern Railway Bangalore nor the DPO, Southern Railway, Madurai is present before us as directed by us on 30.7.92. Shri PA Mohamed, the learned counsel for the respondents prays that they may be given one more opportunity to comply with the aforesaid directions of the Tribunal.

Accordingly, we give the further time as prayed for by Shri Mohamed for their personal appearance on 27.8.92, failing which process for procuring their presence will be ^{initiated} issued. Shri Mohamed undertakes to inform the 2 contemners about the date of appearance.

List for further directions on 27.8.92

A copy of this order be given to the learned counsel for the respondents by hand.

Alleged
(AV Haridasan)

J.M.

Soh
(SP Mukerji)
V.C.

20-8-92

o. issued
on 21/8/92
(2)

27-8-92

(10)

Mr MV Thampan
Mr PA Mohamed

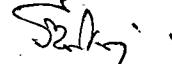
We have heard the learned counsel for the parties on the CCP and, Shri Mohan A Menon, DPO, Southern Railway, Bangalore and Shri M Ramamurthy, DPO, Madurai are both present before us. They have submitted a statement indicating the circumstances in which there has been delay and have expressed their regret for the same. The learned counsel for the petitioner, however, states that the amount due to the petitioner on the leave salary and the interest ^{from} for the date of retirement as directed by the Tribunal as also the balance in provident fund have not yet been paid. Shri PA Mohamed, the learned counsel for the respondents is directed to produce a statement of due amount and paid ^{amount} on the next date of hearing.

List for further direction on 21.9.92

S/Shri Mohan A Menon and Ramamurthy need not be present on the next date of hearing.

Copy by hand.


(AV Haridasan)
J.M.


(SP Mukerji)
V.C.

27-8-92

21-9-92

(21)

Mr MV Thampan
Mr PA Mohamed

At the request of the learned counsel for the petitioner, list for further direction on 13.10.92. Shri PA Mohamed has handed over ^{to the 2d. Counsel for the applicant,} in our presence, an account payee cheque in favour of the applicant for Rs.3,191.00 towards payment of interest and penal interest on the delayed payment of ^{ment} retired benefits.


(AVH)


(SPM)

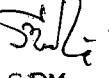
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13.10.92

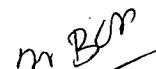
Mr. TThamban-for applicant
Mr. PA Mohammed

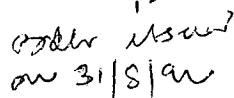
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The learned counsel for the petitioner seeks some time to file a rejoinder to the reply filed by the respondents. List for further directions on CP(C) on 4.11.92.

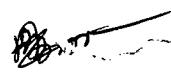

AVH


SPM


A 28/8


m B/M


order issued
on 31/8/92


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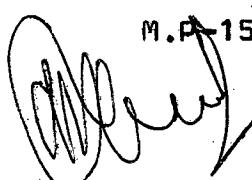
4-11-92
(24)

Mr MV Thampan
Mr PA Mohamed

We have heard the learned counsel for the parties on the CP(C). The learned counsel for the petitioner states that the pension of the applicant has been revised after computing qualifying service on the lines indicated in the judgement though there is some marginal difference between what the applicant expected and what has been sanctioned to him as pension. Arrears of pension along with interest have been paid to him. The applicant's contention is that the provident fund and leave encashment salary has not been paid to him beyond what had been already paid to him before the O.A. was filed.

Since the judgement does not indicate specifically the amount of provident fund and leave encashment salary to which the applicant is entitled or the line on which they should have been computed, the controversy about provident fund and leave salary may not be gone into in a contempt petition like this. Accordingly, the CP(C) is closed and the notice discharged with liberty to the petitioner to file an O.A. for provident fund and leave encashment salary, if so advised and in accordance with law.

M.P-1572/92 is also dismissed.


(AV Haridasan)
J.M.


(SP Mukerji)
V.C.

4-11-92

BCP
PAC
5/11
Order in CP(C) & HC
issued
4/11/92