

CENRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA 553/1996

Mumbai this the 17th day of October, 2001

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Smt.Shanta Shastry, Member (A)

Shri Deoram Raoji, Retired Khalasi,
under the Inspector of Works (M),
Central Railway Bhusawal and
residing at 15 Block behind Rly.Quarters,
MAP 528 Bhusawl-425201,
Dist.Jalgaon.

..Applicant

(By Advocate Shri D.V.Gangal)

VERSUS

1.The Union of India, through
the General Manager,
Central Railway, Bombay V.T.400001

2.The Divisional Railway Manager,
Central Railway, Bhusawal-425 201.

..Respondents

(By Addvocate Shri Suresh Kumar)

O R D E R (ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

The applicant has impugned the order passed by the respondents dated 6.2.1995 rejecting his representation to count the service put in by him as Casual Labourer from 20.2.1965 to 19.1.1979. During the course of arguments Shri D.V.Gangal, learned counsel for the applicant has submitted that there is a mistake in the representation given by the applicant dated 1.2.1995 to the extent that the request of the applicant was to count his casual labour service from 6 months from the date of his appointment i.e. from 20.8.1965 to 19.1.1979 in accordance with the rules. The applicant relies on Para 2501, Chapter 25 of IREM (1968 Edition) read with provisions of Para 2511.

8/11

2. Learned counsel for the applicant has submitted that he does not question the regularisation of the applicant with effect from 17.1.1979 as he admits that at this stage, after several years, his claim would be barred by limitation. Similarly, he has also fairly submitted that there is no claim that the pay of the applicant is to be refixed in the scale of Khalasi with effect from 20.8.1965. He has, however, emphasised that in accordance with the aforesaid rules which then existed and from Railway Board's letter dated 26.10.1964, the applicant cannot be denied the benefit of service of 50% of the casual labour service which he had put in, after 6 months of his continuous service as casual labourer. He has also submitted that the ground taken by the respondents that the OA is barred by limitation cannot be applied to the facts of the case because the applicant retired from service with effect from 31.10.1995 and his claim is confined only to the qualifying service for pensionary purposes thereafter. Applicant has annexed copies of his casual labour card with the O.A. Although the copies of the casual labour card of the applicant annexed to the application are not verified or signed as true copies of the original card, the learned counsel has submitted that respondents have not denied the fact that the applicant was working as casual labourer with effect from 1965. He has, therefore, vehemently contended that the respondents have not denied the fact that the records are not available with them to verify the submissions made on behalf of the applicant that he was working as casual labourer during the period from 1965 to 1979 and with effect from 19.1.1979 he was made a temporary khallasi.

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3. We have seen the reply filed by the respondents and heard Shri Suresh Kumar, learned counsel. We note from the reply filed by the respondents and the submissions made by the learned counsel that they have dealt with the applicant's claim for counting his past service as casual labourer from the due dates in 1965 till 1979 based on Railway Board's letter dated 14.10.1980. They have contended that this letter does not apply with retrospective effect. They have also taken the preliminary objection of bar of limitation but they have not specifically denied in their reply affidavit filed on 31.10.1996 that the applicant has worked as daily rated casual labourer during the period from 1965 to 1979. According to them, based on Paragraph 2005 of the IREM i.e. Railway Board's letter dated 14.10.1980, the applicant is not entitled to the claims made by him in the OA. They have also submitted that he has not challenged Paragraph 2005 of IREM.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. From the brief facts mentioned above and the documents on record, it is noted that the respondents have not denied the fact that the applicant has been employed by them as a daily rated casual labourer from 1965 onwards till 1979. The respondents have appointed him as temporary Khalasi on 17.1.1979 and he reported for duty w.e.f. 20.2.1979. They have submitted that from 1965 to 1979 the applicant has worked as daily rated casual labourer for short spells. In the circumstances, the learned counsel for the respondents was

B2

unable to explain to us how the Railway Board's letter dated 14.10.1980 would be applicable to the terms and conditions of the applicant's service who had been appointed much earlier. As mentioned above, Shri D.V.Gangal, learned counsel has categorically submitted that the service conditions of the applicant when he was employed as casual labourer with effect from 20.2.1965 were governed by the Railway Board's letter dated 26.10.1964 and not by the subsequent letter of 1980. We see merit in the submission made by the learned counsel for the applicant that the respondents have not given any reasons as to why they have not considered the applicant's claims in accordance with the relevant rules applicable at the relevant time.

6. Para 2501 of Chapter 25 of IREM (1968 Edition) relied upon by the learned counsel for the applicant reads as follows:-

"2501(a)

Casual labour refers whose employment is seasonal, intermittent, sporadic or extends over short periods, labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour.

(b)(i) 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".

Relevant portion of paragraph 2511 reads as follows:-

"2511 (a)

Casual labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants as laid down in Chapter XXIII of the Indian Railways Establishment Manual. The rights and privileges admissible to such labour also include the benefits of the Discipline and Appeal Rules. Their service prior to the date of completion of six months' continuous service will

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not, however, count for any purposes like reckoning of retirement benefits, seniority etc. Such casual labourers will, also be allowed to carry forward the leave at their credit to the new post on absorption in regular service ".

(emphasis added)

7. Learned counsel for the applicant has contended that in view of the aforesaid provisions of the relevant paragraphs of the IREM which are applicable to the applicant, after rendering 6 months of continuous service as casual labourer, the applicant "is entitled to be treated as temporary " without any further action being taken by the respondents. Under Paragraph 2511 it is provided that a casual labourer who is treated as temporary after completion of 6 months continuous service is entitled to certain rights and privileges as mentioned therein. This rule provides, inter-alia, that the casual labourers treated as temporary are entitled to all the rights and previliges as admissible to temporary Railway Servants as laid down in Chapter XXIII of the IREM. Learned counsel for the applicant has also contended that in Paragraph 2511 it is provided that "their service,prior to the date of completion of 6 months continuous service will not, however, count for any purpose like reckoning of retirement benefits, seniority etc.", which by implication, means that service rendered by the applicant after 6 months of continuous service as casual labourer has to be counted. He has also submitted that this service will be 50 % of such service as admissible to the applicant after 20.8.1965 to 19.1.1979, as mentioned by him in his representation dated 1.2.1995 which should be taken into account for purposes of pensionary benefits. From the documents on record, we find force in the submissions of Shri D.V.Gangal,learned counsel that the claim of the applicant has to be dealt with under the relevant provisions existing under the Railway Board's letter dated 26.10.1964

1/2

and not under Rule 2005 of the Railway Board letter dated 14.10.1980. This has not been done by the respondents as evident from the reply filed by them on 31.10.1996.

8. With regard to M.P.No.926/2000, the applicant has tried to add certain pages to the Casual Labour Card No.13 covering the period from 19.2.1965 to 19.3.1968. We see no reason to allow the MP as he should have annexed the relevant pages at the time when he filed the OA. Thereafter, M.P.No.926/2000 appears to be an after thought. As mentioned above, none of the pages of the Casual Labour Card filed by the applicant are verified and signed as true copies of the original card. However, we find that this objection has not been taken by the respondents in their reply filed to the OA. as far back as on 31.10.1996, wherein they have themselves stated that the applicant had been working as a daily rated casual labourer during the period from 1965 to 1979. Therefore, to this extent, we agree with the submissions made by the learned counsel for the applicant that the respondents cannot later deny that they do not have the records especially when they know that they have filed their reply to the OA in 1996 and the case is sub-judice. In the circumstances of the case M.P.No.926/2000 to add further documents to the Casual Labour Card of the applicant, subject to the verification to be done by the respondents, is rejected.

9. In the result, for the reasons given above, the impugned letter issued by the respondents dated 16.2.1995 is quashed and set aside and the OA is partly allowed to the following extent:-

- (i) The respondents are directed to reconsider the applicant's claim to the extent of including the qualifying service rendered by him, in accordance with the
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aforementioned rules applicable at the relevant time, keeping in view the observations made above. In case paragraphs 2501 and 2511 of Chapter 25 of IREM (1968 Edition Railway Board's letter dated 26.10.1964) are applicable to the applicant's case at the relevant time in 1965 onwards, they shall grant the applicant such benefits as are provided therein;

(ii) The applicant shall be entitled to the said retiral benefits as applicable to him at the time of his retirement with effect from 31.10.1995;

(iii) As the applicant has superannuated from service, the above action shall be taken by the respondents expeditiously and in any case within two months from the date of receipt of a copy of this order;

(iv) In case the respondents are rejecting the claims for any reason, they shall do so by a reasoned and speaking order and refer to the particular paras/rules of IREM they rely upon with intimation to the applicant, within the aforesaid time.

No costs.



(Smt. Shanta Shastri)
Member (A)



(Smt. Lakshmi Swaminathan)
Vice Chairman (J)