

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

Original Application No.1091/99

Dated: // .01.2001

Keroo Waloo Bhalerao

Applicant.

Shri J.M.Tanpure

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri A.I.Bhatkar

Advocate for  
Respondent(s)

CORAM :

Hon'ble Shri B.N.Bahadur, Member (A),

- (1) To be referred to the Reporter or not? *Yes*
- (2) Whether it needs to be circulated to  
other Benches of the Tribunal? *No*

*B.N.B.*  
(B.N.BAHADUR)  
MEMBER (A)

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THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

Original Application No.1091/99

Dated this Thursday the 11th Day of January 2001 ~~December, 2000.~~ *B.N. Bahadur*

Coram: Hon'ble Shri B.N. Bahadur, Member (A)

Shri Keroo Waloo Bhalerao  
Ex-Mason Grade III, ...  
Section Engineer Workshop,  
Central Railway, Lonawala,  
Resident of At. Bhaje,  
P.O. Malawali, Tal. Mawai,  
Dist. Pune. .... Applicant.  
(Represented by Shri J. M. Tanpure, Advocate)

Vs.

1. Union of India through  
The Secretary,  
Ministry of Railways,  
Rail Bhawan, New Delhi - 110 011.
2. The Section Engineer (WKS),  
Central Railway, Lonawala,  
Ta. Mawal, Dist. Pune.
3. The Divisional Railway Manager (P)  
Chhatrapati Shivaji Terminus  
Mumbai. .... Respondents.  
(Respondents by Shri A.I. Bhatkar, Advocate)

ORDER

[Per B.N. Bahadur, M (A)]

This is an Application made by Shri Keroo Waloo Bhalerao, Ex-Mason Grade III, with the Central Railway, Lonawala who comes up to the Tribunal in grievance against the (implications of) the Certificate of Services issued by Respondents, on 20.11.1999, through the order at Ex.A.1. The Applicant seeks the relief for a declaration that he is entitled for, monthly pension after his retirement, along with the arrears of pension, from the date of

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retirement, with 24% interests thereon. He also seeks a declaration from this Tribunal that he is entitled for an enhanced gratuity and DCRG, Provident Fund and all terminal benefits along with 24% interests thereon.

2. The facts of the case, as brought out by the Applicant, are that he was working under Respondent No.2 as Mason Grade III, and that his date of appointment was 30.1.1978. He was brought on regular scale i.e. on monthly rate on 1.1.1983. He finally retired on 30.9.1994.

3. After his retirement on the above date, the applicant received some terminal benefits from the office of the F.A. & C.A.O. He avers that while he received terminal gratuity and D.C.R.G., he did not receive his Provident Fund amount or monthly pension (copy of the Order at Ex.A.2). The Applicant claims that he has represented through number of applications to the Respondents/ higher authorities for obtaining his dues, but in vain. It is with this grievance that he comes to the Tribunal, seeking the relief as described above.

4. The Respondents in this case have filed a Written Statement of reply, resisting the claims of the Applicant. They first make the point that the Application is hit by the law of Limitation. Further it is averred that the Applicant joined as daily rate casual Mason w.e.f 30.1.1978 and was granted temporary status w.e.f 1.1.1983. He was appointed on regular basis, w.e.f 19.4.1990.

5. The further defence taken is that the service of the applicant as daily rated casual worker, from 30.1.1978, to 31.12.1982 will not count for pensionary benefits, as per Rule 14 (ii) of Pension Rule 1993. 50% of the Service from 1.1.1983 to 18.4.1990 i.e. service with temporary status will count for this

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purpose. Therefore, it is contended that the Applicant had put in a total pensionable service of only 8 years one month and 4 days, and since this is less than the 10 years pensionable service required under Rules, he was not entitled to pensionary benefits as now claimed. Terminal benefits as per law had already been paid to him. It is, therefore, prayed that the O.A. be dismissed.

6. The Learned Counsel for the Applicant, Shri J.N. Tanpure, argued the case in detail, making the point that the service as described between 1983 and 1990 was not casual service, but it was a service put in on a regular scale of pay. He drew attention to the Certificate of the Respondents, a copy of which is filed at Ex. A.3 and stated that the service period is shown as 1.1.1983 to 30.9.1994 and hence, it should be counted as full. Learned Counsel pointed out Rule 20 of the Pension Rules, a copy of which is at page 13, to state that a half the period of service of casual labour after attainment of temporary status i.e. after 120 days service as casual labour, as mentioned therein, should be counted for pensionary benefits. This Rule was depended upon strenuously. Learned Counsel stated that in the 3 distinct phases of the Applicant's employment the period of 10 years can be seen to have been completed, by either or both arguments made by him. If he is considered regular from 1983 then it is a clear 10+ years of service. If this is not considered, then half of the service after completion of 120 days, be considered as pensionable service and in which case also 10 years requirement is met. He also argued that if half the period between May 1978 and April, 1990 is taken, that also comes to six years and six months.

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7. Learned Counsel depended on the ratios of the following case laws: (1) Katarak vs. UOI 1995 LAW IC 718 (2) Vasant G. Chandan vs. State of Maharashtra 1990 (7) (11) CCR 1053 (SC) and (3) Markande vs. Zilla Parishad Chandrapur 1996 (2) 3 CCR 72 (Bombay HC).

8. Learned counsel for the Applicant defended the case on the ground of limitation also, first pointing out to the Supreme Court judgement in the case of S.R.Bhanrale vs. UOI 1996 (LIC) 2756 (SC) as quoted at page 3 of the O.A. He also took the argument that this was a continuous cause of action.

9. Arguing the case on behalf of the Respondents, their learned Counsel took the plea that in 1983, the Applicant was still in casual category and was not a regular employee. He contended that the judgements of the Supreme Court cited are all ratios decided in regard to regular employees and would, therefore, not be applicable to the case of casual employees. Counsel for Respondent strenuously reiterated that the Rules as described require a pensionable service of 10 years and Rule 20 of the Pension Rules are relevant in this regard. Granting temporary status did not mean that an employee had come on to regular service. He stated that Rule 18, was also very important vis-a-vis the Supreme Court judgement cited.

10. Learned Counsel for Respondent depended specially on para 3 of the Written Statement, where the details of the various periods and calculations as per entitlement are shown. He argued finally that the acquisition of a temporary status was not automatic in any case.

11. Let us recapitulate the important dates in the service record of the Applicant, since they are important for deciding

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the issue before us, These are as follows:

- A) Date of entry on casual (employment on daily wage) (DRCL) 30-1-1978
- B) Granted Temp. Status 1-1-1983
- C) Regularised in Service 19-4-1990
- D) Retirement 30-9-1994

12. Now the point for determination is whether the 10 years service have been completed by the Applicant in terms of the Rules. In fact, it is the very interpretation of the calculation as per Rules that is the point to be determined here. Beyond 19.4.1990 and upto 13.9.1994, there is no doubt that full service has to be counted. However, this comes to only some four and half years. One of the contentions made in argument was that the Applicant should be deemed to have automatically acquired temporary status beyond 120 days after the initial entry and if this is agreed to then even counting of the period between 1st April- May 1978 to 19.4.1998 as half service would suffice.

13. Although the case-law cited by the Learned Counsel for the applicant has some indirect relevance to the case of the applicant, a clear and more direct relevance is provided by the Judgment made by the Hyderabad Bench of this Tribunal, while deciding the case of Smt. N.Atchamma {(1994) 28 ATC 196)}. The headnote of this case as reported above reads as follows:

"Casual Labour - Temporary status - Entitlement to, immediately on completion of 120 days' ...6.

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service - Applicant engaged as Gang Woman on 10.1.1970, temporary status conferred on her w.e.f. 10.10.1978 and her services regularised w.e.f. 10.8.1986 - Applicant retiring on superannuation on 31.12.1988 - Respondents' action of determining pensionary benefits taking into consideration service rendered by applicant from 10.10.1978 only and ignoring the previous period, declared invalid - Applicant, held entitled to temporary status immediately on completion of 120 days' service and her retirement benefits to be determined accordingly as per departmental instructions"

14. From a reading of this case, I find that the facts are identical, in essence, to the facts of the case before us. The entire issue has been discussed in detail in this judgment in the matter of Smt. Atchamma, which in my view is clearly applicable to the case before us. We need not repeat the reasoning here. It will have to be decided in the present case also that applicant shall be deemed to have acquired temporary status from a date which is 120 days subsequent to the date of entry of applicant in casual employment of the respondents. Thus, this date (120 days after 30.1.1978) shall be the date from which the calculation of half of service period shall have to be made as per rules. Accordingly, the respondents will have to recalculate the admissibility of pension and pensionary benefits accordingly.

15. The point of limitation has also been raised in the case and has been argued on both sides. We have considered the facts of the matter, with reference to the application for condonation filed. It is indeed regrettable that pensionary benefits/pension have not been paid to the applicant only because of wrong interpretation of Rules, even though the matter has been decided by a Bench of the Tribunal as early as in February, 1994 as discussed above. By several Judgments, including these the Apex Court, Pension and Pensionary benefits have been held to be the rightful claim of Government Officials, and not a mere bounty. Further, the applicant is a low paid employee in the lower ranks



of employment and does not seem to be educated. In the background of these facts and circumstances, we hereby allow the M.P. for condonation of delay and condone the delay in the interest of substantial justice.

16. In view of the above, this OA is therefore allowed in terms of the following orders:

(i) The Applicant shall be deemed to have acquired temporary status as soon as he has completed 120 days from the date of his initial engagement. Respondents are directed to now determine the pension and all other retirement benefits, as per Rules/Instructions, on the above basis. All dues including arrears shall be paid to the applicant w.e.f. the date of retirement. No interest on these dues shall, however, be payable.

(ii) The above orders shall be implemented within a period of three months from the date of receipt of a copy of this order.

(iii) No orders as to costs.

*B. N. Bahadur*

.. 11-01-01.  
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(B.N. BAHADUR)  
MEMBER (A)

B.

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

R.P. NO.: 15/2001 IN O.A. NO. 1091/99.

Dated this Thursday the 31st day of October, 2002.

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CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Keroo Waloo Bhalerao ... Applicant  
(By Advocate Shri J. M. Tanpure)

VERSUS

Union of India & Others ... Review Petitioner  
(Ori. Respondents)  
(By Advocate Shri V. S. Masurkar)

O R D E R

PER : Shri B. N. Bahadur, Member (A).

.....We are considering here Revision Petition (R.P.) No. 15/01. This Revision Petition has been filed on order made in O.A. No. 1091/99 on behalf of the Respondents in the O.A., namely - the Union of India through Divisional Personnel Officer, Mumbai C.S.T. & Others. The grounds taken in the Review Petition is that the judgement in the O.A. suffers from apparent and patent errors and omission of facts, as well as law. It is argued that the Tribunal granted a relief which is not prayed for in the O.A.; that the Applicant has not prayed for grant of temporary status. This, indeed, is the salient point made in R.P.

2. A reply has been filed on behalf of Original Applicant first taking the point that the Review Petition is not maintainable as there is no error apparent. The stand is taken

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that the main relief really granted by the Tribunal in its order is by way of direction to respondents to determine pension, etc. etc. The earlier paragraph is a reasoning as it were.

3. I have gone through the Revision Petition, the reply, the orders made in O.A. and all relevant papers carefully. I have also considered the arguments made by Learned Counsel, Shri J.M. Tanpure appearing for original Applicant and Learned Counsel, Shri V.S. Masurkar, who appeared for the Railways. It was argued on behalf of the Railways that relief provided is different from the relief sought. Various parts of the R.P. giving facts and taking stands were argued, for example, para 5, 6 and 7 of the R.P. The merit point was also taken that only substitutes get benefits and case law in the matter of Inderpal Yadav was cited.

4. Learned Counsel, Shri Tanpure, on the other hand, took the stand that there is no contradiction and that this is not a case of a relief different from that asked for being provided. He stressed that no error apparent on the face of record either on facts or on law was evident in the orders made in O.A. He also sought to meet the points taken in arguments by Shri Masurkar on certain aspects of facts and law.

5. On a careful consideration of the orders made in the case, it is clear that there is no contradiction. Similarly, it is not a case where the relief sought and relief provided are at variance. The issue is, indeed, connected and a careful

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consideration would show that the arguments made by Shri Tanpure are valid. It is not a case of an error apparent on the face of record either in fact or in law and hence, the R.P. cannot succeed. As regards the argument made on facts and law by Counsel for Railways, we cannot consider these, as the case cannot be reargued in an R.P. Well as the official Respondents may have a grievance against the reasonings in the order, their remedy would lie elsewhere and not in a Revision Petition. Under the circumstances, the Revision Petition No. 15/01 is hereby dismissed. No costs.

*B. Bahadur*

(B. N. BAHADUR)<sup>31/10/02</sup>  
MEMBER (A).

os\*R.P.5

Per Tribunal

Date: 13/6

Applicant in Person/by Advocate/Respondent by / *Govt*

Council..... *Govt*.....

The matter adjourned to

For ... *order a... 20/6/03*

*CPM*

*my*  
Dy. Registrar

Dated: 20.6.2003 (1)

Sh. J.M. Tarpane Counsel for the applicant. Sh. V.S. Marurkar Counsel for the respondent.

Sh. Marurkar has made a statement at the Bar that all the payments due to the applicant under the judgement will be released to him before 4 weeks. In these circumstances C.P. 48/2003 stands disposed of. In case applicant is aggrieved after the period of 4 weeks, he will be at liberty to file fresh C.P.

*CPM*  
(S.K. Malhotra)  
M.A.

*Govt*  
(J.S. Dhalwal)  
M.A.

*Govt*

Document despatched to Applicant/Respondent (r) 30/6/2003

02/7/2003