IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BENCH AT MUMBAI

1. OA No.836/99
2. OA No.851/99

ORIGINAL APPLICATION NO 836 OF 1999

Mumbai this the 6th day of June, 2001.

Hon'ble Mr. Shanker Raju, Member (Judicial)

Balwant Z. Naik,
Retired Electrical
Fitter Grade I,
Train Lighting,
Bombay Division,
Western Railway

Residing at

Gokul Niwas,
Bajaj Road,
Vile Parle (W),
Mumbai 400 056

C/O G.S. Walia,
Advocate, High Court
16, Maharashtra Bhavan,
Bora Masjid Street,
Behind Handloom House
Fort, Mumbai 400 001 ... APPLICANT

(By Advocate Shri G.S. Walia)

VERSUS

1. Union of India, through
General Manager
Western Railway
Head Quarters Office
Churchgate,
Mumbai - 400 020

2. Divisional Railway Manager
Mumbai Division
Western Railway,
Mumbai Central,
Mumbai - 400 008 .. RESPONDENTS

(By Advocate Shri V.S. Masoorkar)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BENCH AT MUMBAI

ORIGINAL APPLICATION NO 851 OF 1999

Laxman D. Tambe,
Retired Electrical Fitter
Grade I (Train Lighting),
Bombay Division,
Western Railway

Residing at

1/16, Navshakti Society
1, Nehru Nagar
Kanjrumarg (E)
Mumbai

C/O G.S. Walia,
Advocate, High Court
16, Maharashtra Bhavan,
Bora Masjid Street,
Behind Handloom House
Fort, Mumbai 400 001 ... APPLICANT

(By Advocate Shri G.S. Walia)

VERSUS

1. Union of India, through
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Mumbai Division
Western Railway,
Mumbai Central,
Mumbai - 400 008 .. RESPONDENTS

(By Advocate Shri V.S. Masoorkar)

O R D E R

As both the OAs raise common question of law and fact, they are disposed of by this common order.

2. The applicant in OA-836/99 having reitred as Electric Fitter Grade I on 31.5.97 has sought relief of treating his service rendered as casual labour w.e.f. 20.1.64 to 30.10.70 as a qualifying service and 50% of which is to be reckoned towards pensionary and retiral benefits alongwith 18% interest p.a. whereas the applicant in OA-851/99 retired on 30.6.96 as Electric Fitter Grade I and is claiming reckoning of half of the period rendered w.e.f. 4.6.65 to 29.7.70 as qualifying service for the purpose of pension. The respondents in their reply resisted the claim of the applicant on the ground of limitation and further contended that the applicant was granted temporary status w.e.f. 1.7.70 and regularised we.f. 78.74 and had already been accorded the benefit of qualifying service by reckoning 50% of this period towards pension andthe other period upto the date of retirement has been treated fully for the prupose of pension.

3. The applicant in OA-836/99 vide Annexure A has annexed a casual labour card to establish that with notional breaks he had worked as casual labour on monthly basis w.e.f. 20.1.64 to 30.10.70. The applicant was accorded temporary status w.e.f. 2.7.70 and was subsequently regularised as Substitute Khalasi on 7.8.94. The intervening period from 2.7.70 to 7.8.74 has been rendered for the purpose of pensionary benefits to the extent of 50% and thereafter the period from 7.12.74 till the date of retirement, i.e., 31.5.97 has been treated in

full for the purpose of penisionary benefits. The applicant has sought a grievance that his service rendered as casual labour from 1964 to 1970 has not at all been reckoned for the purposeof qualifying service and consequently for pensionary benefits. Taking resort to OM dated 14.5.68 issued by the Government of India, Ministry of Finance, which was subsequently adopted by the Railways in their letter dated 14.10.70 contended that on attainment of temporary status on completion of 120 days continuous service the entire period is to be counted as qualifying service for pensionary beneits and the only exception is the daily rated casual labour and those employed on projects. The learned counsel for the applicant contended that the grant of temporary status is automatic and on completion of 120 days of service as casual labour on monthly basis the same is acquired by a casual labour. The applicant placing reliance on the casual labour card and the letters issued which he has annexed with the MP-862/2000 states that there is no dispute regarding his being continued as casual labour on daily wages but paid on monthly basis. The stand of the respondents that the relevant record is not traceale will be of no avail as while disposing of MP-862/2000 this Court categorically observed that there is no necessity to allow the applicant to either adduce evidence or to issue a commission for examintion of the witnesses as the applicant has placed on record the service casual labour card and the fact is not in dispute. In this background it is stated that even if the record is not treaceable the same has not been specifically denied by the respondents. The applicant further contended that he has taken a specific plea that he had worked as a casual labour with occasional breaks which are to be ignored and was working

in open lines and gettinghis monthly salary computed on monthly basis and this averment has not at all been controverted by the respondents in their reply. The stand of the applicant is that he had come to know for the first time about this casual labour service not reckoned for the purpose of pensionary benefits to the extent of half of the service when the pension papers have been prepared by the respondents after revision. Placing reliance on a ratio of the Apex Court in M.R. Gupta v. Union of India, 1995 SCC (L&S) 1273 andalso on D.N. Pandey v. Union of Inida, 1991 (17) ATC 26 it is contended that as the grievance of the applicant is regarding proper fixation of his pension the same is a of recurring cause of action and arises every month on the occasionof payment of pension and as such the case of the applicant is not barred by limitation. It is also contended that as per the Railway Board's letter dated 14.10.80 ibid the applicant has automatically acquires the temporary status on completion of 120 days of continuous service and as such this period should have been reckoned at least 50% for the purpose of calculating his pensionary benefits. Placing reliance on Rama Prasad Singh Roy v. Union of India & Others, 1988 (7) ATC 399, it is contended that the intentional breaks givenby the Railway authorities cannot be a ground to deny the benefits to him. The applicant has also placed reliance on an order passed in OA-1165/93 dated 7.7.99 to contend that in a similarly situated case of Civil Aviation the circular issued by Government of India in 1968 was made applicable to the applicant therein, as such the applicant is also entitled for the same relief. As far as the limitation is concerned, it is contended that the official PPO was issued on 10.9.98 and the applicant has filed this OA within one year as prescribed under

which debars the daily rated casual labour from the benefits of the circular. It is contended that there is no provision for automatic accord of temporary status and the applicant being a daily rated employee cannot be allowed to count this service as qualifying service for the purpose of pension. The respondents contended that

in open lines and gettinghis monthly salary computed on monthly basis and this averment has not at all been controverted by the respondents in their reply. The stand of the applicant is that he had come to know for the first time about this casual labour service not reckoned for the purpose of pensionary benefits to the extent of half of the service when the pension papers have been prepared by the respondents after revision. Placing reliance on a ratio of the Apex Court in M.R. Gupta v. Union of India, 1995 SCC (L&S) 1273 andalso on D.N. Pandey v. Union of Inida, 1991 (17) ATC 26 it is contended that as the grievance of the applicant is regarding proper fixation of his pension the same is a of recurring cause of action and arises every month on the occasionof payment of pension and as such the case of the applicant is not barred by limitation. It is also contended that as per the Railway Board's letter dated 14.10.80 ibid the applicant has automatically acquires the temporary status on completion of 120 days of continuous service and as such this period should have been reckoned at least 50% for the purpose of calculating his pensionary benefits. Placing reliance on Rama Prasad Singh Roy v. Union of India & Others, 1988 (7) ATC 399, it is contended that the intentional breaks givenby the Railway authorities cannot be a ground to deny the benefits to him. The applicant has also placed reliance on an order passed in OA-1165/93 dated 7.7.99 to contend that in a similarly situated case of Civil Aviation the circular issued by Government of India in 1968 was made applicable to the applicant therein, as such the applicant is also entitled for the same relief. As far as the limitation is concerned, it is contended that the official PPO was issued on 10.9.98 and the applicant has filed this OA within one year as prescribed under

Section 21 of the Administrative Tribunals Act of 1985 (for short, A.T. Act). It is further contended that his case has notbeen brought under the category of persons who are not entitled for this benefit as per the circular of 1980 of the Railways ibid as casual labour cadre is not given to a daily rated casual labour but issued to a casual labour employed on long term basis and there has not been denial to his being monthly rated casual labour and was paid on monthly basis.

4. The respondents in their reply rebutted the contentions of the applicant and stated that the applicant cannot be made entitled for reckoning the period of casual labour service for the purpose of qualifying service and pensions unless he has acquired the temporary status and worked for 120 days thereafter. According to the learned counsel for the respondents the applicant under the garb of treating this period as a qualifying service in fact is seeking his temporary status w.e.f. 1964 which is hopelessly barred by limitation and the Tribunal has no jurisdiction to entertain this relief. It is also objected to that the applicant has not exhausted the remedies by filing a representation as no grievance has been put to the Government and the respondents were constrained to take any decision. The respondents have further contended that the applicant was a daily rated casual labour and as such he cannot be accorded the benefit of circular dated 14.10.80 in view of its clause 2 which debars the daily rated casual labour from the benefits of the circular. It is contended that there is no provision for automatic accord of temporary status and the applicant being a daily rated employee cannot be allowed to count this service as qualifying service for the purpose of pension. The respondents contended that

regularisation of casual labour is dependent upon the availability of the vacancies and the OM issued in 1968 by the Government of India is not pari materia with the Railway Rules, as for regularisation the pre-requisite is screening and in the eventuality the Railway servant fails to present himself or fails in the screening he cannot be accorded the benefit of regularisation. The learned counsel of the respondents distinguised the ratios citedby the applicant and contended that M.R. Gupta's case (supra) would not be applicable as the applicant is seeking grant of temporary status under the garb of resorting the benefits under the Railway circular, as unless the applicant is accorded temporary status he would not be entitled for reckoning this period as qualifying service. As regards the other cases it is contended that these cases do not pertain to the Railways and therein no prayer for grant of temporary status was made. It is lastly contended placing reliance on the ratio laid down by the Apex Court in Union of India v. K.G. Radhakrishana Panickar, AIR 1998 SC 2073 that a person engaged on daily rates casual laboiur will not be entitled to claim benefits of the period under the scheme and this is possibleonly if he works for 120 days after accord of temporary status which the applicant was accorded and acquired in the year 1970.

5. I have carefully considered the rival contentions and perused the material on record. No doubt, it has been established that the applicant had worked as a casual labour on daily wages w.e.f. 20.1.64 to 30.10.70 and this has been controverted by the respondents in their counter reply. The plea taken by the respondents

regarding limitation to my mind is very much sustainable and legally tenable. The applicant who had worked till 31.10.70 as a casual labour had not challenged his accord to temporary status which was bestowed upon him by the respondents on 2.7.70. Thereafter also the applicant has not questioned the grant of temporary status to him till his retirement. At the fag end of the service and after retirement the applicant is assailing the action of the respondents and claiming benefit of qualifying service for the period he worked as a casual labour by raising a grievance that the grant of temporary status is automatic and it is acquired by a casual labour having rendered 120 days of service, which he completed in the year 1964. The plea of the applicant that from the PPO he has come to know about non-reckoning of the period from 1964 to 1970 as qualifying service had given rise to the cause of action is not logical and rational. Unless the issue of grant of temporary status to the applicant from the year 1964 after he had rendered 120 days service as casual labour is not gone into his subsequent relief of treating this period as qualifying service cannot be adjudicated upon. As provided under Section 21 (2) (a) and (b) of the A.T. Act the Tribunal has no jurisdiction to adjudicate a cause of action which had arisen prior to three years of the date of coming into force of the A.T. Act. The grievance in the present case is according temporary status to the applicant w.e.f. 1964 is beyond the jurisdiction of the Tribunal and as such cannot be legally gone into. The present OAs are barred by the doctrine of dealy and laches and the ratios cited by the learned counsel of the applicant in M.R. Gupta's case (supra) would be not available to him as in that case the question was fixation of pay and the cause of action had arisen every month on payment of salary, whereas in the present

case mere payment of less pension every month would not give rise to recurring cause of action unless the period rendered as casual labour by the applicant is reckoned for the purpose of pension. This application is filed in fact for refixation of pension which cannot be granted to the applicant unless he had worked 120 days continuously after accord of temporary status in theyear 1964. The case of action had arisen in the year 1964 and not being a recurring one would be hit by the provisions of Section 21 of the A.T. Act. In this view of ours we are fortified by the ratio of the Apex Court in the case of S.S. Rathore vs. State of M.P., AIR 1990 SC 10=1989 (2) ATC 521. The Full Bench of the Tribunal in the case of Mahabir and Others v. Union of India, 2000 (3) ATJ 1, has held that the provisions of Section 21 of the A.T. Act would be applicable in the case of casual labour too. I find from the record that the respondents have rightly accorded the pensionary benefits to the applicant by reckoning the period rendered by him after accord of temporary status to the date of his regularisation i.e. w.e.f. 2.7.70 to 7.8.74 strictly in accordance with the circular of Railway Board dated 14.10.80 half of the service rendered during this period has been treated as qualifying service for the purpose of pension and thereafter the full service was counted from 7.12.74 to 31.5.97. As on merits also I find that the applicant has failed to show that he had worked as a casual labour not as daily rated casual labour but as a casual labour on monthly basis. Documents attached by the applicant in the form of casual labour card and certificate issued by the respondents clearly show that he has been appointed and continued as a casual labour on daily wages. It has not been established by the applicant that he had worked as a

casual labour on daily wages being paid on monthly basis which entitles him for accord of benefit as provided in the letter dated 14.10.80. Whatsoever may be, the applicant is not entitled for benefit of letter dated 14.10.80 ibid unless he is accorded temporary status after completion of 120 days service in 1964. As this court is without jurisdiction to entertain the grievance of the applicant for reckoning this period from 1964 to 1970 as qualifying service for the purpose of pension the same cannot be adjducated upon under the relevant rules and the provisions of A.T. Act.

6. Having regard to the discussion made above and the the reasons recorded, I find no merit in the OAs and the same are accordingly dismissed, but without any order as to costs. Let a copy of this order be placed in the case file of each case.

S. Raju

(Shanker Raju)
Member(J)

'San.'