

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD.

* * *

O.A. 1020/92

Dt. of Decision : 24.2.94.

Smt. N. Atchemma

.. Applicant.

Vs

1. The General Manager,
South Central Railway,
Secunderabad - A.P.*
2. The Divisional Railway Manager,
South Central Railway,
Vijayawada.
3. The Ministry of Pension and
Pensionary Welfare,
Government of India;
New Delhi, Behind Khan Market,
New Delhi - 110 003.

.. Respondents.

Counsel for the Applicant : Mr. K. Venkateswarlu

Counsel for the Respondents : Mr. J.R. Gopal Rao,
SC for Rlys.

CORAM:

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

ORDER

¶ As per Hon'ble Shri A.B. Gorthi, Member (Admn.) ¶

The applicant was initially engaged as a Gang Woman under CPWI, Nellore on 10.1.1970. She continued to work as such for over 25 years with intermittent breaks in her engagement. The respondents gave her temporary status w.e.f., 1.1.85 and regularised her services w.e.f. 10.8.86. She retired from service on 31.12.1988 on attaining the age of superannuation. She was given Gratuity and Provident Fund counting her service only from 1.1.85 to 31.12.1988. Her claim is, that her entire service should be taken into consideration for the purpose of granting her pensionary benefits.

2. The respondents in their reply affidavit have stated that on a reconsideration of the case of the applicant, she was granted temporary status from 10.10.78. Accordingly an amount of Rs. 6,268/- was paid towards arrears of pay, in addition to the following retirement benefits which were granted to her:-

- i) Service gratuity Rs. 2,866/-
- ii) Terminal gratuity Rs. 2,697/-
- iii) Leave encashment Rs. 6,599/-

3. In calculating the above amounts, the respondents took into consideration the service details as under:-

Temporary status from
10-10-78 to 9-8-86.

Regular service from
10-8-86 to 31-12-88.

(11) (53)

4. Counting 50% of the temporary service and full regular service the qualifying service of the applicant, was calculated as 5 years and 11 months and 8 days.

5. Mr. K. Venkateswarlu learned counsel for the applicant disputed the above calculation of the respondents. He contended that the applicant having rendered almost continuous service for a period of 25 years, the respondents had no justification in delaying the grant of temporary status and ~~her~~ regularisation in the manner in which they did. He has drawn my attention to ^a judgement of the Calcutta Bench of the Tribunal in Smt. Bhagabati Nayak Vs Union of India 1993 (1) ATJ 429. In that case the Tribunal made a detailed reference to the judgement of the Supreme Court in the State of Haryana Vs ^a Piara Singh and others (1992) 4 SCC 188 wherein the apex ^{court} observed that "So far as work charged employees and casual labourers are concerned, effort must be made to regularise them as far as possible and as early as possible subject to their fulfilling the qualification, if any, prescribed for the post and subject also to availability of work". It was further observed that if a casual labour is continued for a fairly long spell, say two or three years, a presumption may arise that there is regular need for his/her service. Accordingly the Tribunal held that ~~the~~ half the service of the husband of the applicant according to the Railway Rules should be taken to be qualifying

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service for the purpose of pension. That was the case were the employee was not regularised. Here in the present case the applicant was duly regularised in a Group D post with effect from 10.8.1986. The question that comes up for consideration here is, regarding the temporary service rendered by the applicant.

6. The applicant would be entitled to temporary status as soon as she completed 120 days as a Casual Gang Woman. In this view, I am supported by decision of the Supreme Court in Union of India Vs Basant Lal & others JT 1992 (2) SC 459. Relevant portion of the judgement is reproduced as below:-

"The case of the workers was that they had worked for over 120 days continuously in the Construction Division of the Northern Railway other than projects and as such they had acquired temporary status. The Tribunal held that admittedly all the applicants before them had completed more than 120 days of continuous service as such they had acquired temporary status. The workers had been given casual labour cards. The Tribunal also referred to a letter of General Manager, Northern Railway dated 29.12.1978 which contained reference of earlier instructions vide letters dated 21/22.2.1972, 23.5.72 and 27.11.1975 in accordance with which casual labourers whether employed on project or otherwise who had completed four months continuous service were required to be considered for employment Screening Committee for absorption against regular Class IV posts and

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(13)
(33)

casual labour on project who as a Rule be appointed against Class IV posts that may be required for operation and maintenance of new assets created and they were eligible for appointment on new section of the open line of the Railway concerned irrespective of the limitation of the immediate area of the construction. The workers had alleged in para 37 of their application that the aforesaid instructions which had statutory force were not being implemented by the Railways. In reply to the said allegation the Railways admitted the same as a "matter of record". The Tribunal in the above circumstances held that the applicants before them had worked for more than 120 days as such they will be deemed to have acquired temporary status and this conclusion was further supported by the letter of the General Manager, Northern Railway, dated 29.12.1978 extracted above.

7. In view of the above, the applicant would be entitled to temporary status as soon as she completed 120 days from the date of her initial engagement. I therefore direct the respondents to grant her temporary status from the date she completed 120 days from the date of her initial engagement. The service rendered by the applicant after thus having acquired temporary status would be considered for the purpose of calculating her pensionary benefits in accordance with

the extant rules. The pensionary entitlements of the applicant will thus be recalculated by the respondents and paid to her within a period of 4 months from the date of communication of this order.

8. The application is allowed in the above terms without any order as to costs.

[Signature]
(A.B. GORTHI)
MEMBER (ADMN.)

Dated : The 24th February 94.
(Dictated in Open Court)

[Signature] 11-3-94.
Deputy Registrar

To spr

1. The General Manager, S.C.Rly, Secunderabad-A.P.
2. The Divisional Railway Manager, S.C.Rly, vijay
3. The Ministry of Pension and Pensionary Welfare,
Govt.of India, New Delhi,
behine Khan Market, New Delhi-3.
4. One copy to Mr.K.venkateswarlu,
Moosarambagh, Hyderabad.
5. One copy to Mr.J.R.Gopal Rao, S
6. One copy to Library, CAT.Hyd.
7. Copy to All Reporters and All Ben
of CAT.Hyd.
8. One spare copy.

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[Handwritten notes]
10/3/94