

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.1656/97.

Dt. of Decision : 4/9/98

- | | |
|---------------------------|-------------------------------|
| 1. B.L.Sunkappa | 31. Eeramma, LR of |
| 2. Y.Michel | A.Hanumanthu |
| 3. K.Sundaramma | 32. Ch.Lakshmanna |
| L.R. of Late D.Denial | 33. A.Pakkerappa |
| 4. B.Gorantla | 34. Bhagyamma, LR of |
| 5. Ananda Rajulu | P.Purushotham |
| 6. Siddamma L.R. of | 35. K.Pakkerasabu |
| S.Muneppa | 36. Lakshamma, LR of |
| 7. B.Yamunappa | Late B.Buddappa |
| 8. Rajamma, L.R. of | 37. K.Rajamma, LR of |
| Late Peddaiah | Late Dhaved |
| 9. H.Erapanna | 38. T.Ramudu |
| 10. B.Yerrappa | 39. P.Jemus |
| 11. A.Ananthamma, L.R. of | 40. Narasamma, LR of |
| A.Nagappa | A.Basappa |
| 12. A.Veeranna | 41. T.Gangappa |
| 13. Shaik Madhar | 42. K.Bhemappa |
| 14. Venkamma, LR of | 43. Bodemma, LR of P.Buddanna |
| J.Ayyanna | 44. P.Habraham |
| 15. B.K.Ramudu | 45. K.Nawanepathy |
| 16. K.Laleppa | 46. B.Ranganna |
| 17. Shaik Buden | 47. Kadhira, LR of |
| 18. B.Chnnalinganna | B.Lakshmanna |
| 19. B.Naganna | 48. Hanumakka, LR of |
| 20. B.Narayana | K.Mallappa |
| 21. Dhurgamma, LR of | 49. C.Hanumanthu |
| Late K.Thippanna | 50. Y.Bojjanna |
| 22. K.Narayana | 51. K.Hajaperan |
| 23. Gori Bhee, LR of | 52. Habeeb Bee, LR of |
| Kasim Sab | Shaik Ibrahim |
| 24. K.Urukundhappa | 53. Jayamma, LR of K.Sunkappa |
| 25. J.Yallappa | 54. Gangamma, LR of |
| 26. B.Rangaiah | P.Thimappa |
| 27. Chobalesu | 55. C.Narasappa |
| 28. Narasamma, LR of | 56. Rathamma, LR of |
| B.Yerrappa | Late Samuel |
| 29. Meremma, LR of | 57. Pothanal Erappa |
| C.Hussainappa | 58. Budhur Yesobu |
| 30. B.Pedda Anjanaiah | 59. K.Rangappa |
| | 60. Santhosamma LR of |
| | Lakshmanna |
| | 61.Shareef Bee LR of Shaik |
| | Mahaboob |
| | 62.Eeramma, LR of |
| | B.HanumanthuRs |
| | 63.Silar Saheb |

Vs

.. Applicants.

- | | |
|---|-----------------|
| 1. The Divl. Personnel Officer, SC Rly,
Guntakal, Ananthapur District. | |
| 2. The Asst. Personnel Officer, SC Rly,
Guntakal, Ananthapur District. | .. Respondents. |

Counsel for the applicants : Mr.T.Lakshminarayana

Counsel for the respondents : Mr.N.R.Devaraj, Sr.CGSC.

CORAM:-


THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

ORDER

Heard Mr.T.Lakshminarayana, learned counsel for the applicants and Mr.W.Satyanarayana for Mr.N.R.Devaraj, learned counsel for the respondents.

2. There are 63 applicants in this OA. It is stated that all the applicants had joined as casual labour as Tranship Hamalies/Luggage Porters/Goodshed Porters/ Attenders etc., between the year 1950 and 1954. All the applicants were reported to have been regularised on 22-11-72 and absorbed in various departments in South Central Railway. The details of names, the date of appointment, the date of retirement, the pension drawn and also the commencement of regular service as per SR is enclosed at Annexure-III at page-21 to the OA. All the applicants retired on different date, some time between 1980 and 1990 which is included in the above referred annexure. The applicants are of the opinion that their qualifying service was not correctly calculated for granting them pension and other pensionary benefits from the date they were brought on temporary status till they were regularised. Hence, they filed OA.55/93 on the file of this Bench. That OA was disposed of by order dated 26-07-96. The relevant portions of the judgement in OA. 55/93 are in paragraphs 6 & 7. The above two paragraphs are reproduced below:-

"But the learned counsel for the applicants disputes the date of granting them Temporary Status. He further submits that it has been wrongly entered in the service register and because of that 50% qualifying service has been calculated less than what it should be. This factual verification in regard to conforment of temporary status of the applicants has to be done. In order that the applicants get satisfied in regard to the correctness of the entry of their conferment of temporary status and the date of regularisation, they should be allowed to see the service register available with the



respondents. In order to facilitate this, administration should inform them to come in a batch of six every day starting from 1st September and show them the service register and also permit them to take note of various dates mentioned in the service register. As it is stated that the applicants are illiterates or semiliterates they may take along with them one of educated employee/ex-employee for checking the records. Above should be done by an APO concerned so that the applicant will get satisfied that they are shown by a responsible officer. If the dates shown in the records are wrong in the opinion of the applicants, they are free to file representation to the concerned respondent indicating correct date and also reasons for treating that date mentioned by them as correct. If such a representation is received, the concerned respondent will suitably advise the applicant after scrutiny. After reply to the applicants has been given after verification, if any relief is to be given on that basis in regard to pension and pensionary benefits, the respondents will take suitable action in this connection.

In the result, there is no need to give any direction in regard to counting of 50% of the casual service from the date of conferment of the Temporary Status till they were regularised. The respondents themselves have fairly submitted that they will count 50% of their service for pension and pensionary benefits. The verification as mentioned above should be initiated from 1st September 1996 and completed as per schedule. The applicants thereafter, if so advised, may submit a representation if any correction is required in regard to their date of conferment of Temporary Status and date of regularisation. If such a representation is received by the respondents, the same should be disposed of within two months from the date of receipt of the representation in accordance with law. If on the basis of that scrutiny, the respondents come to a conclusion that 50% calculated earlier needs upward revision, the same should be done and pension and pensionary benefits recalculated on that basis."

It is stated that the respondents had informed of the results of the verification. But the applicants filed CP.10/97 in OA.55/93 for not implementing the direction given in the judgement. That CP was disposed of by the following order:-

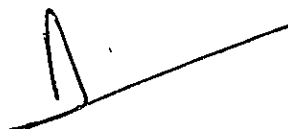
"The respondents may once again summon applicants individually and their cases discussed with them, records shown to them and the contentions and the reply recorded in the file

after obtaining the signatures of the applicants present. A copy of the recorded note should be sent to the applicants. In case any of the applicants are not appearing before them, then the respondents themselves should consider the case in the light of the contentions made by them and dispose of the case in accordance with law. Even though they are not present, they also should be replied accordingly in writing."

The respondents submit that ^{they} had complied with the direction given in the CP also. However, the applicants are not satisfied with the reply. They submit that the period of temporary status of 12 employees mentioned in para-6.3 of the OA earlier to 1-1-61 was also taken into account for purpose of fixing their pension and pensionary benefits. But the applicants were denied in regard to the temporary status put in by them earlier to 1-1-61. The learned counsel for the respondents especially quoted the case of B. Pedda Hanumanthu and Sk. Abdul Rahman to state that in those two cases the temporary status services earlier to 1-1-61 were also taken into account. Hence, the applicants also should be given the benefit of their temporary status services earlier to 1-1-61 to determine their qualifying services.

3. This OA is filed praying for a direction to the respondents to count the qualifying service to the applicants from the date of their attaining temporary status on 15-08-58 to till the date of regularisation on their respective dates mentioned in Annexure-III and for a consequential fixation of their pension and pensionary benefits accordingly.

4. A reply has been filed in this OA. The respondents contend that the period spent by them as temporary status casual labour will only be counted to the extent of 50% of that service for purpose of determining



qualifying service. The qualifying service will thus be calculated by adding 50% of the temporary status service from 1-1-61 to the regular service after their regular appointment. This is in accordance with the office Memorandum No.F(E)III/68/PNI/21 dated 22-7-70 circulated under Sl.Circular No.120/88. For none of the casual labourers the temporary status service earlier to 1-1-61 was taken into account. The cases of 12 casual labourers mentioned by the applicants has been examined by the respondents and submitted in the reply that none of their temporary status casual services earlier to 1-1-61 was taken into account. However, in some cases the records are not available as it is very old and those casual labourers had retired about 10 to 15 years back. As number of cases have been checked the relief asked for in this OA by the applicants could not be sustained on the basis of that examination. Hence, the respondents submit that there is no merit in this OA. They also submit that in view of the judgement in O.A.55/93 and on the basis of the direction given in CP.10/97 in the judgement the applicants were informed fully of the position and hence nothing further can be done in this case by the respondents.

5. The applicants' main contentions are as follows:-

(1) The period spent by 12 casual labourers when they were working as temporary status casual labour earlier to 1-1-61 were taken into account in determining the qualifying service. The learned counsel for the applicants specially mentioned the case of two temporary status casual labourers viz., S/Shri B.Pedda Hanumanthu and Sk. Abdul Rahman as an example to contend as above. The applicants



services from the date of grant of their temporary status from 15-8-58 were not taken into account for determining the qualifying service but were taken only for the period from 1-1-61 onwards. Thus, the applicants were discriminated in fixing their qualifying service for purpose of payment of pension and pensionary benefits.

(2) The applicants were to be brought on temporary status after completing 180 days of continuous service and they should be regularised one year after their satisfactory service on obtaining minimum standard literacy and after being selected by a duly constituted committee of officers. The applicants were appointed as Tranship Hamalies/Luggage Porters etc., in Guntakal Division and the Guntakal Division printed the service condition for the Tranship Casual labourers and issued ^{the} circular in the year 1958. The para-6 of that circular is relevant in this case. As per that para the applicants should have been brought on temporary service after they had completed 180 days of continuous service after their engagement and regularised one year thereafter. If that is so, the applicants should have been regularised in 1958 itself and hence elimination of their services earlier to 1-1-61 is irregular. The learned counsel for the applicants read out the para-6 of that circular. That para is reproduced below:-

"This shed has been sanctioned 281 posts of labourers. The mode of recruitment is that they are first taken as ordinary Casual Labourers on daily wages, and on completion of 180 days of continuous service they are brought on to Central Pay Commission scales of pay, and on completion of one year satisfactory service and on obtaining a minimum standard of literacy, they are absorbed in the regular class IV cadre, after being selected by a duly constituted committee of officers."



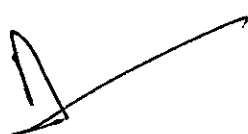
6. The above two contentions were considered. The applicants submit that in some cases temporary services earlier to 1-1-61 was taken into account. They have quoted the name of 12 such casual labourers in para 6.3 of the OA. In the reply the particulars of the employees in whose cases pensionary benefits alleged to have been calculated from 15-8-58 was examined by the railway authorities. In the case of Sri Y.Maichel, Sk.Abdul Rahman, G.Mudukappa, P.L.Lingappa and K.Thippanna, it has been stated that 50% of the Casual Labour service from 1-1-61 only had been taken in to account on the basis of records. In the case of Sri B.Lingappa, B.Pedda Hanumanthu, K.Venkateswarlu, K.Anjanaiah, G.Mudikappa and P.Eliya the service records were not traceable at this distant date as they had retired about 15 years earlier. When the records available in case of some of the casual labourers the contention of the applicants is not found to be in order. Hence, the respondents submit that the applicants have not made out their case.

7. In order to verify the first contention that in some case of the casual labour employees, the casual labour service earlier to 1-1-61 was taken in to account the applicants were asked to produce the satisfactory evidence to prove their cases by order dated 21-7-98. It was also stated in that order that mere assertion saying that casual service prior to 1961 were taken into account in the case of some casual labourers cannot be countenanced unless satisfactory proof from the record is made available.

8. The learned counsel for the applicants only docketed of the services earlier to 1-1-61 which was reported to have been counted in the case of B.Pedda

Hanumanthu and Sk.Abdul Rahman. Relying on the service certificate of B.Pedda Hanumanthu bearing No.019788 dated 2-11-88 the applicants submit that the period of service in the case of B.Pedda Hanumanthu has been noted from 15-8-58 to 31-10-88. When that is so, it has to be taken that they were given qualifying service for that period. But that submission is not complete and appropriate. The period of services is only to be noted. It does not say that the period of services noted has also been taken into account for purpose of calculating the qualifying services. The total service including in the temporary service is only indicated and that cannot go to prove to come to the conclusion that Mr.B.Pedda Hanumanthu was given the benefit of his 50% of earlier service as temporary status casual labour earlier to 1-1-61. The PPO bearing No.A/PEN/GTL/Rlys./SP/7054 dated 31-10-88 also does not indicate the qualifying service taken in the case of said B.P.Hanumanthu. The service certificate bearing No.031206 dated 3-8-90 of Mr. Sk. Abdul Rahman was also examined. The position as explained above in the case of Mr.B.P.Hanumanthu equally applies in this case also. The PPO bearing No.A/PEN/GTL/Rlys/8191 dt. 7/90 also does not indicate the qualifying service.

9. From the above the applicants have not made out any case to come to the conclusion that in some cases the 50% of temporary status service earlier to 1-1-61 has been taken into account for the purpose of counting of the qualifying service. Mere ascertainment that it was done in some cases without satisfactory proof cannot be relied upon to grant the relief to the applicants in this OA. The respondents have examined number of cases and had come to the conclusion that none of them were given the benefit of



the temporary status casual service earlier to 1-1-61 and they followed strictly the instructions contained in the Sl. Circular No.120/80. Para (e) of that circular is relevant which is reproduced below:-

"Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1-1-61 for which authentic records of service may be available."

10. Hence, in view of what is stated above, I find that the respondents acted in accordance with the rule and no benefit bereft of rules can be granted to the applicants and such benefits bereft of rule had also not been granted to others as per records. Hence, the first contention is rejected. No further roving enquiry on the basis of the submission of the applicants can be ordered.

11. It is not understood whether circular purported to have been issued in the year 1958 by Guntakal Division is in order or not and whether the Divisional Superintendent can issue such a circular when the casual labour engagement and absorption are to be done in accordance with the Railway Board's circular issued by the General Manager. The learned counsel for the applicants could not satisfy me in regard to the authenticity of the circular issued by the Guntakal Division.

12. Be that as it may, in para-6 of that circular it is nowhere stated categorically that they should necessarily be brought as a regular Khalasi one year after the completion of their temporary status service. They have to be selected by a duly constituted Committee of officers and they should also possess the minimum standard of literacy.



It is not clear whether the applicants were subjected to any screening at that time. If the above circular is not followed immediately one year after the completion of the temporary status, the applicants should have challenged the in-action of the respondents in that connection then itself. It appears that they had taken no action. After the retirement they cannot question the wisdom of the respondents in not regularising their services as per para-6 extracted above. Hence, relying on this para no benefit can be given to the applicants herein. Even presuming that the action as above as indicated in the circular has to be followed the applicants should categorically submit in whose cases the circular was fully followed and whether they are their juniors. Merely saying that the respondents had followed in the case of juniors without any proper record to say so, they cannot get any benefit out of that contention. If their juniors had been conferred with regular service as per para-6 of the circular, then the applicants should have protested against that at that time itself. Protesting against regularisation of their juniors as per the circular 40 years later and that too after all of them had retired from service cannot be a reason to take note of that submission.

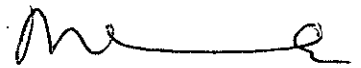
13. In view of what is stated above, the second contention also has to be rejected.

14. Though it is not stated in the OA, the learned counsel for the applicants submitted that the encashing of leave at their credit at the time of retirement as per the 4th Pay Commission accepted recommendation were not given to the applicants. He also submits that the applicants had



represented their cases. But -no reply had been given to them. As no representation have been enclosed to the OA, no view can be taken in this connection. However, if so advised the applicants may submit a detailed representation in this connection for encashment of their leave available to their credit at the time of their retirement in accordance with the instructions then prevailing. If such representations are received, the same may be examined by the respondent authorities if leave records are available and suitable reply issued to them. In case no leave records are available the representations if any, received should be replied stating so.

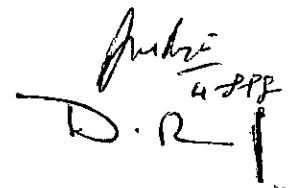
15. With the above observation in para 14 supra, the OA is dismissed. No costs.



(R. RANGARAJAN)
MEMBER (ADMN.)

Dated : The 4th August, 1998.

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OA.1656/97

Copy to:-

1. The Divisional Personnel Officer, South Central Railway, Guntakal, Ananthapur District.
2. The Asst. Personnel Officer, South Central Railway, Guntakal, Ananthapur District.
3. One copy to Mr. T. Lakshminarayana, Advocate, CAT., Hyd.
4. One copy to Mr. N.R. Devaraj, Sr. CGSC., CAT., Hyd.
5. One copy to B.R.(A), CAT., Hyd.
6. One duplicate copy.

srr

IP COURT

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PRAKASH MESHEER :
M(J)

DATED:

4/8/98

ORDER/JUDGMENT

M.A./R.A/C.P.NO.

in

C.A.NO.

1656/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

