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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

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SECTION OFFICER (Judl.)

FORM No. 4  
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUJARATI BENCH

ORDER SHEET

Org. App/Misc.Petn/Cont.Petn/Rev.Appl.....

192/2004

In O.A.

Name of the Applicant(s) Sri Gopal Nath

Name of the Respondent(s) U.O.I & O.R.

Advocate for the Applicant Mr. R. Sarma, A. Dey & A. Rahman

Counsel for the Railway/C.G.S.C. Alp Cereus

OFFICE NOTE DATE ORDER OF THE TRIBUNAL

3.9.2004

Heard Mr.R.Sarma, learned counsel for the applicant.

The O.A. is admitted, call for the records, returnable by four weeks.

List on 4.10.2004 for further orders

The application is admitted and is filed/C.F. in its original, deposited vide IPS/BD No..... 20G/114071

Dated..... 22/8/04

M. Gorey  
Dy. Registrar

22/8/04

Steps taken.....

bb

22.11.2004

None present for both the parties.  
List on 3.12.2004 for orders.

Notice & order  
sent to D/Section  
for issuing to  
resp. Nos. 1, 2 & 3  
by regd. A/D.

15/9/04

D/Memo No=1453

tx 1455 dt. 14/9/04

bb

3.12.2004

On the plea of Dr. M.C. Sarma, learned counsel for the respondents six weeks time is given to the respondents to file written statement. List on 21.1.2005 for orders.

I.C. Patel  
Member (A)

mb

16/9/04  
S/R awaited

1-12-04  
S/12 awaited.

11.2.05.

Service report is awaited. Reply has not been filed. Adjournded to 9.3.05.

lm

  
Member (J)

10-2-05  
S/12 awaited

d

7.3.05

No reply has been  
filed.

9.3.2005 Present: Hon'ble Justice Shri G. Sivarajan, Vice-Chairman

At the request of Dr M.C. Sharma, learned counsel for the respondents the case is adjourned to 30.3.2005 for filing written statement. No further time will be granted.

  
Vice-Chairman
29.3.05

No w/s has been  
filed.

nkm

30.3.2005 Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

Dr. M.C. Sarma, learned counsel for the respondents submits that he is filing written statement today. Learned counsel for the applicant submits that he has received a copy of the written statement. In the circumstances, post the case on 29.4.2005 for hearing. Rejoinder, if any, in the meantime.

  
Vice-Chairman

Service completed.

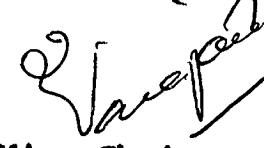
Service Completed.

*29/4*

28-4-05  
No rejoinder has been  
filed.

mb

29.4.2005 Dr. M.C. Sarma, learned counsel for the respondents submits that written statement has been filed. Counsel for the applicant seeks time to file rejoinder. Post on 20.5.2005.

  
Vice-Chairman

Resp. No. 1 is deleted. mb  
vide order dt. 29/4/05, 20.5.2005  
passed in MP 80/05.

*29/4/05*

Heard Dr. M.C. Sarma, learned counsel for the respondents. Heard Part heard. List on 17.6.2005.

*14-5-05*  
Member

No rejoinder has been  
filed.

Notes of the Registry | Date | Order of the Tribunal

17.6.2005

Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of. NO order as to costs.

*D. Reed*  
Member

*G. Jeff*  
Vice-Chairman

Know  
11/6/05  
ply, Counsel

nkm

14.7.05  
copy of the judgment  
has been sent to  
the Office for 14 days  
in case to the applicant  
by post

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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A./R.A. No. 192 of 2004

DATE OF DECISION 17.6.2005

Shri Gopal Nath .....APPLICANT(S)

Mr R. Sarma, Mr A. Roy and  
Mr A. Rahman .....ADVOCATE FOR THE  
APPLICANT(S).

-VERSUS -

Union of India and others .....RESPONDENT(S)

Dr M.C. Sharma, Railway Counsel .....ADVOCATE FOR THE  
RESPONDENT(S).

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE-CHAIRMAN

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other benches ?

Judgment delivered by Hon'ble Vice-Chairman

lps

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No. 192 of 2004

Date of Order: This the 17<sup>th</sup> day of June 2005.

The Hon'ble Justice Shri G. Sivarajan, Vice-Chairman

The Hon'ble Shri K.V. Prahladan, Administrative Member

Shri Gopal Nath  
Son of Late Dayal Nath,  
Resident of Village: Pub-Lumding,  
Murabasti, Mouza & P.S.: Lumding,  
District: Nagaon, Assam.

.....Applicant

By Advocates Mr R. Sarma, Mr A. Roy, and  
Mr A. Rahman.

- Versus -

1. The General Manager,  
North East Frontier Railway,  
Maligaon, Guwahati.

2. The Divisional Railway Manager,  
N.F. Railway, Lumding Division,  
Lumding, Assam.

.....Respondents

By Advocate Dr M.C. Sharma, Railway Counsel.

.....  
**ORDER**

**SIVARAJAN. J. (V.C.)**

The applicant retired from the Railways as a Sweeper Mason Grade-I under SSE(W)/L/Lumding on 31.8.2000. He has been given pension also. However, he is aggrieved by the calculation of pension. According to the applicant he entered the service of the Railways as a casual worker on 1.2.1966. Hence his

*9/2*

service for the purpose of pension has to be reckoned from 1.2.1966 till 31.8.2000.

2. The grievance of the applicant is that, according to the respondents, the applicant had worked as casual worker on 'no work no pay' basis only from 21.11.1967 upto 18.8.1973, that he was granted temporary CL/CPC status with effect from 19.8.1973 and was absorbed as regular Mason Helper in the scale of Rs.210-290 with effect from 1.1.1993.

3. Mr R. Sarma, learned counsel for the applicant, submits that the pension of the applicant has to be fixed by reckoning the period from 1.2.1966 to 31.8.2000 as according to him, temporary status as a casual worker was assigned to him from 1.2.1966 onwards. In other words, the counsel submits that the applicant had continuous service from 1.2.1966 and as such he is entitled to be assigned temporary status from that day onwards.

4. Dr M.C. Sharma, learned Railway Counsel, on the other hand, submits that as per records of the Railways the applicant had worked as casual labourer on a daily wage basis, in whose case the rule of 'no work no pay' prevails, only from 21.11.1967 and that he has been granted temporary status only from 19.8.1973. Counsel further submits that the applicant was subsequently absorbed on regular basis in the post of Mason Helper only with effect from 1.1.1983. Counsel further submits that as per Rule 2005 of the Indian Railway Establishment Manual Vol.II, the period of service as a casual worker rendered on the basis of 'no work no pay' rule will not be reckoned for pension purpose and that only 50% of the period of service after assigning temporary status will be reckoned

*Spb*

for pension. He further submits that pension of the applicant has been strictly worked out on the basis of the said rule.

5, We have considered the rival submissions. The relevant portion of Rule 2005 of the Rules reads as follows:

"(a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of the Manual. The rights and privileges admissible to such labour also include the benefit of D&A Rules. However, their service prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-à-vis other regular/temporary employees. This is, however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered.

Casual labour including Project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily rated casual labour will not be entitled to these benefits."

6. Though the applicant has stated that he joined the service under the Railways as casual worker on 1.2.1966, the respondents, with reference to the service book of the applicant, states that he joined the services only from 21.11.1967. It is further stated that from 21.11.1967 to 18.8.1973 the applicant had worked as a casual worker on 'no work no pay' basis and therefore, the said period cannot be reckoned for any purpose. The respondents have also stated that the applicant had been on temporary status only from 19.8.1973 and that he had been regularized as a Mason Helper from 1.1.1983. Rule 2005 of the rules extracted above shows that the period of service as a daily rated casual labourer

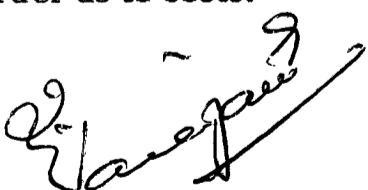


will not be reckoned for any purpose and further as per the rule only 50% of the period of temporary status will be reckoned for pension. It is seen that the pension of the applicant has been fixed on that basis. However, according to the applicant the pension must be fixed with reference to the period of service from 1.2.1966 onwards.

7. In the absence of materials to show that the applicant worked as casual labourer from 1.2.1966 that too continuously and in the absence of the order assigning temporary status to the applicant, it will not be possible for this Tribunal to say that the pension already calculated is not in accordance with law. In the circumstances we are of the view that if the applicant has got a case that he had service as casual worker from 1.2.1966 continuously and if he has got material to show that temporary status was assigned to him from 1.2.1966, certainly he can file a representation within one month from today with these records. If any such representation is filed, notwithstanding the particulars contained in the service book, the concerned respondent will consider the representation and pass appropriate orders on merits within a period of three months thereafter. The applicant will produce this order alongwith the representation before the respondents, if any filed pursuant to this direction.

The O.A. is disposed of as above. No order as to costs.

  
( K. V. PRAHLADAN )  
ADMINISTRATIVE MEMBER

  
( G. SIVARAJAN )  
VICE-CHAIRMAN

संघीय अधिकारिक अधिकारी  
Central Administrative Tribunal

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :::: GUWAHATI

27 AUG 2004

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(An application Under Section 19 of the Administrative  
Tribunal Act, 1985 )

गुवाहाटी अधिकारी  
Guwahati Bench

Original Application No. 192 of 2004

Between

Sri Gopal Nath .... Applicant

- Versus -

Union of India & Others .... Respondents

Sl.No.	Description	Page Nos
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2	Verification	12
3	Annexure - A	13
4	Annexure - B	14
5	Annexure - C	15

For the Tribunal Office

Date of Filing : 26/08/2004

Filed by :-

Registration :

Rajeswar Sarma

Signature :-

(Rajeswar Sarma)  
Advocate

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH:::GUWAHATI

O.A. NO. 192 OF 2004

Between

Sri Gopal Nath .... Applicant

-And-

Union of India & Others .... Respondents

SYNOPSIS

The applicant files this application praying for issuance of Mandamus, direction that the applicant joined his services on 1.2.1966 on temporary basis and as he was retired on 31-8-2000, so the applicant has 34 years 7 months as qualifying service and as such he is entitled to 50% of pension of the scale of pay w.e.f. 1.9.2000 of the post of Ex. Sweeper/Masson/Gr.I/LMG held by the applicant and presently the ~~maximum~~ pension of the applicant is being paid 1/3rd of average emoluments.

19-8-1973

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BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:::GUWAHATI

Original Application No. 192/2004

FIRED W/ 1  
GONE BY 27/2/04  
RECORDED 27/2/04  
RECORDED 27/2/04  
RECORDED 27/2/04

IN THE MATTER OF :

An application under Section 19 of  
the Administrative Tribunal Act, 1985

- And -

IN THE MATTER OF :

Sri Gopal Nath

Son of Late Dayal Nath

Resident of Village : Pub-Lumding,

Murabasti, Mouza & P.S. : Lumding

District : Nagaon, Assam.

..... Applicant

- Versus -

1. The Union of India

Represented by the Secretary to the  
Government of India, Ministry of Railway,  
New Delhi.

2. The General Manager,

North East Frontier Railway

Maligaon, Guwahati.

3. The Divisional Railway Manager,

N.F. Railway, Lumding Division,

Lumding, Assam.

.... Respondents.

Details of Application

1) The particulars against which the application is made :

The application is made for issuance of a

Mandamus/Direction/order in respect of granting 50% pension to the applicant according to Fifth Central Pay Commission.

2) Jurisdiction of the Tribunal :

The applicant declares that the subject matter in this application is within the jurisdiction of the Tribunal.

3) Limitation :

The applicant further declares that application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4) Facts of the Case :

4.1. That the applicant is a citizen of India by birth and a permanent resident of village Pub-Lumding, Mura Basti, Mouza and Police Station- Lumding, in the district of Nagaon, Assam.

4.2. That the applicant was appointed as temporary casual worker on 1-2-1966 at Jagiread and the applicant stayed there for a period of 3 years without break and thereafter the applicant was working as temporary casual worker regularly without any break in Sapormukh, Lumding, Dimapur, Jagiroad and lastly the applicant was transferred again to Lumding in the year 1973. It may be stated that during the period from 1-2-1966 till 18-8-1973, the applicant was regularly allowed to work on temporary basis in different places under the respondents and during the said period the applicant was paid the wages as per the provision of Railway Authority.

4.3. That the applicant states that the applicant was regularly appointed in the post of Sweeper Mason Grade-I with effect from 19.8.1973 and he was brought under the Third Central Pay Commission with effect from 19-8-1973. Be it mentioned here that the Third Central Pay Commission came into force with effect from 1-1-1973 and during the year of 1973-74 the applicant filed several representations before the respondents praying for regularisation of his services with effect from 1-2-1966 and the applicant prayed at that time to give the benefit of the Second Central Pay Commission with effect from 1-2-1966 as the Second Central Pay Commission came into force with effect from 1-7-1959, but the respondent authorities did not pay any attention to regularised his services as Sweeper Masson Grade-I with effect 1-2-1966 . Be it mentioned that the respondent authorities extracted his service as temporary worker without break in service for the period 1-2-1966 to 18-8-1973 and the applicant had legitimate expectation that his service shall be regularised with effect from 1-2-1966 and he would be paid his arrears of regular scale of pay for the period from 1-2-1966 to 18-8-1973.

4.4. That the applicant states that the applicant is an energetic , dutiful, obedient ,sincere,loyal to the service and during his service period he was never suspended, no departmental proceeding was drawn against him and there was no break in service.

4.5. That the applicant states that he was retired from service on superannuation on 31-8-2000 and till his superannuation the applicant was working in the capacity of Sweeper Mason Grade-I under SSE(W)/L/Lumding.

4.6. That the applicant states that during his entire service period from 1-2-1966 till 31-8-2000 the applicant has filed several application in different occasion before the respondent authorities praying for regularisation of his services with effect from 1-2-1966 and not 19-8-1973 as the respondent authorities extracted his service without break as temporary worker in different places including Jagiroad, Sapormukh, Lumding, Dimapur, but inspite of that the respondent authorities did not pay any heed and regularised his services with effect from 19-8-1973 instead of 1-2-1966. Be it mentioned that the applicant had reckonable service period 1-2-1966 till 31-8-2000 that is total 34 years 7 months of qualifying service.

4.7. That the applicant states that the respondent authorities issued a calculation sheet in the name of the applicant showing the date of entry in government service on 19.8.73/1.1.83 and date of retirement 31.8.2000 thereby in calculation it is shown the length of qualifying service 23 years 9 months 22 days of the applicant. It is pertinent to mention that the respondent authorities have taken the centre date between 19.8.1973 and 1.1.83 i.e. 9.11.1978 showing the total length of qualifying service as 21 Years 9 months 22 days, which has no justification at all.

A copy of calculation sheet dated 18.8.2000 issued by the respondent authorities is annexed hereto and is marked as Annexure-A.

4.8. That the applicant states that the respondent authorities issued pension payment order No. 0406003300 dated 18.8.2000 in favour of the applicant for credit of pension Rs. 1738/- and Relief 661/- total Rs. 2399/- with

( 5 )

effect from 1.9.2000 per month in his paying branch at United Bank of India, Lumding and the relief as increased from time to time is admissible on original pension of Rs. 1738/-

A copy of pension payment order dated 18.8.2000 is annexed hereto and is marked as Annexure- B.

4.9. That the applicant states that during the service career of the applicant, he had approached several times in different occasions to regularise his service in the post of Sweeper Mason Grade-I with effect from 1.2.1966 and payment of scale of pay since then till date but nothing had been done since then till date.

4.10. That the applicant states that he had filed a representation for fixation of pension on 20.9.2002 before the Hon'ble Minister for Railways, Govt. of India and the said application has been duly acknowledged on 7.10.2002 but nothing has been done and nothing is communicated to the applicant.

A copy of acknowledgement dated 7.10.2002 acknowledged by the Ministry of Railways, Govt. of India is annexed hereto and is marked as Annexure- C.

4.11. That the applicant states that the respondent authorities must take qualifying service w.e.f. 1.2.66 inspite of rendering services as temporary worker till 18.8.1973 and as such the action of the respondents is arbitrary, illegal and malafide. The respondents should have taken the qualifying service of the applicant w.e.f. 1.2.1966 as the respondent extracted the services of applicant for

the period ~~xxx~~ 1.2.1966 to 31.8.2000 i.e 34 years 7 months as qualifying services.

4.12. That the applicant states that Rule 49 of Central Civil Services (Pension) Rules 1972 which is applicable to Railway Pensioners reads as follows :-

" Rule 49 2(b) :

In case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service or thirty three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than (Rupees three hundred and seventy five per mensem).

Rule 49 (3)

( In calculating the length of qualifying service fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying services )"

4.13. That the applicant states that the President of India is pleased to decide that with effect from 1.1.1996, pension of all pensioners including Railway pensioners irrespective of their rate of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1.1.1996 of the post held by the pensioner and however the existing provisions in the rules governing qualifying service and minimum pension shall continue to be operative.

4.14 That the applicant states that he is entitled for full pension as per Rule 49 of CCS( Pension) Rules, 1972 as he has served 34 years 7 months qualifying services and therefore the respondents are bound to pay 50% of the minimum pay w.e.f. 1.9.2000.

4.15. That the applicant states that in calculation sheet prepared by the respondents, the date of entry in the government services has shown as 19.8.73/10.1.83 and thereby it is crystal clear that the respondents have erroneously shown the date ~~as~~ 19.8.73/10.1.83 instead of 1.2.1966.

5. Grounds for relief with legal provision :

5.1. For that the respondents extracted the services of the applicant as ~~Casual~~<sup>Temporary</sup> worker without break from 1.2.1966 to 18.8.1973 and as such the respondent must take into account the qualifying service w.e.f. 1.2.1966 and not 9.11.1978.

5.2. For that the respondents must regularise the service of the applicant with effect from 1.2.1966 though he was the temporary worker without break for the period 1.2.1966 to 18.8.1973.

5.3. For that the respondents cannot take into account the dates of entry in the government as 19.8.1973/ 10.01.1983 and also cannot take the length of qualifying service 21 years 9 months 22 days instead of 34 years 7 months.

5.4. For that the respondents have not considered Rule 49 of the Central Civil Services Rules 1972 and as such the action of the respondents is illegal and arbitrary and liable to be struck down.

5.5. For that the respondents have not considered that the President of India was pleased to decide that w.e.f. 1.1.1996 , pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1.1.1996 of the post held by the Pensioners.

5.6. For that the existing pensioner in the rules governing qualifying service shall continue to be operative and in case of the applicant, the qualifying service should be taken 34 years 7 months and not 21 years 9 months 22 days.

5.7. For that the pension of the applicant should be calculated at 50% of the average emolument and 50% of the scale of pay is applicable in the case of the applicant with effect from 1.9.2000 as the same was introduced w.e.f. 1.1.1996 for the post held by the employee at the time of retirement .

5.8. For that the implementation of the government's decision on the recommendation of Fifth Central Pay Commission and these orders apply to all Pensioners under the Central Civil Services ( Pension) Rules 1972 CCS ( Extra-ordinary Pension) Rules and the corresponding rules applicable to Railway Pensioners.

5.9. For that the respondents should have considered favourably the appeal filed on 20.9.2002 before the Ministry of Railway, Government of India, New Delhi.

5.10. For that the respondents should have considered the date of joining service on 1.2.1966 and 34 years 7 months qualifying service.

5.11. For that it is a fit case within the jurisdiction of this Hon'ble Tribunal to interfere the matter for payment of pension.

5.12. For that the respondents have violated the Rules of the Railway Services ( Pension) Rules, 1993.

5.13. For that the Respondents could not cite any addition and just reasons for their arbitrary action in denying the claim of the applicant.

5.14. For that the respondents have not considered the adverse effect of the applicant for non payment of 50% of the minimum pension w.e.f. 1.9.2000 of the post of Sweeper Masson Grade-I held by the applicant.

6. Details of Remedies Exhausted:  
That the applicant states that he has no other alternative and efficacious remedy than to file this application. Representations through proper channel were submitted by the applicant on 20.9.2002 and subsequently the applicant approached several times in different offusions for disposal of the representation and legal notice and the same have not been disposed of till date.

7. Matters not previously filed or pending with:  
The applicant has not filed any application previously before this Hon'ble Tribunal or any other Hon'ble Court.

8. Relief sought:

In view of the facts and circumstances stated in paragraphs 4 above, the applicant prays for the following reliefs :-

- 1) A direction to the respondents that the applicant joined his service on 1.2.1966 as temporary workers.
- ii) A direction to the respondents that applicant is having 34 years 7 months as qualifying service from 1.2.1966 to 31.8.2000.
- iii) A direction to the respondents that the applicant is entitled to 50% of minimum pension w.e.f. 1.9.2000 on recommendation of the Fifth Central Pay Commission w.e.f. 1.1.1996.
- iv) A direction to the respondents that pension upto 50% of the scale of pay applicable to the applicant of having 34 years & 7 months qualifying service.
- v) A direction to the respondents to pay arrears of pension w.e.f. 1.9.2000 till date and payment of 50% pension regularly in future.
- vi) Cost of the application.
- vii) Any other relief or reliefs to which the applicant is entitled to as the Hon'ble Tribunal may deem fit and proper.

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( 11 )

9. Interim order prayed :

Pending disposal of this application, a direction may please be issued to the respondents to pay 50% of the pension to the applicant in view of Section 19(4) of the Administrative Tribunal Act. The applicant also prays that the instant application be disposed of expeditiously.

10. Particulars of the I.P.O. :

(i) IPO No : 205 114071

(ii) Date :

(iii) Payable Amount: Rs. 50/- (Rupees Fifty) only.

(iv) At which Post Office :

11. List of Enclosures :

(i) Index

(ii) Application

(iii) Annexures- A, B and C.

(iv) I.P.O.

(v) Vakalatnama

Verification.....

/mmw/

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( 12 )

VERIFICATION

I, Sri Gopal Nath, aged about 63 years, Son of Late Dayal Nath, Hindy by caste, by profession: a Pensioner, resident of village : Pub-Lumding, Murabasti, Mouza and Police Station : Lumding, District : Nagaon, Assam do hereby verify that the statements made in paragraphs 1 to 4 and 6 to 11 are true to my knowledge and belief and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 26 day of August 2004 at Guwahati.

*Gopal Nath*

Signature

*Gopal Nath*

CALCULATION SHEET.

(IMPORTANT FOR REFERENCE AND GUIDANCE )

1. Name Sri Geopal Nath, Ex. Sivasagar, Assam
2. Date of birth 07.07.1940
3. Date of entry in the Government service 1978-79/12/93
4. Date of retirement/Death 31.3.2000
5. Length of qualifying service 21/12/2000 - 31.3.2000  
(For pension/Gratuity, as indicated in PPO).
6. Emoluments drawn during the last 10 months Rs. 52,125.00

I) Average emolument for pension Rs. 5212.50  
II) Pension admissible: Rs. 1738.00  
(Calculation to be shown as follows).  
Avg Emo. Rs. 5212.50 (qualifying service).  
In completed 6 months ..... X period not  
exceeding 6 months ..... 2

one addng ) Rs. .....

III) Emolument of gratuity Rs. 245.00 as indicated in PPO).

IV) Gratuity admissible Rs. 19,695/-  
Calculation to be shown as follows:-  
Emoluments Rs. 1738.00 (Qualifying service) in completed ..... 6 months period not exceeding 60.  
i) Emoluments for family pension Rs. 5250.00  
ii) Family pension admissible Rs. 1525.00  
(Calculation to be shown as follows).  
a) Ong. family pension Prescribe %age subject  
Pay ..... Drawn. ..... (x) to prescribe minor & max  
Rs. 5250.00 = ..... Rs. 1525.00  
b) Enhanced family pension Rs. 1738.00  
Family pension as or rate as Rs. 1525.00  
above (X) 2Rs. 3150.00 subject to prescribed  
(minimum and maximum as per rule - 51 Rs. 1738.00)  
Ref:- No, if any .....

Dated 30/7/01

Counter signed .....

Accounts Officer Head of Office

No. if any .....  
\*\*\*\* The competent authority as per para 325-MRPR .....

A. H. S.  
D. K. S.  
8/6/01



Annexure C

Copy

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राष्ट्रीय संसद  
मिनिस्टरी ऑफ रेलवे  
रेलवे रेलवे

मिनिस्टरी ऑफ रेलवे  
रेलवे रेलवे-110001

Minister for Railways  
Government of India  
New Delhi-110001

7.10.2002

Dear Shri Acharia ji,

I am in receipt of your letter dated 20<sup>th</sup> September, 2002 regarding anomaly in the fixation of pension of Shri Gopal Nath, ex-Sweeper Mason Gr.I, Lumding Division, N.E Railway.

With regards,

Yours sincerely,



(Nitish Kumar)

Shri Basudeb Acharia,  
Member of Parliament,  
188, North Avenue,  
New Delhi 110 001.

After  
26/9/02

31 MAR 2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH, GUWAHATI.

IN THE MATTER OF

O.A.192/2004

Shri Gopal Nath ...

Applicant

Versus

Union of India & Others ..

Respondents

AND (

IN THE MATTER OF

Written Statement on behalf of the Respondents

The answering respondents respectfully SHEWETH :

1. That the answering respondents have gone through the copy of the application filed and have understood the contents thereof. Save and except the statements which have been specifically admitted hereinbelow or those which are borne on records all other averments/allegations as made in the application are hereby emphatically denied and the applicant is put to the strictest proof thereof.

2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However, the answering respondents have confined their replies to those points/allegations/averments of the applicant which are found relevant for enabling a proper decision on the matter.

3. That the application suffers from want of a valid cause of action as will be clear from the submissions made in the relevant paragraphs below.

4. That the application suffers from wrong representation and lack of understanding of the circumstances and facts relating to the matter as will be clear from the submissions.

5. Parawise remarks:

5.1. As regards paragraph 4.1, the answering respondents have no remarks to offer, except to put the applicant to the strictest proof of his claim made therein.

5.2. As regards paragraph 4.2, the answering respondents beg to state that as per records in his service book the applicant worked as casual labour on a daily wage basis (in whose case the rule of 'No work no pay' prevails) and where there is no temporary worker status) from 21.11.67 to 18.08.73. He was granted temporary CL/CPC status with effect from 19.08.73 and was absorbed as regular Mason Helper in scale Rs.210-290/- with effect from 1.1.93. 1-1-83

..... P....2.....

File by  
M. C. Lalita  
30/3/05  
Advocate  
29/3

By. Chief Personnel Officer / HQ  
N.F. Railway, Maitigaon  
Guwahati-11 27

The contention of the applicant that his service as casual labour on daily wage basis under "No work no pay" rule prior to grant to him of temporary status as CL/CPC on and from 19.8.73 should be counted as service for pensionary benefits is not sustainable under the Rules. According to Rule 2005 of the Indian Railway Establishment Manual Vo.II "Casual labour including Project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits".

A photocopy of the extract of Rule No.2005 of the Indian Railways Establishment Manual Vol.II is annexed herewith and marked as ANNEXURE A.

The service allegedly rendered by the applicant as casual labourer on daily basis (according to the applicant this period was between 1.2.1966 and 18.8.1973 and according to Railway records this period was between 21.11.1967 and 18.8.1973) is not to be counted as service for pensionary benefits as the same was rendered prior to his attaining temporary status. The rule quoted above allows only 50% of service rendered as CL/CPC (i.e. after attaining temporary status) for the purpose of pensionary benefits.

The respondents have carefully followed the Rule in question for granting pensionary benefits to the applicant as indicated below:-

me  
 a) 50% of 9 yrs. 4m & 13 days = 4 yrs. 8m. & 7 days.  
 b) 100% as regular service from 1-1-83 to 31.8.2000 = 17 yrs. 9m. & 7 days.  
 Total service for pensionary benefits = 21 yrs. 9m. 14 days.

The pensionary benefits of the applicant based on the above qualifying service was calculated as follows:-

(a) Last 10 months' pay- Rs.52,125/-  
 Average pay per month - Rs.5,215.50.  
 (b) Superannuity pension- 5,212.50 = Rs.2,606.25X  $\frac{44}{66}$ .  
 = Rs.1,737.50 or Rs.1,738.

The details given above would indicate that the period of service of the applicant for pensionary benefits and calculation of his monthly pension on superannuation were done as per rule applicable to all staff similarly placed on the rolls of the Railways.

(3)

5.3. As regards paragraph 4.3 the answering respondents beg to state that the applicant is under the wrong impression that the period of his service rendered prior to grant of temporary status as CL/CPC worker is to be counted for pensionary benefits. This impression is wrong as Rules do not permit the same as during such periods prior to grant of temporary status the person apparently works as a casual labourer on daily basis on "No work no pay" basis on a kind of muster roll. As per rule the applicant is entitled to pensionary benefits only for the period his qualifying service to the extent of 50% of service as CL/CPC and 100% qualifying service thereafter upto the date of retirement. It is clear that as per Rule the period of alleged service from 1.2.66 to 18.8.73 during which period the applicant worked as daily rated casual worker without temporary status is not to be counted as service for purpose of pensionary benefits.

5.4. As regards paragraphs 4.4 and 4.5 the answering respondents have no remarks to offer.

5.5. As regards paragraphs 4.6, 4.7 and 4.8 the answering respondents beg to reiterate the submissions made in paragraphs 5.2 and 5.3 of this written statement above and beg to state that the fixation of pension and other allowances for the applicant was done correctly as per rule.

5.6. As regards paragraphs 4.9, 4.10 and 4.11 the answering respondents beg to state that as per Rules framed by the Ministry of Railways the period of service prior to the applicant's attaining temporary status as CL/CPC worker cannot be counted for pensionary benefits. There is absolutely no cause for the applicant to be aggrieved on this count.

5.7. As regards paragraph 4.12 the answering respondents beg to state that the Railway Pension Rules which govern the pension matters of Railway employees like the applicant, are no different from the Central Civil Service Pension Rules, along with subsequent modifications effected from time to time. The concept of qualifying service for casual labourers with CL/CPC status is however special for the Railways for which there are separate government instructions issued through the Railway Board in the Establishment Manual, as already referred to vide remarks against paragraph 5.2 above.

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Mr. Chetan  
Chief Personnel Officer  
N.F. Railway, Majigaon  
Guwahati-11

5.8. As regards paragraphs 4.13, 4.14 and 4.15 the answering respondents beg to state that the fixation of pension of the applicant as shown in paragraph 5.2 above is correct as per Railway Pension Rules and as per instructions issued by the Govt. of India, Ministry of Railways and there is no scope for revision of the same. The date of entry of the applicant to service is correctly shown as 19.8.73, the date on which he was granted CL/CPC status and the period of his service as CL/CPC worker from 19.8.73 to 31.12.82 was counted to the extent of 50% for qualifying service for grant of pensionary benefits as per Rule.

Under the circumstances, the answering respondents beg to state that the applicant has no cause of action and that the O.A. has been filed under a wrong understanding of the Rules which have been followed in correctly and fairly fixing the pensionary benefits of the applicant. It is therefore prayed that the application be dismissed with costs.

And for this act of kindness the answering respondents shall as in duty bound ever pray.

(5)

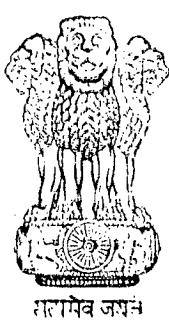
VERIFICATION

I, Shri R. AAIYU, son of  
Shri S//o Late S. Ramarao, aged about  
39 years, at present working as Dy. CPOf HQ  
N.F.Railway, Maligaon, do hereby verify and solemnly  
affirm that the statements made in paragraphs 1 to 5 are  
true to the best of my knowledge and information derived  
from records which I believe to be true and the rest are  
my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 29/3  
day of March, 2005.

  
29/3  
Dy. Chief Personnel Officer / HQ  
Signature N.F. Railway, Maligaon  
Guwahati-11

Designation.



भारत सरकार  
GOVERNMENT OF INDIA  
रेल मंत्रालय  
MINISTRY OF RAILWAYS  
(रेलवे बोर्ड)  
(RAILWAY BOARD)

भारतीय रेल स्थापना मैनुवल  
INDIAN RAILWAY  
ESTABLISHMENT MANUAL

जिल्ड II  
Volume II

(संशोधित विंशतीमाला)

1990

(Revised Edition)

1990

time to time for regulating and controlling the total strength of casual labour (including those with temporary status) should be rigidly followed.

(3) In those exceptional cases where engagement of "fresh faces" as casual labour is authorised personally by the General Manager, the procedure prescribed in regard to engagement of individuals as casual labour "fresh faces" will be followed.

(4) The percentage of reservation for SC/ST laid down for group 'D' categories should be followed for recruitment of casual labour, in the manner laid down in the instructions of the Board, except in the case of those who are required for emergencies like flood relief work, accident, restoration and relief etc.

(5) In order to provide documentary proof of service, a casual labour should be given a card. A person wanting to be appointed as a casual labour should be asked to supply to the administration two passport size copies of his photograph at the time of his engagement as casual labour. This photograph duly attested by the competent authority should be pasted on his service card another copy is the casual labour register. Casual labour should be asked to deposit Re. 1/- towards the cost of service card. The following particulars should be indicated by concerned supervisory official in the Service Card :

- (1) Name of the employee (in Block letters).
- (2) Father's Name (in Block letters).
- (3) Date of birth.
- (4) Age at initial casual employment, year, month.
- (5) Personal mark/s of identification.
- (6) Date of engagement.
- (7) Date of termination.
- (8) Nature of job on each occasion.
- (9) Signature of the Supervisor.
- (10) Name in full (In capital letters) & Designation of the Supervisor.

**Note**—These should be cross references to LTI Register/CL Card Number. In cases of re-engagement as casual labour previous spell of employment be checked up by Supervisors' concerned including checks from the original paid vouchers.

5-2 RB/ND/89

The service cards should be in the form of a booklet and should have stiff card board binding. On page 1 on the left side detailed instructions should be printed for the guidance of casual labourers. These instructions should be in bilingual form both in English and Hindi. In addition, Railways may add a local language of the area subject to convenience. The service card should be machine numbered and account of service cards maintained in Divisional office.

Casual labour engaged for short duration like a week or ten days for work of short duration or for emergencies like restoration of breaches etc., will not, however, be issued cards, nor their names entered in Casual Labour Register.

(6.1) Loss of the card should be reported to the nearest police station and a copy of FIR lodged with the police should be given to the Railway authorities on the basis of which a duplicate card may be issued on a charge of Rs. 2/- . The issuing authority should satisfy himself that the duplicate is being issued to the same person to whom the original was issued and failure on his part on this score would be punishable under D & A rules.

(6.2) Casual Labour Registers will be maintained in accordance with instructions in this regard issued from time to time by the Railway Board.

**2002. Entitlements and privileges admissible to Casual Labour.**—Casual Labour are not eligible for any entitlements and privileges other than those statutorily admissible under the various Acts, such as, Minimum Wage Act, Workmen's Compensation Act, etc. or those specifically sanctioned by the Railway Board from time to time.

**2003. Breaks in Service.**—The following cases of absence will not be considered as breaks in service for the purpose of determining 120 or 180 days or 360 days (as the case may be) of continuous employment:—

- (a) The period of absence of a workmen, who is under medical treatment in connection with injuries sustained on duty covered by provisions under the Workmen's Compensation Act.

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(b) Authorised absence not exceeding twenty days including three days unauthorised absence, for personal reasons. Absence of half a day should be reckoned as half a day only.

(c) In the case of female casual labour, a period of absence of four weeks (in addition to 20 days authorised absence) may be allowed for maternity purposes.

(d) On completion of works or for non-availability of further productive work, when casual labour on daily wages or in regular scale of pay or 1/30th of the minimum of the scale plus Dearness Allowance, is discontinued and employed later when work is available, such gaps in service will not count as breaks in service for the purpose of reckoning of continuous service of 120 days or 180 days or 360 days as the case may be. (This provision is effective from 2nd October, 1980).

(e) Non-performance of work on days of rest given under the Hours of Employment Regulations or under the Minimum Wages (Central) Rules, 1950 and on days on which the establishment employing the labour remains closed, does not constitute a break nor will it be counted against the limit of twenty days referred to in (b) above.

(f) The term "authorised absence" for this purpose covers permission granted by the supervisory official in charge to be away from work for the period specified.

**2004. Notice of Termination of service.**—Except where notice is necessary under any statutory obligation, no notice is required for termination of service of casual labour. Their services will be deemed to have been terminated when they absent themselves or on the close of the day.

**Note.**—In the case of a Casual labourer who has obtained temporary status after completion of prescribed period of continuous employment, the period of notice will be determined by the rules applicable to temporary railway servants.

Casual labour should not be deliberately discharged with a view to causing an artificial break in their service. Where casual labourer have to be terminated due

to non-availability of work for them the unit for their retrenchment will be that of an Inspector and Supervisor (as the case may be) in the case of casual labour on the open time. For project casual labour on Zonal Railways, the unit for this purpose will be the Division-wise and Department-wise as per instructions issued by the Railway Board. Casual labour diverted from one unit to another will rank junior-most in the new unit.

**2005. Entitlements and Privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 days of continuous employment (as the case may be).**—(a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D & A Rules. However, their service prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-a-vis other regular/temporary employees. This is, however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered.

Casual labour including Project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption in qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily rated casual labour will not be entitled to these benefits.

(b) Such casual labour who acquire temporary status, will not, however, be brought on to the permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for Group D Posts in the manner laid down from time to time. Subject to such orders as the Railway Board may

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issue from time to time, and subject to such exceptions and conditions like appointment on compassionate ground, quotas for handicapped and ex-service men etc. as may be specified in these orders they will have a prior claim over others to recruitment on a regular basis and they will be considered for regular employment without having to go through employment exchanges. Such of them who join as Casual labour before attaining the age of 28 years should be allowed relaxation of the maximum age limit prescribed for Group D posts to the extent of their total service which may be either continuous or in broken periods.

(c) No temporary posts shall be created to accommodate such casual labour, who acquire temporary status, for the conferment of attendant benefits like regular scale of pay, increment etc. After absorption in regular employment, half of the service rendered after attaining temporary status by such persons before regular absorption against a regular/temporary/permanent post, will qualify for pensionary benefits, subject to the conditions prescribed in Railway Board's letter No. E(NG)II/78/CL/12 dated 14-10-80. (Letter No. E(NG)II/85/CL/6 dated 28-11-86 in the case of Project casual labour).

(d) Casual labour who have acquired temporary status and have put in three years continuous service should be treated at par with temporary railway servants for purpose of festival advance/Flood Advance on the same conditions as are applicable to temporary railway servants for grant of such advance provided they furnish two sureties from permanent railway employees.

(e) Casual labour engaged on works, who attain temporary status on completion of 120 days continuous employment on the same type of work, should be treated as temporary employees for the purpose of hospital leave in terms of Rule 554-R-I (1985 Edition).

A casual labour who has attained temporary status and has been paid regular scale of pay, when re-engaged, after having been discharged earlier on completion of work or for non-availability of further productive work, may be started on the pay last down by him. (This shall be effective from 2nd October, 1980).

✓ 2006. **Absorption of Casual Labour in regular vacancies.**—Absorption of casual labour in regular Group D employment may be considered in accordance with instructions issued by the Railway Board from time to time. Such absorption is, however, not automatic but is subject, inter-alia, to availability of vacancies and suitability and eligibility of individual casual labour and rules regarding seniority unit method of absorption etc. decided by the Railway Administration.

(ii) (a) Casual Watermen for summer season shall be eligible for temporary status on completion of 120 days of continuous employment.

(b) For this purpose, various spells of engagement as casual waterman may be aggregated provided the gap between two spells of employment has been caused due to season being over and/or there being no work for them in such establishment provided further that if a person engaged in the previous years is given an opportunity to work in the same hot weather establishment in the subsequent year but he fails to avail of that opportunity, he will have to start afresh in the event of his being so engaged again in future seasons. These provisions are effective from the summer season of 1985. (E(NG)II/83/CL/117 dt. 25-1-85).

(iii) As long as it is established that a casual labour has been enrolled within the prescribed age limit, relaxation in upper age limit at the time of actual absorption should be automatic and guided by this factor. In old cases where the age limit was not observed, relaxation of age should be considered sympathetically. The DRMs may exercise such powers to grant relaxation in age limit.

✓ 2007. **Employment of Casual labour in skilled categories.**—(1) Normally Casual labour should not be appointed in skilled categories without a trade test. A panel should be maintained by the open line to cater to the needs of the casual labour in semi-skilled and skilled categories. Where no panel of suitable candidates is available, engagement in semi-skilled or skilled categories may be done without trade test but