

**CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH: JABALPUR**

OA 534/2005

THIS THE 25th DAY OF APRIL, 2006

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Pannalal, aged about 65 years
S/o Late Mahadeo, Ex-Helper,
Khalasi, C&W, NKJ, R/o Post and
Village – Beohar, Distt. – Katni.

... Applicant.

(By Advocate Shri H.S. Verma)

VERSUS

1. Union of India, through
Secretary, Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Manager,
West Central Railway, Jabalpur.
3. Divisional Railway Manager,
West Central Railway, Jabalpur.

... Respondents.

(By Advocate Shri H.B. Srivastava)

ORDER

By the present OA applicant, who retired on attaining the age of superannuation with effect from 31.3.1998, seeks direction to respondent no.3 to grant him pensionary benefits with consequential benefits and interest @ 18% p.a.

2. Applicant claims that he was initially appointed as casual labourer on 03.11.1970 under P.W.I., Khanna Banjari (Central Railway). On completion of 120 days' casual service, he was brought on monthly rates of pay with effect from 30.1.1971 and treated at par with other temporary employees. He had worked as Khallasi upto 04.10.1994 and was regularized against the permanent post on 05.10.1994. He attained the age of supeannuation on 31.3.1998. Earlier he filed OA No.4/2003 seeking direction to respondents to grant him pensionary benefits, which was disposed of vide order dated 13.1.2003 at the admission stage with direction to decide his pending representation within the time-limit prescribed therein.

3. Pursuant to aforesaid directions, respondent no.3 considered & rejected his claim stating that since he had not completed ten years' qualifying service and had rendered only eight years & eleven months' service, was not entitled to pensionary benefits under the rules in vogue. *Applicant claims that he had served for more than 22 years, 4 months & 5 days and as per instructions issued by the Railways on the said subject, 50% of the period of casual service was to be treated as qualifying service while computing the qualifying service for pensionary benefits.* It is contended that he had worked from 03.11.1970 to 22.05.1983 for about 3,920 days, which service had been ignored by the respondents and, therefore, the factual aspects stated vide impugned communication dated 16.6.2003 is not correct. He submitted an affidavit dated 13.5.2004 in support of his claim that he had worked since 1970 to 1983.

4. Shri H.S. Verma, learned counsel for applicant contended that as per para-2511 (a) of I.R.E.M., advance correction slip No.13, "*casual labour shall be eligible to count half period of service rendered by them after attaining temporary status on completion of 120 days continuous employment before regular absorption as qualifying service for the purpose of pensionary benefits.*" Strong Reliance was placed on Hon'ble A.P. High Court judgment in *G.M. S.C. Rly. & Anr. Vs. Shaik Abdul Khader [2004 (2) ATJ 24]* to contend that once temporary status is granted to a person who later on absorbed, the entire service rendered by him is liable to be counted towards determination of qualifying service. Further reliance was placed on **2005 (2) ATJ 30**, a Division Bench judgment of Hon'ble Punjab & Haryana High Court in *Hari Chand vs. Bhakra Beas Management Board & Ors.* Reliance was also placed on Single Bench judgment of Principal Bench in *Smt. Guddi vs. National Capital Territory of Delhi & Ors.]* in OA 10/2006 decided on 05.5.2005.

5. The respondents, on the other hand, contested the claim laid and specifically stated that applicant's claim that he had worked as daily rated casual labour in the construction organization of the Railways from 03.11.1970 to the year 1983 and further granted temporary status, was made with no supportive



document except a self-declared affidavit, which cannot be recognized as an authoritative document. As per entries in his service register and records available, he was engaged on daily rated casual labour on 23.5.1983 and brought on monthly rates of pay from 23.11.1983. He was further granted temporary status from 23.5.1984 & regularized against permanent post on 16.9.1994. The applicant had worked in broken periods in the construction organization and as per provision of rules broken periods are not to be counted as qualifying service for the purpose of pensionary benefits. Reliance was placed on Rule 14 of Railway Services (Pension) Rules, 1993. The applicant was appointed as Khallasi on 16.9.1994 & superannuated on 31.3.1998 and thus considering the provision of rules, in vogue, his total qualifying service works out to be nine years and two months. As per Rule 69 of Railway Services (Pension) Rules, 1993, the minimum qualifying service required for getting superannuation pension is 10 years. Since he had put in less than ten years of qualifying service, he was not entitled to monthly pension on retirement. His claim raised in a recognized forum i.e. Permanent Negotiating Machinery at the General Manager level in May, 2000 was re-examined at various levels including that of associate accounts with all records available. As he could not produce any record relating to his alleged casual service rendered prior to 23.11.1983, it was finally decided to treat him as casual labour with effect from 23.11.1983. He was treated as temporary status from 23.5.1984 in view of documents available on record. Applicant had also applied for ex-gratia pension & was advised on 01.11.1998 that since he was not an SRPF optee, he was not entitled to the same. Applicant's claim that he had put in more than 25 years of service, was specifically disputed. The plea of limitation was also pressed stating that he was advised on 06.6.1998, reiterated on 11.8.1998 as well as 08.3.2001 that he was not entitled to pension and pensionary benefits since the service rendered by him fell short of ten years' qualifying service as prescribed under the Rules & he had not challenged the aforesaid orders.



6. The respondents also filed MA 660/2005 seeking deletion of respondent no.1 from array of parties contending that the Indian Railways Act, 1989 specifically contemplated that the general superintendence and control of Zonal Railway rest with the General Manager, who is the in-charge of Zonal Railway and Railway Board may exercise certain limited powers over the entire system of the Indian Railways. As per the law laid down in *State of Kerala vs. General Manager, Southern Railway, Madras* {AIR 1976 SC 2538}, under Section 80 of CPC appropriate authority in the case of Railway administration is the General Manager of the concerned Zonal Railways and therefore the impleadment of Union of India through Secretary, Ministry of Railways was not justified and therefore liable to be deleted from the array of parties. This request has been opposed by the applicant.

7. The respondents also filed additional pleadings on 04.10.2005 reiterating their contentions raised in the reply. It was further contended that the applicant was engaged as a daily rated labour in construction organization which itself is a temporary organization and all his wages were paid from the contingency fund of India and not from the Consolidated Fund of India. Reliance was also placed on 1999 (2) ATJ 578 in *Gyan Bhai Gangaram & Ors., Altaf Hussain vs. U.O.I. & Ors.* [1998 (1) ATJ CAT Bangalore 11] and *Vinayak Balkrishna vs. U.O.I. & Ors.* [2003 (3) ATJ CAT Mumbai 593] to contend that casual labour are entitled to count half of their service spent on projects as temporary status and not otherwise.

8. The applicant contested the respondents plea by filing a detailed rejoinder as well as additional rejoinder and reiterated contentions raised, as noticed hereinabove besides citing some more judgments namely OA 1055/2004 of Principal Bench decided on 05.5.2004 and OA 669/CH/2004 decided on 20.4.2005 by the Chandigarh Bench of this Tribunal.

9. I have heard learned counsel for parties and perused the pleadings and material placed before me. Shri H.S. Verma, learned counsel for applicant strenuously urged that in terms of the law laid down by the Hon'ble Andhra Pradesh High Court in *Shaik Abdul Khader* (supra), applicant is entitled to count



full service including the period of casual employment, grant of temporary status till regularization, for the purpose of pension. It is further contended that the law laid down vide afore-said judgment is binding upon this Tribunal. Rule 31 of the Railway Services (Pension) Rules, 1993, which also provides for counting of service paid from contingency had been duly noticed therein.

10. Before proceeding further it would be expedient to notice Rule 31, which reads thus:-

"31. Counting of service paid from contingencies

In respect of a railway servant, in service on or after the 22nd day of August, 1969, half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment, subject to the following conditions namely:-

- (a) the service paid from contingencies has been in a job involving whole time employment;*
- (b) The service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned as posts of malis, chowkidars, and khalasis;*
- (c) The service should have been such for which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly basis and which, though not analogous to the regular scales of pay, borne some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period by staff in regular establishments;*
- (d) The service paid from contingencies has been continuous and followed by absorption in regular employment without a break;*

Provided that the weightage for past service paid from contingencies shall be limited to the period after 1st January, 1961 subject to the condition that authentic records of service such as pay bill, leave record or service-book is available.

NOTE: 1. The provisions of this rule shall also apply to casual labour paid from contingencies.
2. The expression 'absorption in regular employment' means absorption against a regular post." (emphasis supplied)

11. Shri Verma, learned counsel further contended that judgment of Punjab and Haryana High Court in Hari Chand (supra) is also applicable in the facts and circumstances of the present case. Shri H. P. Srivastava, learned counsel for respondents, on the other hand, contested the said plea & contended that Hari Chand (supra) is inapplicable in the facts and circumstances of this case inasmuch as Rules 31 & 20 of IREM Vol.-II, which had been the subject matter



herein, is worded differently than the provisions applicable therein. Similarly, it was contended that Railways have already filed SLP (C) 24465/2003 against the judgment of Andhra Pradesh High Court in Shaik Abdul Khader (supra), and therefore the said judgment is sub-judice. I may note at this stage that in Shaik Abdul Khader, the question considered by this Tribunal was whether 50% of service rendered by the respondent therein as casual labour could be counted as qualifying service for the purpose of pension. He was appointed as casual labour on 06.1.1979, granted temporary status from 01.1.1983. 50% of service rendered by him from 06.1.1979 to 01.1.1983 had to be counted whereas service from 01.1.1983 had to be counted in full. He was absorbed in Group-D post w.e.f. 01.1.1995. The contentions raised was that in terms of master circular 54/94, half of the period of service of a casual labour after attainment of temporary status on completion of 120 days continuous service would count for pensionary benefits. The said benefit had already been extended to the project casual labour with effect from 01.1.1981. The department computed the service as casual labour from 01.1.1983 to 31.12.1994, as, 11 years, 11 months and 30 days. This was reduced by 618 days which was leave without pay. So the net service of the respondent as casual labour was 10 years, 3 months and 17 days. 50% of it would come to 5 years 1 month 23 days. Regular service was from 01.1.1995 to 29.2.1996, when he attained the age of superannuation was 1 year 1 month 28 days. As such his total qualifying service being 6 years 3 months and 21 days, he was held as not entitled to pension. According to him, he had put in service of 17 years 1 month and 23 days, which factual aspect was disputed. After noticing master circular no.54/94 particularly para-20 dealing with counting of period of service for casual labour for pensionary benefits as well as par 2005 (a) of IREM Vol.-II and Rule-20 of the aforesaid Rules, it was held that: "on absorption whole of the period for which a casual labour worked after getting temporary status would have to be counted and half of the period has to be counted of the period for which a casual labour worked without being absorbed. Once he is given temporary status that means he has been absorbed in the department." It was further held that the respondent was entitled to get service

counted in full from 01.1.1983 and half of the service counted before 01.1.1983 and accordingly, the writ petition filed by the Railways was dismissed. It would be expedient to notice the para-20 of master circular no.54/94 as well as Rule-20 of the aforesaid Rules, 1993 which read thus:-

Para-20 of Master Circular 54/94

"20. Counting of the period of service of casual labour for pensionary benefits:- Half of the period of service of a casual labour (either than casual labour employed on Projects) after attainment of temporary status on completion of 120 days continuous service if it is followed by absorption in service as regular railway employee, counts for pensionary benefits. With effect from 1.1.1981, the benefit has also been extended to Project Casual Labour."

Rule 20 of Railway Services (Pension) Rules 1993

"20. Commencement of qualifying service

Subject to the provisions of these rules, qualifying service of a railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

Provided that officiating of temporary service is followed without interruption, by substantive appointment in the same or another service or post:

Provided further that –

- (a) in the case of a railway servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose; and*
- (b) in the case of a railway servant not covered by clause (a), service rendered before attaining the age of sixteen years shall not count, except the compensation gratuity."*

12. Similarly, para-2005 of IREM Vol.-II reads thus:-

"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-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.

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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.

(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 issue from time to time, and subject to such exceptions and conditions like appointment on compassionate ground, quotas for handicapped and ex-servicemen 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.

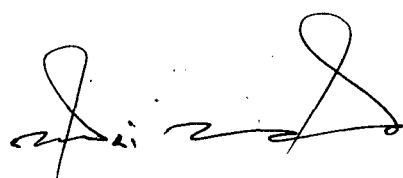
(e) Casual labour engaged on works, who attain temporary status on completion of 120 days continuous employment on the same type of work, should be treated as temporary employees for the purpose of hospital leave in terms of Rule 554-R-I(1985 Edition).

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 drawn by him. (This shall be effective from 2nd October, 1980)"

13. On bestowing my careful consideration and giving anxious thought to the entire aspect of the case, it is noticed that there is no cogent material produced by the applicant to substantiate and establish the contention that he had worked from the year 1970 to the year 1983 on casual basis. Therefore, I hold that the said period cannot be counted towards determination of qualifying service. Admittedly, the respondents have considered his engagement and grant of temporary status from 23.11.1983 and 23.5.1984 respectively. It is not in dispute that 50% of the service rendered till 16.9.1994 when he was regularized has been computed by the respondents. His date of superannuation, i.e. 31.3.1998 is also not in dispute. It is also not denied that he had applied for ex-gratia pension which was not agreed to. It is also not in dispute that his request was rejected and he was advised on this aspect on 6.6.1998, which stand was reiterated on 11.8.1998 as well as 8.3.2001. If his service as casual labourer w.e.f. 23.11.1983 is taken into consideration till 16.9.1994 when he was regularized, the 50% of such service would come to about five years and few months. Full service since 16.9.94 till 31.3.1998 would come to 3 years 6 months and 15 days. Sum total of this service would thus be less than 10 years of qualifying service prescribed under the rules making one eligible for retirement pension. In view of the above, I find no justification and reason to accept applicant's contention. Therefore, I have no hesitation to conclude that there is no illegality committed by respondents in rejecting his request for grant of pension. In such circumstances, the reliance placed on the judgments is not relevant and is of no help to the applicant.

Accordingly, OA fails and is dismissed. No costs.


(Mukesh Kumar Gupta)
Member (J)

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

पत्रिकादि संख्या.....

(1) सविता, जयपुर, जयपुर, जयपुर, जबलपुर

(2) अमेरिका, जयपुर, जयपुर, जयपुर, जबलपुर H.S. Verma Dr. Katar

(3) अमेरिका, जयपुर, जयपुर, जयपुर, जबलपुर H.B. Sharma Dr. Katar

(4) अमेरिका, जयपुर, जयपुर, जयपुर, जबलपुर H.B. Sharma Dr. Katar

सूचना एवं आचार्य आचार्य आचार्य आचार्य
उप सचिव

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