

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(7)

ORDER SHEET

ORDERS OF THE TRIBUNAL

8.1.2007

OA 543/2005

Mr. Nand Kishore, counsel for applicant.

Mr. T.P. Sharma, counsel for respondents.

Learned counsel for the applicant prays for adjournment.

Let the matter be listed on 27.2.2007.


(U.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

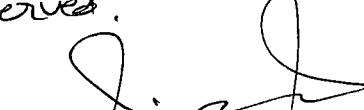
vk

27.2.2007

Mr. Nand Kishore, Counsel for applicant
Mr. T.P. Sharma, Counsel for respondents

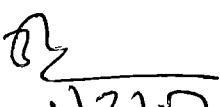
Heard. Order Reserved.


(T.P. SHUKLA)
M(A)


(M.K. GUPTA)
M(J)

113107

Order has been given
today in the open court by
DSC.


113107

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 1st day of March, 2007

ORIGINAL APPLICATION No.543/2005

CORAM:

HON'BLE MR.M.K.GUPTA, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA,ADMINISTRATIVE MEMBER

Shri Makardam
s/o Shri Jadoo,
aged about 65 years,
retired P.W.Mate
under Executive Engineer (C),
Western Railway, Jaipur/Ajmer
(at Phulera) now resident
of House No.130,
Loco Colony, Jaipur.

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through
General Manager,
North-Western Railway,
Hasanpura Road,
Jaipur.
2. Chief Administrative Officer
(Construction Unit),
North Western Railway,
Hasanpura Road,
Jaipur
3. Divisional Railway Manager,
North Western Railway,
Power House Road,
Jaipur.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

O R D E RPer M.K.Gupta, Judicial Member

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, applicant claims pension from February, 1998 onwards with arrears alongwith interest at the rate of 12% per annum.

2. Facts, as stated, are that he was appointed in Railways as Casual Labourer on 14th September, 1976 in the pay scale of Rs. 196-232. In terms of Railway Board circular dated 1st June, 1984 (Ann.A2) Ministry of Railways decided in principle that Casual Labourers employed on projects (also known as project casual labourers) would be treated as temporary on completion of 360 days of continuous employment. Those who had completed 5 years of service as on 1.1.84 were to be treated as 'temporary' w.e.f. 1.1.84. Those who had completed 3 years but less than 5 years of service as on 1.1.84 were to be treated in the said category w.e.f. 1.1.85 and those who had completed 360 days but less than 3 years of service as on 1.1.84 were to be treated as 'temporary' w.e.f. 1.1.86. In terms of aforesaid Railway Board Circular, Western Railway, Jaipur issued memorandum dated 11th September, 1985 and as he had completed 3 years of service i.e. equivalent to 1095 days or more service as on 1.1.84, he was

treated as temporary w.e.f. 1.1.85. Applicant's name appeared at Sl.No.2 in the said memorandum. Vide Ann.A3 communication dated 31st July, 97/10th September, 1997 after being screened, he was appointed/regularized as Gangman in the pay scale of Rs. 775-1025 on provisional basis and was posted at Alwar. His name appeared at Sl.No.2 in the said communication also. A certificate was issued by the office of Executive Engineer (C), Western Railway, Jaipur on 31st January, 98 certifying that he has worked since the year 1958 to 31st January, 1998 as Permanent Way Mate. His grievance is that he was entitled to pension treating him as temporary employee since the year 1958. Unfortunately, on retirement, he was paid only Rs. 4379 as retiral benefits. He attained the age of superannuation on 31st January, 1998 and, therefore, in terms of the aforesaid Railway Board circular, he had rendered more than 30 years of service in the temporary capacity. Under rule 18 of the Railway Service (Pension) Rules, 1993, he was entitled to pension on completion of 10 years of service, which mandate was violated by the respondents.

3. Shri Nand Kishore, learned counsel strenuously urged that in terms of the judgment of the Hon'ble Supreme Court in 1996 (1) SLJ 116 (SC), Ram Kumar and Ors. vs. Union of India and ors. and 2004 (2) ATJ 23,

General Manager, South Central Railway, Secunderabad
vs. Shaik Abdul Khader, applicant was entitled for
pension.

4. Per contra, respondents contested the claim laid and raised preliminary objections regarding limitation as well as jurisdiction. It was stated that application was filed after a lapse of almost 7 years and, therefore, it is time barred. On an earlier occasion, he had challenged the validity of order dated 31st July, 97/11th September, 97 as well as sought directions to release all increments due on the post of Mate since his appointment with all consequential benefits vide OA No.492/1997. The said OA was disposed of vide order dated 17th January, 2001. This Tribunal found no infirmity/illegality in the impugned order dated 31st July, 97/11th September,97. As far as the question of protection of pay was concerned, a direction was issued to respondents to protect the pay which he was drawing before his regularization on Group-D post. On merits, it was stated that applicant was granted only 'temporary status' w.e.f. 1.1.85 and he was not termed as temporary employee. Since the Railway Board decided to regularize casual labourers with temporary status, which decision had been circulated in all the divisions in 1996 and applicant submitted his option for screening, he was screened by the construction organization. On being found fit by

the screening committee, the DRM, Jaipur issued order of regularization in Group-D post vide order dated 31st July, 97/11th September, 97. He was selected as Gangman and posted under A.En. Alwar. Since he protested against the said order and did not join the said post on regularization at Alwar contending that he was lowered down in status and his designation was also changed from Mate to Gangman and moreover, since he had less than two years to retire, the order dated 31st July, 97/11th September, 97 was not justified. It was pointed out that as he retired on 31st January, 98 without being relieved for regularization. The formality of regularization could not be completed and in the circumstances, he cannot be treated to have been regularized. In the above backdrop, he was rightly paid the terminal benefits and is not entitled to any pension. At no point of time, he was actually regularized and joined regularized post, contended Mr. T.P.Sharma, learned counsel for respondents.

5. Applicant by filing short rejoinder reiterated the contention raised. Pension is not a bounty in the hands of respondents, contended Shri Nand Kishore, learned counsel for applicant.

6. We have heard the learned counsel for the parties and perused the pleadings carefully.

7. The short question in the present case is whether the applicant was at all regularized or not. The factum of issuance of order dated 31st July, 97/11th September, 97 is not in question. On the other hand, we have already noticed that validity of said order had been unsuccessfully challenged vide OA No.492/1997. It is not in dispute that he had not joined that post to which he had been regularized vide the aforesaid order. Rather, the applicant submitted his representation dated 4.11.1997 by which he pleaded that since the employees who retire within two years period cannot be transferred anywhere; the said order basically means a transfer, and had not been given effect to. In other words, the applicant had not joined the regularized post till he attained the age of superannuation on 31st January, 1998. The basic dispute remains whether the applicant was regularized prior to the said date or not. The contention of Shri Nand Kishore, learned counsel is that he was treated as 'temporary' employee w.e.f. 1.1.85. Whether the said term 'temporary' was indicative of his status or was it a temporary appointment alone remains to be adjudicated. Since learned counsel for applicant had placed strong reliance judgment of Ram Kumar (supra), the Bench raised specific query as to whether the Railway Board issued circular whereby such 'temporary' employee had been allowed pension. Despite our best efforts, we were unable to extract any specific/clear

reply either issuance of any circular or document establishing such facts. We may at the cost of repetition observe that judgment on which strong reliance was placed, does not lay down any law. Rather the said judgment was passed only on Civil Misc. Petition filed by certain persons, who had not been regularized. The said order and judgment, in its entirety, is reproduced as under:

"Heard learned counsel for the parties. Mr. Goburdhan does not dispute the statement of Mr. Sibal, counsel for the respondent that out of 890 people, 504 have been adjusted against posts now created and 488 out of those 504 have been regularized. It is also brought to our notice that the widow of one of the petitioners has already been offered a job.

Mr. Goburdhan seems to be interest in about 12 persons who have not been regularized. They seem to be skilled workers at present working in Class III posts. Since regularization on the basis of our orders have to be only in Class IV posts, Mr. Sibal, on instructions states that arrangement in respect of them is that though they are regularized in Class IV posts, they would carry the present pay they are drawing in Class III posts by protection until they are regularized in Class III posts following the Rules and instructions.

Mr. Goburdhan relying upon the Board's instructions issued on 20th January, 1985, says that these people have already worked for more than five years and have become entitled for regularization in Class III posts. If that be so, we call upon the Railway administration to give effect to the Board instructions referred to above and consider the claim of the 12 persons named below for regularization as against Class III posts subject to their satisfying the requirements laid down in the Board instructions.

1. Sharad Kumar	2. Radha Charan Baikwar
3. Ashok Kumar	4. Shekeel Ahmad
5. Shyam Sundar	6. Rajeet Ram
7. Radhey Shyam	8. Naresh Kumar
9. Ram Naval	10. Rajinder Singh
11. Trilochan Ram	12. Tej Pratap

The only other question to be seen is with regard to entitlement to pension. It appears that the Board on the basis of the Fourth Pay Commission report has provided for pension at the time of superannuation even to those who are temporary employees. In Paragraph 12 of our order on the basis of material then placed before us, we had taken the view that temporary employees were not entitled to pension on superannuation. We direct the Railway Board to consider the claim of temporary employees who are before us for pension at the time of superannuation or otherwise in view of the fact that the Board has taken its own decision differently. Obviously appropriate material had not

been placed before this Court when the submission of Mr. Ramaswamy for Railway administration was accepted in the order. The decision is beneficial to the employees and we direct that the Board's decision may be implemented. (emphasis supplied)

C.M.P.stands disposed of.

8. The emphasized portion, as noticed hereinabove, would show that the Railway Board were only directed to 'consider the claim' of categories of employees who were denied pension. At the cost of repetition, we are emphasizing once again that neither the decision taken by the Railway Board nor any judgment rendered subsequently requiring and laying down the law that those who were treated temporary in terms of Railway Board circular dated 1.6.1984, were made eligible for grant of pension, without being regularized, was brought to our notice. In our considered view, aforesaid order and judgment neither lays down any ratio nor law and observation made therein cannot be read either out of context or unnecessarily emphasized. Moreover, the circular being only administrative order cannot be read as a 'statute' and given the expanded meaning. We may also note that the aforesaid circular/scheme dated 1st June, 1984 had been noticed by the Hon'ble Supreme Court in celebrated judgment namely Inderpal Yadav and Ors. vs. Union of India and ors., (1985) 2 SCC 648 and with certain modifications the said scheme was accepted and direction was issued to implement it. If one has

regard to the said judgment, it would be noticed that the basic issue raised therein had been about regularization of Casual Labourers employed on projects. Paragraphs 4,5 and 6 would justify, in our conclusion, that the said judgment nowhere confer a right of pension before one is regularized. Time and again, the aforesaid paragraphs have emphasized that the scheme is a preliminary step towards realization of idle enshrined in Article 41 and 42 of the Constitution towards regularization of large force employed in Railways as a Casual Labourer.

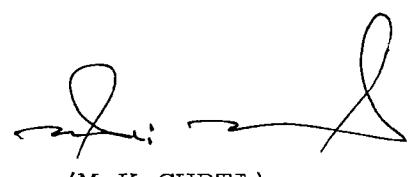
In the circumstances, we hold that applicant's placing reliance on circular dated 1st June, 84 to suggest that he had been treated 'temporary' instead of 'temporary status' and was thus eligible for pension is misplaced and thus did not confer any right to pension. The reliance placed on Seikh Abdul Khader (supra), in our respective view is not applicable in the facts and circumstances of the present case as the applicant was neither in temporary service nor assume the appointment/charge on substantive basis. His absorption order dated 31st July, 1997/11th September, 1997 did not create any vested right of pension, particularly, when he had not joined the said post. Under the Railway Services (Pension) Rules, 1993, one becomes entitle to pension when he assume the character of Railway Servant. A Casual Labourers with 'temporary' status is not a Railway employee under the

provisions of aforesaid Rules, which are statutory in nature.

9. In view of discussions hereinabove, we find no merit in this case. Accordingly, OA is dismissed. No costs.


(B.P. SHUKLA)

Administrative Member


(M.K. GUPTA)

Judicial Member

R/