

(Reserved on 05.10.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This is the **06th** day of **November, 2018**.

ORIGINAL APPLICATION NO. 330/669/2012

HON'BLE MR GOKUL CHANDRA PATI, MEMBER (A).

Ram Sanwar, Son of Sri Pancham Yadav, Ex. Khalasi in the office of Chief Engineer (TMC), North Eastern Railway, Gorakhpur.

.....Applicant

VERSUS

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Personnel Officer, North Eastern Railway, Gorakhpur.
3. Executive Engineer, Track Machine (T.M.C), North Eastern Railway, Gorakhpur.

.....Respondents

Advocate for the Applicant : Shri A.D. Singh

Advocate for the Respondents : Shri Raj Kamal Srivastava

O R D E R

By way of the instant original application (in short OA), the applicant has prayed for following main reliefs: -

“i).to quash the impugned order dated 15.2.2012 (Annexure No. A-1 to the compilation No. 1) passed by the respondent no. 2.

ii).to issue a suitable order and direction to the respondents to regularize the services of the applicant w.e.f. 31.12.1997 as per circulars of Railway Board dated 3.9.96 (Annexure No. A-2) and 11.12.96 (Annexure No. A-3) and count the aforesaid period for pensionary benefits with all consequential benefits and pay all the retiral dues to the applicant.”

2. The facts of the case, in brief, are that the applicant was engaged as casual worker (Khalasi) on 01.09.1970. He was granted temporary status on 16.09.1985 and posted in Track Machine Organization of Gorakhpur Headquarter. The Railway Board issued a circular on 03.09.1996 (Annexure A-2) for regularization of casual workers who were on roll as on 30.04.1996. Another circular dated 11.12.1996 (Annexure A-3) was issued by the Railway Board clarifying that the screening of casual workers should be done on the basis of seniority, date of birth, date of initial engagement, date of attaining temporary status, number of days worked upto 31.08.1996. Circular dated

19.08.1997 (Annexure A-4) was also issued by the Railway Board regarding process of paper screening and to complete the screening process by 30.10.1997. It is stated that in-spite of these circulars, the respondents did not regularize the services of the applicant although several temporary status employees were regularized vide result dated 29.12.1997 (Annexure A-5).

3. The General Manager, Engineering, Gorakhpur had issued another letter dated 06.09.2000 to the In-charge, Track Machine, North East Railway, Gorakhpur for holding screening test of casual workers in Track Machine Department on 25.09.2000 pursuant to which the applicant submitted all the documents. On 20.10.2000, the screening of the applicant was done and vide letter dated 22.01.2001 (Annexure A-6), issued by the Chief Personnel Officer, North East Railway, Gorakhpur all the Khalasies working in Track Machine Department were found eligible but their service were not regularized.

4. The applicant was again considered for screening on 16.03.2004 and his services were regularized on 20.05.2004 instead of December, 1997, as provided in Railway Board's circular dated 03.09.1996 and 11.12.1996. Against this action of the respondents, the applicant preferred a representation dated 30.05.2004 (Annexure A-9) for regularization of his service w.e.f. December, 1997. The respondents did not take any decision of the representation of the applicant and he retired on superannuation w.e.f. 31.01.2001. It is stated that since the respondents did not release pensionary benefit to the applicant after which he preferred a representation dated 14.07.2011 (Annexure A-11). Having received no response, he filed OA No. 1476/2011 which was disposed of vide order dated 13.12.2011 (Annexure A-12) with direction to the respondents to decide representation of the applicant and in compliance thereto, the respondents passed the impugned order dated 15.02.2012 rejecting the representation of the applicant.

5. Hence, the applicant has filed the instant OA on following main grounds: -

- i. Action of the respondents is discriminatory and arbitrary because they deliberately did not regularise his service from December, 1997, as provided in the Railway Board Circular dated 03.09.1996 and 11.12.1996.
- ii. Several junior casual workers, whose screening was done on 12.08.1998, 15.03.1999 and 18.11.1999, were regularized w.e.f. 31.12.1997 vide order dated 27.01.2000.
- iii. The applicant worked from 16.09.1985 to 19.05.2004 for 18 years 8 months 5 days in the temporary capacity and after regularization he

worked from 20.05.2004 to 31.01.2011 for 6 years 8 months 4 days. Hence, he completed about 26 years of service since as per rules and the temporary service be counted for the purpose of pensionary benefits.

iv. As per Railway Board letter dated 03.09.1996, the services of the applicant, who was already on roll as on 30.04.1996, was to be regularized by December, 1997. .

6. The respondents have filed Counter Affidavit stating therein that as per Circulars dated 03.09.1996, 11.12.1996 and 19.08.1997, screening of casual workers engaged under construction organization was done, whereas the applicant was working in Track Machine Organization under the Engineering department. It is stated that consequently, vide letter dated 05.09.2000 (Annexure CR-1), screening process for regularization of casual workers under Track Machine Organization was done. It is contended that the casual workers whose names are given at Annexure A-8 were engaged in construction organization while during that period, the applicant was working under Track Machine Organization, which was ex-cadre. Hence, the question of regularization of juniors does not arise. It is further stated since the applicant was regularized on 20.05.2004, i.e. after 01.01.2004, hence as per the Railway Board Letter dated 17.09.2004 (Annexure CR-5), the applicant is entitled pensionary benefits under new pension scheme.

7. The applicant has filed Rejoinder, reiterating the contentions taken in the OA. He also referred to the judgment dated 23.11.2009 passed by this Tribunal in OA No. 1379/2009 - Narendra Singh Vs. UOI & Ors (Annexure RA-1) and the order dated 03.02.2011, 04.02.2011, 07.02.2011 and 08.02.2011 (Annexure RA-2) passed in compliance of the order of the Tribunal in support of his claim. The applicant has also referred to a Circular dated 01.08.2006 (Annexure RA-5) issued by the Railway Board regarding pension.

8. I have heard Shri A.D. Singh, learned counsel for the applicant, who also produced a copy of order dated 09.05.2018 passed in OA No. 1018/2012 - Kishori Lal & Ors. Vs. UOI & Ors at the time of hearing. Shri Raj Kamal Srivastava, learned counsel for the respondents reiterated the arguments in the counter affidavit and specifically drew my attention to the Supplementary Counter Reply filed by the respondents on 24.07.2018 in which it is stated that the respondents vide order dated 12.08.2017 have decided to regularize the services of the applicant with effect from 22.01.2001 and hence, the applicant will be eligible for pensionary benefits as per the old pension scheme. However, the applicant's counsel pressed for the benefit of regularization with effect from 31.12.1997 which has been allowed in similar cases.

9. I have considered the submissions of the learned counsels for both the parties and perused the pleadings and the copy of the judgments referred at the time of hearing. Learned counsel for the applicant argued that the applicant is entitled for regularization from December, 1997 as per the Railway Board circular and as other junior casual labourers were regularized from 1997. The respondents' counsel had argued that the casual labourers who were regularized from 1997, were from Construction department whereas the applicant is from Track Machine Organization and both category of employees cannot be compared and that the respondents have allowed the benefit of regularization to the applicant with effect from 22.1.2001 as informed in the Supplementary Counter Reply dated 24.7.2018 filed by the respondents.

10. In view of the contentions in the Supplementary Counter Reply dated 24.7.2018 filed by the respondents, the only dispute remaining in this OA is whether the applicant's date of regularization which has been already antedated to 22.1.2001, can be further antedated in the light of order of this Tribunal in similar cases.

11. Learned counsel for the applicant relied on the order of this Tribunal dated 9.5.2018 in the case of Kishori Lal & others vs. Union of India & others in OA No. 1018/2012. In ON No. 1018, the applicants were working as Khalasi under Izet Nagar division before being transferred to Track Machine Section on 16.5.1994. Their case was considered for regularization as per the Railway Board circular dated 3.9.1986 (Annexure A-2), stipulating that the screening should be completed during 1997 as per the policy decision taken by the Government. But the applicants' services were not regularized. They were found suitable in the screening in 2001, but their services were regularized with effect from 20.5.2004 in OA No. 1018/2012. Thereafter, the respondents represented and then filed the OA No. 1018/2012. The plea of the respondents in that OA was also similar i.e. the case of the casual workers in Construction department was considered and regularized in 1997, but the applicants were under Engineering department, for which the regularization of casual workers was taken up in 2004.

12. This Tribunal in the order dated 9.5.2018 has observed as under:-

"18. It is not disputed that in view of Railway Board circulars dated 3.9.1996 and 11.12.1996, the services of all casual labourers who were on roll on 30.4.1996 were to be regularized and it is also not disputed that the applicants were engaged as casual labourers on the post of Khalasi

between 1978 and 1984 and they were also granted temporary status between 1984 and 1986 and they were on roll on 30.6.1996. It is also an admitted fact that several casual labourers working in different organization of Railways were regularized in the 1997, 1998 and 1999 but the respondents did not take any action to regularize the services of the applicants while services of several juniors casual labourers were regularized. It is also not disputed that the regularization process of the applicants were initiated in the year 2000 but it was cancelled and finally the applicants have been regularized vide order dated 22.05.2004.”

13. The order dated 9.5.2018 has also referred to a number of cases as indicated below as cited by the applicants in that OA in which the similar claims of the casual labourers have been allowed:-

- i. Union of India and others Vs. CAT, Allahabad Bench and others – 2010 (1) ESC 220 (All) DB
- ii. Union of India and others Vs. Birendra Singh & another – 2015(2) AISLJ 215
- iii. Narendra Singh Vs. Union of India and others (OA No. 1379/09) decided on 23.11.2009 by CAT, Allahabad Bench.
- iv. Nadir Ali Vs. Union of India & ors. – 2014 (1) (CAT) AISLJ 333.

14. Finally, the Tribunal vide order dated 9.5.2018 has held as under:-

“23. In my view, the facts of this OA are identical to the facts in the case of Narendra Singh (Supra). In the said OA, the applicant Narendra Singh was regularized on the basis of paper screening held on 24.4.2006 and he claimed his regularization w.e.f. 29.12.1997. It was held that there was no fault of the applicant and he was declared entitled to be regularized from the date i.e. 29.12.1997 when similarly situated other casual labourers were regularized ignoring his name.

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27. Accordingly, OA is allowed and the respondents are directed to treat the applicants as regularized from the date when similarly situated other casual labourers were regularized and latest by 31.12.1997 and their regular services should be counted from such date for the purpose of pension and other pensionary benefits. No order as to costs.”

15. The facts in this OA are similar to the facts in the OA No. 1018/2012 and other OAs cited in the order dated 9.5.2018. In this case also the applicant had filed OA No. 1476/2011 which was disposed of with a direction to the respondents to dispose of his representation. But as the impugned order dated 15.2.2012, the reason furnished by the respondents is that as per the circulars dated 3.9.96 and 11.12.96 of the Railway Board did not envisage that the date of regularization will be from retrospective effect. This reason is not acceptable

in view of the following clear instructions of the Railway Board in circular dated 3.9.96, which have not been considered in the order dated 15.2.2012:-

“Reg : Regularization of Casual Labour.

Attention is invited to AE (Staff) Railway Board's D.O. letter of even number dt. 12.5.96 advising the Railways of the announcement made by the Hon'ble MR in Parliament in the course of his reply to the discussion on the Railway Budget for 1996-97 that all the 56,000 approx Casual Labour on roll as on 30.04.1996 will be regularized by 1997-98 and requiring the Railways to draw an Action Plan to ensure that the absorption of all Casual Labour on roll is completed by Dec'97, so that a position of no Casual Labour on roll is achieved by that date.”

It is clearly stipulated that the regularization process should be completed by 31.12.1997 and there will be no casual labour on roll on December, 1997. It implies that either the applicants should have been regularized by December, 1997 and if it is not possible to regularize them, then the applicant should have been disengaged so that there will be no casual labourer as on December, 1997. There was no option available for the respondents to have delayed the regularization of casual labourers who were on roll as on 3.9.96, beyond 31.12.1997. Further, the argument that there is no provision for retrospective effect to regularization does have much force since the respondents have themselves antedated the date of regularization of the applicant to 22.01.2001 as stated in the Supplementary Counter Reply filed on 24.07.2018.

16. In view of the above discussions and following the order dated 9.5.2018 of this Tribunal in OA No. 1018/2012, which squarely covers the present case as well, this OA is allowed and the respondents are directed to treat the applicant as regularized from the date when similarly situated casual labourers were regularized and such date shall not be later than 31.12.1997 as per the circular dated 3.9.1996 of the Railway Board and their regular services should be counted from such date for the purpose of pension and pensionary benefits. No costs.

(Gokul Chandra Pati)
Member-A.

Anand...