

**Central Administrative Tribunal, Allahabad Bench,
Allahabad**

Original Application No. 330/00316/2012

Reserved on 28.2.2018

Pronounced on 28.3.2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Ram Chandra son of late Maiku Lal r/o House No. 133/422 Dhakana Purwa, Transport Nagar, Kanpur Nagar-23.

Applicant

By Advocate: Sri B.N. Singh

Versus

1. Union of India through the General Manager, Head Quarter, North Central Railway, Subedarganj, Allahabad.

2. Divisional Rail Manager, North Central Railway, Nawab Yusuf Road, Allahabad.

Respondents

By Advocate: Sri Anil Kumar

By Hon'ble Mr. Justice Dinesh Gupta, Member(J)

The applicant has preferred this O.A. under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

i) To quash the impugned order dated 20.10.2011 passed by respondent No. 2.

ii) Issue a further order or direction to the respondents to grant the temporary status to the applicant on completion of 120 days of service as Casual Mali and pay difference of salary and other attending benefits admissible to temporary status

employee as per Railway Board orders along with 18% interest.

iii) Issue any other order or direction to the respondents to treat the entire service as temporary employee for the purposes of retiral benefits including pension.

iv) Issue any other order or direction as may deem fit and proper in the circumstances of the case.

v) Award the cost of the original application.

2. The facts emerging from the O.A. are that the applicant was appointment as Casual Mali on 28.10.1974 and completed 123 days till 27.2.1975.

2.1 The applicant was granted temporary status w.e.f. 25.1.1980 and was given CPC scale from this date. The respondents regularized the services of the applicant in the year 2000 and the applicant was promoted as Cook.

2.2 Vide circular dated 20.12.1985 (Annexure A-2), the Railway Board directed the respondents to provide benefit of regular employee to all casual labourers after completion of 120 days of continuous service by granting them temporary status.

2.3 Respondent No. 2 vide letter dated 3.4.1989 (Annexure A-3) directed the Head of Departments of Railway to pay arrears of CPC to casual labourers after completion of 120 days of continuous service.

2.4 Division Bench of Andhra Pradesh High Court in the case of General Manager South Central Railway, Sikandarabad Vs. Shaik Abdul Khader decided on 23.6.2003 directed the respondents to treat the casual employee after completion of 120 days of service for all practical purposes as temporary status employee and give them other service benefits and CPC scale including pensionary benefits since then

2.5 Applicant gave representation dated 25.9.2010 (Annexure A-4) to the respondent No. 2 for granting temporary status and CPC scale after completion of 123 days of continuous service but when action was taken, applicant filed O.A. No.885 of 2011 which was disposed of by this Tribunal vide order dated 15.7.2011 (Annexure A-5) directing the respondents to take a decision on the representation of the applicant.

2.6 Respondents vide order dated 21.10.2011 have not considered the Railway Board order/ circular issued on the subject and treated the applicant's case of retired employee and refused to grant benefits as per Railway Board orders.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that nothing has been brought on record to show that the applicant was appointed as Casual Mali on 28.10.1994. However, it is submitted that applicant

was appointed as Mali w.e.f. 25.1.1980 and was drawing salary accordingly. It is further submitted that temporary status are granted to the casual labourers after due procedure and not granted automatically after completion of 120 days. In the present case, applicant was granted temporary status w.e.f. 25.1.1980 and was paid salary accordingly as per extent rules. It is further submitted that only half of the service of casual labour will be counted from the date of granting of temporary status till regularization and not entire the service. It is further submitted that applicant cannot be permitted to raise said issue after a lapse of 32 years and O.A.is highly time barred.

3.1 Through the impugned order dated 20.10.2011, respondents have clearly indicated that Hon'ble High Court of Andhra Pradesh has also re-considered the case of Shaikh Abdul Khader in Writ Petition No.10838 of 2001 filed by the General manager South Central Railway, Secunderabad and another Vs. A Ramanamma and passed the judgment on 1.5.2009 in which the Hon'ble High Court has held as under:-

“Similarly, Shaik Abdul Khader(supra) directing counting of the entire service rendered by a casual labour after getting temporary status even before absorption for purposes of qualifying service for

pension/family pension, runs contrary to the distinction between 'casual labour with temporary status' and 'temporary railway servants' recognized by Chanda Devi(supra) and other decisions of the Supreme Court. The conclusion in Shaik Abdul Khader(supra) that once a casual labour is given temporary status, that means that he has been absorbed in the department, does not appear to fit in with the interpretation of the rules and the legal position by the Apex Court."

3.2 Accordingly, keeping in view the subsequent judgment dated 1.5.2009 passed by High Court of Andhra Pradesh, the respondents vide impugned order dated 20.10.2011 observed that applicant is not entitled for any benefit on the basis of order passed by High Court of Andhra Pradesh in Writ Petition No. 10838 of 2001 decided on 23.6.2003.

4. Heard the learned counsel for applicant Sri B.N. Singh and learned counsel for respondents Sri Anil Kumar and perused the pleadings available on record.

5. Counsel for applicant submitted that applicant was in fact appointed as Casual Mali on 28.10.1974 and completed 123 days till 27.2.1975 and applicant submitted that in view of circular dated 20.12.1985 which provide benefit of regular employee to all casual

labours after completion of 120 day of continuous service by granting them temporary status, applicant should have been granted temporary status immediately after completion of 120 days. However, the applicant was granted temporary status w.e.f. 25.1.1980 and was regularized in the year 2000. The applicant by way of this O.A. prayed for payment of difference of salary and other attending benefits admissible to temporary status employee from the date of completion of 120 days i.e. 7.2.1975 till the date of temporary status i.e. 25.1.1980. Counsel for applicant further submitted that applicant was appointed as casual labour and as per RBE No. 168/1986 the applicant is entitled for grant of temporary status on completion of 120 days. Counsel also draws Court attention towards the definition of Casual labour. Counsel further submitted that respondents while deciding the representation of applicant fails to consider this aspect that the applicant is only claiming difference of salary and other attending benefits on completion of 120 days till the date of grant of temporary status i.e. 25.1.1980.

6. Counsel for respondents submitted that first of all, claim of the applicant for grant of difference of pay and other benefits is hopelessly barred by limitation. As per applicant's own contention, the applicant was

given temporary status w.e.f. 25.1.1980 while the applicant is claiming the same from 27.2.1975 the date on which he has completed 120 days. The applicant has raised first time this grievance by representation dated 25.9.2010 and when the same was not considered, the applicant preferred O.A. No. 885/2011 which was disposed of by this Tribunal vide order dated 15.7.2011 directing the respondents to take a decision on the representation of the applicant. Thus the applicant has raised his grievance in respect of period 27.2.1975 till 25.1.1980 for the first time in 2010 i.e. after more than 35 years. While as per Section 21 of the AT Act, the applicant should have raised his grievance within a specified period given in Section 21 of the AT Act. Counsel further submitted that applicant himself stated in his representation dated 25.9.2010 that he claims parity with the case of General Manager South Central Railway, Sikandarabad Vs. Shaik Abdul Khader decided on 23.6.2003. While disposing of the representation of the applicant, respondents clearly mentioned that case of General Manager South Central Railway, Sikandarabad Vs. Shaik Abdul Khader was again reconsidered by the Hon'ble High Court of Andhra Pradesh in the case of General Manager South Central Railway, Secunderabad and another Vs. A.

Ramanamma (W.P. No. 10838/2001) and High Court over ruled the verdict of Shaikh Abdul Khader case and both the case were also considered by the Hon'ble Apex Court in Civil appeal No. 3938 of 2017 (arising out of SLP (C) No. 23723 of 2015 Union of India and others Vs. Rakesh Kumar and others and other connected Civil Appeals and vide order dated 24th March, 2017 and Hon'ble Apex Court 2017 resolved the controversy arising in the case of casual labours given temporary status and count of period of his service for the purpose of pensionary benefits. Counsel for respondents provided the copy of judgment of A. Ramanamma (supra) and Rakesh Kumar and others.

7. The Court is unable to accept the contentions raised by the learned counsel for applicant.

8. First of all, at a very outset, O.A. is barred by limitation. Admittedly, the applicant has completed 120 days on 27.2.1975 and he was granted temporary status w.e.f. 25.1.1980 and right from 1975 till 1980, applicant has never raised grievance regarding payment of difference of salary. He first time moved a representation on 25.9.2010. Hon'ble Supreme Court in the case of **Ramesh Chandra Sharma v. Udham Singh Kamal reported in 2000(2) SLJ SC 89** observed as under:-

"21. Limitation – (1) A tribunal shall not admit an application:

- (a) In a case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date of which such final order has been made;
- (b) In a case where an appeal or representation such as is mention in Clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) xxx xxx

xxx

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal, that he had sufficient cause for not making the application within such period."

9. The Hon'ble Apex Court in the case of **Bhop Singh Vs. Union of India and others reported in (1992) 3 SCC 136**, has been pleased to observe as under:-

"Inordinate and unexplained delay or latches is by itself a ground to refuse relief to the petitioner irrespective of the merit of his claim."

10. The Hon'ble Apex Court in the case of **Union of India Vs. Harnam Singh** reported in AIR (1993) SCC page 1367, has been pleased to observe that "*The law of limitation may operate harshly but it has to be applied with all its rigour and the Courts or Tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire.*"

11. Now, the court has to see whether in the light of above case laws, the case of applicant could be considered at this stage. The applicant counsel tried to argue that part of that period involves the payment of salary, as such grievance can be raised at any time. It is not disputed that applicant has approached this Tribunal after 32 years and applicant has failed to demonstrate the reasons for not coming forward earlier.

12. So far as merit of the case is concerned, first of all, the applicant relied upon a Railway Board circular dated 168/1986 and submitted that applicant is entitled to get the benefit of this circular. In this connection, it is stated that this circular was not in existence when the applicant has completed 120 days in 1975, hence this circular will not be applicable in the case of applicant. Further, the contention of the applicant that applicant should have given temporary

status immediately after completion of 120 days is also not correct because simply after completion of 120 days, a person will not be able to get temporary status unless the respondents adopts a proper procedure for granting temporary status and screening and other tests. Applicant has never given any such of test. Further the issue raised by the applicant for parity with the case of Shaik Abdul Khader is concerned, it is not disputed that this judgment was distinguished by the High Court of Andhra Pradesh in the case of A. Ramanamma(W.P. No. 10838/2001) who delivered the judgment on 1.5.2009 in which Hon'ble High Court of Andhra Pradesh has considered in detail the case of General Manager, North West Railway Vs. Chanda Devi reported in 2008 (2) SCC 108 as well as para 20 of the Master Circular No. 54 and para 2005 of IREM and also considered other cases of this Tribunal and has come to the conclusion that Casual Labour after attaining temporary status is entitled to reckon only half of the period. It may however be noticed that in the case of G.M. South Central Railway Vs. A. Ramanamma, the Andhra Pradesh High Court relying upon the case of Chanda Devi (supra), reconsidered the judgment passed by the Andhra Pradesh High Court in the case of Shaik Abdul Khader and held that "counting of the entire service rendered by a casual

labour after getting temporary status even before absorption for purpose of qualifying service for pension/family pension runs contrary to the distinction between casual labour with temporary status and temporary railway servants recognized by Chanda Devi (supra) and other decisions of Hon'ble Supreme court." The conclusion in Shaik Abdul Khader that once a casual labour is given temporary status, it means that he has been absorbed in the department does not appear to fit in with the interpretation of the rules and the legal position by the Apex Court. Thus, the counsel for respondents submitted that Andhra Pradesh High Court in the case of G.M. South Central Railway Vs. A. Ramanamma (supra), distinguished the case of Shaik Abdul Khader relying on which the Principal Bench of this Tribunal has passed the judgment.

13. Further, in the case of Sahjadi Devi, the respondents have considered and decided the representation of the applicant in the light of order passed by High Court Andhra Pradesh in Writ Petition No. 10838/2001 on 1.5.2009 which was challenged before the Tribunal by filing O.A. No. 1331 of 2010 and the Tribunal dismissed the O.A. vide order dated 28.7.2011 with the following observations as quoted in para 6 of the counter reply filed by the respondents:-

“The judgment delivered by the CAT, Allahabad Bench in the above mentioned O.A. was based on the judgment of Shaik Abdul Khader and the correct law as not laced before the Tribunal at the time of pronouncement of the judgment and in a subsequent judgment the Hon’ble High Court of Andhra Pradesh distinguishes the case of Shaik Abdul Khader. Hence placing reliance on the subsequent judgment of the Hon’ble High Court of Andhra Pradesh, the applicant is not entitled for the benefit as the applicant has not put in minimum qualifying period of service. Hence the applicant is not entitled for family pension after the death of her husband employee. The impugned order passed by the respondents on the representation of the applicant is perfectly justified and in accordance with the latest judgment of the Hon’ble High Court of Andhra Pradesh.

14. Thus, the benefit sought by the applicant in the light of judgment of High Court of Andhra Pradesh in the case of General Manager South Central Railway Sikandarabad Vs. Shaik Abdul Khader decided on 23.6.2003 which was further considered by the same

High Court in the case of A. Ramanamma (W.P. No. 10838/2001) who considered in detail the case of General Manager, North West Railway Vs. Chanda Devi reported in 2008 (2) SCC 108 as well as para 20 of the Master Circular No. 54 and para 2005 of IREM and also considered other cases of this Tribunal and has come to the conclusion that Casual Labour after attaining temporary status is entitled to reckon only half of the period. It may however be noticed that in the case of G.M. South Central Railway Vs. A. Ramanamma, the Andhra Pradesh High Court relying upon the case of Chanda Devi (supra), reconsidered the judgment passed by the Andhra Pradesh High Court in the case of Shaik Abdul Khader and held that "counting of the entire service rendered by a casual labour after getting temporary status even before absorption for purpose of qualifying service for pension/family pension runs contrary to the distinction between casual labour with temporary status and temporary railway servants recognized by Chanda Devi (supra) and other decisions of Hon'ble Supreme court." The conclusion in Shaik Abdul Khader that once a casual labour is given temporary status, it means that he has been absorbed in the department does not appear to fit in with the interpretation of the rules and the legal position by the

Apex Court. Thus, the counsel for respondents submitted that Andhra Pradesh High Court in the case of G.M. South Central Railway Vs. A. Ramanamma (supra), distinguished the case of Shaik Abdul Khader relying on which the Principal Bench of this Tribunal has passed the judgment.

15. Further, the Hon'ble Apex Court in the case of Civil Appeal No. 3938 of 2017 (arising out of SLP (C) No. 23723 of 2015) Union of India and others Vs. Rakesh Kumar and others and other connected Civil Appeals vide its order dated 24th March, 2017 concluded the controversy after considering the judgments of General Manager, South Central Railway, Secunderabad , A.P. Vs. Shaik Abdul Khader and case of the General Manager, South Central Railway Vs. A. Ramanamma. Relying upon various decisions of Hon'ble Apex Court specifically in the case of Chanda Devi (supra), it was held that in the case of A. Ramanamma reasons were given for not following the case of case of Shaik Abdul Khader and in the case of A. Ramanamma, Andhra Pradesh High Court has considered in detail the case of Chanda Devi as well as Para 20 of Master Circular No. 54 and para 2005 of IREM. However, the Apex Court has held that finding of the Andhra Pradesh High Court in the case of A. Ramanamma that 50 percent of service as casual

labour cannot be counted was not correct law and relied upon Note 1 of Rule 31 of Rules 1993 for counting of service paid from contingencies. It was further held that except to the above extent, the judgment of Andhra Pradesh High Court in A. Ramanamma case lays down the correct law and finally the Apex Court allowed all the Civil Appeals and in para 55 of its judgment held as under:-

"55. In view of foregoing discussion, we hold :

- i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularized on a regular/temporary post for the purposes of calculation of pension.
- ii) the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of of pension.
- iii) Those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of Rules, 1993.
- iv) It is open to Pension Sanctioning Authority to recommend for relaxation in

deserving case to the Railway Board for dispensing with or relaxing requirement of any rule with regard to those casual workers who have been subsequently absorbed against the post and do not fulfill the requirement of existing rule for grant of pension, in deserving cases. On a request made in writing, the Pension Sanctioning Authority shall consider as to whether any particular case deserves to be considered for recommendation for relaxation under Rule 107 of Rules, 1993. "

16. In view of the aforesaid legal position the court is of the considered view that claim of the applicant is hopelessly barred by limitation as well as there is no merit in the O.A. The applicant has also failed to demonstrate that he ever raised his grievance in proper manner before competent authority. Thus, court is unable to grant any relief to the applicant and thus, O.A. has no merit and liable to be dismissed.

17. Accordingly, O.A. is dismissed as barred by time as well as on merits. No order as to costs.

Justice Dinesh Gupta)
Member (J)

HLS/-

