Central Administrative Tribunal
Principal Bench, New Delhi

O.A. No. 3019/2015

New Delhi, This the 14th day of August, 2015

Hon'ble Shri George Paracken, Member (J)
Hon'ble Shri Shekhar Agarwal, Member (A)

Sh. Niwas Verma, Aged 61 years
S/o Late Shri Ram Kishan Verma
Mason,
R/o. P-21, Near Dahiya X-Ray Clinic,
Pana Udhao, Narela,
Delhi. … Applicant

(By Advocate: Sh. R. K. Shukla)

Versus

1. Union of India
   Through General Manager
   Northern Railway Headquarter,
   Baroda House, New Delhi.

2. The Chief Administrative Officer (Construction),
   Northern Railway, Kashmere Gate,
   Delhi.

3. The Deputy Chief Engineer
   Northern Railway, (Construction),
   Tilak Bridge,
   New Delhi. …Respondents

O R D E R (O R A L)

Shri. G. George Paracken, Member (J) :

The applicant has filed the present Original Application relying upon the judgment dated 06.02.2014 passed by this

Hon'ble Tribunal and upheld by Hon'ble High Court of Delhi at New Delhi, in O.A. No. 3745/2012 to extend the benefits of said judgment for the purpose of counting of 50% services rendered as casual labourer till the date of temporary status and 100% services from the date of temporary status to their regularisation for the purpose of pension and other benefits. He also seeks for the following reliefs:-

> "(a) To direct the respondents to count the services rendered by the applicant in the capacity casual labour as 50% after counting 120 days and 100% from the date of temporary status till their regularisation for the purpose of pension and pensionery benefits and other benefits as a qualifying service and MACP well.
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> (b) To direct the respondents to extend the benefits of judgment and order passed in Shyam Pyare & Ors. Vs. UOI & Ors. which is on the basis of Shaikh Abdul Khadar's judgment for the purpose of pension and pensionary benefits, as well as other consequential benefits, according the respondents be directed to examine the cases of the applicant in accordance with law.
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> (c) Any other relief which this Hon'ble Tribunal deem fit and proper may also be passed in the facts and circumstances of the case in favour of the applicants."

2. According, to the learned counsel for the applicant, the applicant was initially appointed on casual basis in the year 1977 and he was granted temporary status w.e.f. 01.01.1982 and further he was regularized w.e.f. March, 1995. His grievance is that the service rendered by him as casual labour and the service

rendered by him as temporary status employee have not been taken into consideration as qualifying service for the purpose of granting him the benefits under the MACP Scheme as well as the retiral benefits.

3. This issue has already been settled by this Tribunal by observing that 50% of casual service and 100% of temporary service followed by regularization shall be counted for the purpose of granting both MACP benefits and pensionary benefits.

4. The applicant has referred to the Order of this Tribunal in OA No.1502/2005 - Chander Pal and another vs. Union of India and another decided on 16.2.2006 relying upon the judgment of the Hon'ble Andhra Pradesh High Court in the case of General Manager, South Central Railway, Rail Nilayam, Secunderabad, A.P. and another vs. Shaik Abdul Khader, 2004 (2) ATJ 23. The relevant part of the said Order is as under:-

> "8. If one has regard to the above, deeming that on temporary status, one is absorbed in the department, the services rendered as such have to be reckoned in full for qualifying service and earlier period of casual service without having temporary status has to be reckoned in half towards qualifying service for the purpose of pensionary benefits.
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> 9. In the light of the above, the same treatment has to be meted out to the applicants, once the Railway Servants (Pension Rules, 1993 have been interpreted by the Honble Andhra Pradesh High Court (supra), which is the binding precedent on me.

> 10. In the result, OA is allowed. Respondents are directed to treat services rendered by applicant no.1 and deceased husband of applicant no.2 represented through LR with temporary status in full for qualifying service and half of the service period rendered as casual labour before acquirement of temporary status as qualifying service and accordingly, retiral benefits on the basis of calculation of qualifying service has to be worked out and the arrears would be disbursed to the applicants within a period of three months from the date of receipt of a copy of this order. No costs."

5. Learned counsel for the applicant has also stated that the aforesaid Order of this Tribunal has been upheld by the Hon'ble High Court of Delhi in Writ Petition (Civil) No.6348/2008 decided on 15.1.2009. The said judgment being a short one is reproduced as under:-

> "The question involved is as to whether service rendered by an employee after the grant of temporary status and before he was regularized should be counted for the purpose of fixing the pension. The learned Tribunal has answered this question in affirmative relying upon the judgment of Central Administrative Tribunal, Hyderabad, passed in the case of Sheikh Abdul Qadir vs. Union of India. Against the judgment, Railway had filed writ petition in the High Court of Andhra Pradesh which writ petition was also dismissed affirming the judgment of the Central Administrative Tribunal. SLP filed by the Railways was also dismissed as withdrawn. Taking note of these facts, this Court has upheld similar view in the Writ Petition No.631-33/2006 and review petition filed therein has also been dismissed by the Division Bench of this Court vide orders dated 23.11.2007.
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> No doubt SLP was dismissed as withdrawn as respondent in the said SLP had died in the

meantime. Be as it may, after going through the judgment of the Andhra Pradesh High Court, we agree with the view taken by the Andhra Pradesh High Court in the aforesaid case. We may point out at this stage that relying upon the judgment of the Andhra Pradesh High Court, earlier also a Division Bench of this Court had dismissed Writ Petition (Civil) No.2528/2007 of the Union of India under identical circumstances vide orders dated 12th December, 2007.

Learned counsel for the respondent informs that against that judgment, the petitioner, i.e., Union of India had filed Special Leave to Appeal (Civil) CC 7157/2008, which was, however, dismissed by the Supreme Court vide orders dated 13th May, 2008. Copy of the said orders is produced before us for our perusal.

In view thereof, we do not find any merit in this writ petition, which is accordingly dismissed."

6. This Tribunal again in its Order dated 26.05.2014 in OA No.2639/2013 - Ram Saran v. Union of India and Others held as under:-

"7. In view of what has been stated above, we are of the view that the applicant herein has made out a case for grant of relief. Accordingly, for parity of reasons given in the judgment of the Andhra Pradesh High Court in the matter of Shaik Abdul Khader (supra), this OA is allowed in the same terms. However, before parting with the matter, it may be observed that the learned counsel for applicant has drawn our attention to Railway Boards circular dated 25.2.2010 based upon another circular dated 4.12.2009, which stipulates that for the purpose of extension of the benefit of MACP Scheme, 50% of temporary status casual labour service on absorption in regular employment may be taken into account. Suffice it to observe that here we are not concerned with the extension of benefits of MACP Scheme but the

case of the applicant is regarding taking into consideration the full period of temporary status for counting of qualifying service instead of 50% of the period for the purpose of pensionary benefits and not for the purpose of MACP Scheme.

8. For the foregoing reasons, the OA shall stand disposed of. No costs."

7. Recently, also this Tribunal has disposed of similar case (OA No.1684/2015 - Shri Vijender Kumar and another vs. Union of India and others, decided on 6.5.2015). The relevant part of the said order reads as under:-

"2. According to the applicants counsel, their case is squarely covered by the decision of the Honble Andhra Pradesh High Court in the case of General Manager, South Central Railway, Rail Nilayam, Secunderabad, A.P. and another vs. Shaik Abdul Khader, 2004 (2) ATJ 23. The relevant part of the said judgment reads as under:-

4. The arguments and counter arguments can be appreciated only after going through the relevant rules. Rule 31 of the Railway Services (Pension) Rules, 1993 lays down:

31. Counting of service paid from Contingencies:- In respect of a railway servant, in service on or after the 22nd day of August, 1968, half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment subject to the following condition, 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

such 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 scales of pay, Bears some relation in the matter of payment 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. Subject to condition laid down in this rule, in respect of a railway servant half of the service paid from contingencies shall have to be taken into account for calculating pensionary benefits on absorption in regular employment. Now the question is, when a person gets a temporary status whether it could be said that he had been absorbed in terms of Rule 31 because after absorption the service shall have to be counted keeping in view Rule 31.

5. Now different provisions of Master Circular 54 of 1994 shall have to be gone into to which a reference has been made by the Tribunal. Para-20 of the Master Circular No. 54 lays down;

"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."

Reference has been made to another extract of para-2005 of Indian Railway Establishment Manual, Volume-II. Sub-para-1 of para 2005(a) lays down;

> "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."
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> If this sub-para is read with para-20 and also with rule-31, there remains no doubt 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 that he has been absorbed in the department. Even para 2005 (a) has been drafted in the same way because of the fact that even such casual labour who have attained temporary status are allowed to carry forward the leave at their credit in full to the new post on absorption in regular service. Therefore, we have no doubt in our mind that once temporary status is granted to a person who is absorbed later on in regular service caries forward not only the leave

> to his credit but also carries forward the service in full. Half of the service rendered by him as casual labour before getting the temporary status has to be counted. Therefore, we do not feel that the Tribunal was wrong in coming to the conclusion it has, although we may not agree with the reasons given by the Tribunal. The view taken by us is further strengthened by mandate of rule-20 of Railway Services (Pension) Rules which lays down:
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> "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.
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> Provided that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post.
>
> Provided further that-
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> (a) ....
>
> (b) ...."
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> Therefore, we hold that the respondent was entitled to get the service counted in full from 1-1-83. He was also entitled to get half of the service counted before 1-1-83 from the date he had joined in the railways as casual labour."

8. In view of the above position, we dispose of this OA with the direction to the respondents to verify the factual position stated by the applicant with regard to the service rendered by him and to count 50% of casual service and the entire 100% temporary

status casual service rendered by the applicant as qualifying service for the purpose of granting him the benefits under MACP and benefits under the pensionary rules. The respondents shall also pass appropriate orders implementing the aforesaid directions within a period of two months from the date of receipt of a copy of this order. There shall be no orders to costs.

(SHEKHAR AGARWAL)
MEMBER (A)

(G. GEORGE PARACKEN)
MEMBER (J)

/mbt/