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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00140/2017

Tuesday, this the 3rd day of April, 2018

CORAM:

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

G.Kuttappan, S/o.Gopalan,
Retired M.V.Driver,
Southern Railway, Trivandrum.
Residing at Suresh Bhavan,
Alampotta, Kovalassery P.O.,
Thiruvananthapuram – 695 512.

...Applicant

(By Advocate M/s.Varkey & Martin)

V e r s u s

1. Union of India represented by General Manager,
Southern Railway, Chennai – 3.
2. The Chief Administrative Officer,
Construction Branch, Southern Railway,
Egmore, Chennai – 600 008.
3. Senior Divisional Finance Manager,
Southern Railway, Trivandrum – 695 014.

...Respondents

(By Advocate Mr.Mathews.K.G)

This application having been heard on 27th March 2018 the Tribunal on 3rd April 2018 delivered the following :

ORDER

The applicant is a retired Motor Vehicle Driver who was working under the Construction Branch of the respondent Railways. He started service under the Railways as Casual Mazdoor in the open line from 6.6.1978 to 25.6.1989 and was granted temporary status as CPC Mazdoor from 26.6.1989. He was

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regularised as Gangman with effect from 16.6.1993 and thereafter he was promoted as Motor Vehicle Driver initially on adhoc basis from 1.2.1995 and was regularized on 12.2.1999.

2. When he retired on 30.4.2011 as Motor Vehicle Driver he was treated as a Gangman on the ground that the posts in the Construction Wing wherein he was Motor Vehicle Driver were ex-cadre posts. Being aggrieved he filed O.A.No.962/2012 before this Tribunal. His pension was ordered to be re-fixed vide Annexure A-1 order dated 6.10.2015 . His grievance in the present O.A is that while the respondents so fixed his pension, 50% of the service rendered by him as Casual Mazdoor was not counted. He prays for a declaration that he is entitled to count 100% of temporary status service and 50% of casual labour service to his regular service for the purpose of pensionary benefits, MACP etc. and also to set aside Annexure A-3 Revised Pension Payment Order in so far as it relates to the qualifying service recorded therein and for consequential benefits.

3. In the reply statement the respondents stated that 50% of the applicant's service from the time of granting temporary status ie. from 26.6.1989 to 15.6.1993 and 100% of his service from 16.6.1993 to 30.4.2011 have already been accounted for pension and pensionary benefits and accordingly he was found to be having a qualifying service of 19 years as calculated in Annexure R-3.

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4. Heard Shri.Martin G Thottan, learned counsel for the applicant and Shri.Mathews.K.G., learned standing counsel for the Railways. Perused the records.

5. Shri.Martin G Thottan submitted that the applicant will be satisfied if the respondents count 50% of the casual service rendered by him prior to the grant of temporary status so that he will be able to get the benefits of MACP, medical allowance, post retirement complimentary pass etc. which requires 20 years of total service. He submitted that as per the recent decision of the Apex Court in *Union of India v. Rakesh Kumar & Others* AIR 2017 SC 1691 50% of the casual service rendered before granting temporary status and 50% of the temporary status till regularisation has to be counted for calculating retiral benefits. He pointed out from para 10 of the reply statement that the respondents do admit this aspect also.

6. The only residual dispute for the respondents is that the applicant has not produced any proof regarding the casual labour service rendered by him. In this connection the applicant has produced Annexure A-4 casual labour service card along with M.A.No.180/384/2018 in which he has prayed for receiving that document. M.A.No.180/384/2018 is allowed in the interests of justice. The authenticity of Annexure A-4 was not disputed by the respondents.

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7. In the above circumstances this Tribunal directs the respondents to count 50% of the casual service rendered by him in terms of Annexure A-4 in addition to what has been reckoned as qualifying service in Annexure A-3 Revised P.P.O. Annexure A-3 is quashed and set aside *qua* the qualifying service of 19 years mentioned therein. Respondents are directed to issue a fresh Revised P.P.O after re-calculating the qualifying service and reckoning 50% of the casual service rendered by the applicant in terms of Annexure A-4 also. The applicant shall also be considered for granting the benefits of MACP and other service and retiral benefits. But he shall not be entitled to any monetary benefits in cash except reckoning the above matters in the quantum of pension to be revised counting of 50% of the casual service rendered by him in terms of Annexure A-4. He shall be given other benefits like medical allowance, post retirement complimentary pass etc based on counting of 50% of the casual service rendered by him. Ordered accordingly.

8. The O.A is disposed of as above. No order as to costs.

(Dated this the 3rd day of April 2018)

(U.SARATHCHANDRAN)
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00140/2017

- 1.** **Annexure A-1** - True copy of the order in O.A.No.962/2012 of this Hon'ble Tribunal dated 6.10.2015.
 - 2.** **Annexure A-2** - True copy of the representation 20.10.2015.
 - 3.** **Annexure A-3** - True copy of the Revised Pension Payment Order No.0604208472 dated 25.2.2016.
 - 4.** **Annexure A-4** - True copy of the Service Card issued to the applicant.
 - 5.** **Annexure R-1** – True copy of Memorandum issued by Dy.CE/CN/TVC No.P 535/CN/TVC/Court case dated 11.11.2015.
 - 6.** **Annexure R-2** – True copy of Revised Pension Payment Order No.0604208472 dated 19.1.2016.
 - 7.** **Annexure R-3** – True copy of Sanction Memorandum dated 10.2.2016.
 - 8.** **Annexure R-4** – True copy of Revised Pension Payment Order No.0604208472 dated 25.2.2016.
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