

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. 050/00692/2017

Reserved on- 03.04.2018.

Date of pronouncement 26.04.2018

CORAM

Hon'ble Shri J.V. Bhairavia, Member [J]

1. Nathuni, S/o Nanhoo, R/o Village- Dudhaila, P.s. Jamhor, District- Aurangabad (Bihar)Applicant

By Advocate : Shri L.B. Singh

Versus

1. The Union of India through Secretary, Ministry of Railway, Rail Bhawan, New Delhi, Pin Code-110001.
2. The General Manager (P), East Central Railway, Hajipur, District- Vaishaili, Pin Code 844101.
3. The Divisional Personnel Manager, Eastern Central Railway, Mugalsarai (U.P.), Pin -232101
4. The A.P.O Eastern Central Railway, Mugalsarai (U.P.), Pin -232101
5. The Divisional Railway Manager, Eastern Central Railway, Mugalsarai (U.P.), Pin -232101
6. The Assistant Engineer, Eastern Central Railway, Japla (Jharkhand) Pin Code 822116
7. The Assistant Engineer, Eastern Central Railway, Dehri-on-sone, Rohtas at Sasaram (Bihar), Pin code -821115.
8. The Railway Inspector, Eastern Central Railway, Dehri-on Sone, rohtas at Sasaram (Bihar) Pin Code 821115.

.....Respondents

By Advocate: Shri Rajesh Mohan

O R D E R

Jayesh V. Bhairavia, M [J]: In the present OA, the applicant, a retired railway employee has prayed for grant of pension and arrears thereon as he has completed qualifying service to receive the pension by counting his service period of temporary status as 100% instead of 50% and also counting 50 % of his engagement as casual labour till he was granted temporary status in view of various judgements passed by Hon'ble Apex Court, High Court and this Tribunal in identical cases. The applicant has prayed as under :-

"[8.1] That the Hon'ble Tribunal be pleased to direct the respondents authority to calculate afresh as per verdict of this Hon'ble Tribunal, High Court as well as the guidelines issued by the Hon'ble Apex Court of India

(Annexure P/3) and sanction the pension and pay it regularly and also calculate the arrears of pension, if any, in accordance with law.

[8.2] That further direction may be issued to the respondents authority to calculate and pay the arrears of pension from the day he is eligible for granting the pension benefits with applicable interest as per rules and norms of the railway department.

[8.3] That any other relief / reliefs as your Lordships may deem fit and proper in the larger interest of natural justice."

2. The brief facts of the case, as submitted by the applicant, are as below :-

[i] The applicant, namely Shri Nathuni son of Nanhoo, resident of village Dudhalia, P.S. Jamhor, District Aurangabad, Bihar submitted that initially he was appointed as a daily wages labourer in the department of railway in the year 1960. He had continuously worked as a casual labour more than 120 days and subsequently on 12.11.1985 he had been granted temporary status.

[ii] That, on 24.07.1991 he was absorbed as regular employee in group 'D' as Gangman and on attaining the superannuation age he retired on 31.12.1997 under engineering department, Eastern Railway, Mugalsarai.

[ii] On 18.12.1997 the office of D.R.M. Mugalsarai, Eastern Railway had issued service certificate bearing serial No. E/Pen/Engg/97 – 678-NR dated 18.12.1997 to the applicant according to it the period of service was stated 12.11.1985 to 31.12.1997 as Gangman. (Annexure P/1 refers).

[iv] The learned counsel for applicant submitted that at the time of granting temporary status to the applicant on 12.11.1985, the applicant was placed at serial no. 107 with a details of joining date as casual labour on 16.11.1959 and completed 1064 days. (Annexure P/1 series, page no. 14 of the O.A.).

[v] It is further submitted that after superannuation of the applicant he was not granted any benefit of pension. Therefore, the applicant

had submitted various representation since 1997 for considering his case for grant of pension. However, in spite of his tremendous effort to get redress his grievance he moved pillar to post but the respondents has not considered his claim. The applicant had approached this Tribunal by way of filing OA No. 796/2013 which was dismissed for not removing the defects and the MA no. 401 with M.A No. 402/2015 was filed for restoration was dismissed on 16.02.2016. The grievance of the applicant remained unadjudicated. Thereafter the applicant has filed the present O.A.

(vi] It is submitted that applicant was duly appointed on the post of Gangman man under Engineer Department, Mugalsarai in the year 1959-60 on daily wages and thereafter, he was granted temporary status from 12.11.1985 and subsequently was absorbed as a permanent employee as Group 'D' emplployee and superannuated on 31.12.1997 from the post of Gangman. The identically situated railway employee had been granted pension who had completed minimum tenure of Gangman by counting the period of temporary status.

[vii] The identically situated employee had filed various cases before this Tribunal and they were ordered to receive benefit of pension. The learned counsel for applicant placed reliance on following orders and judgements.

[i] The judgments/orders passed by this Tribunal, CAT, Patna (in analogous cases) i.e O.A No. 657/2012 dated 07.12.2014.

[ii] The Judgement passed by Hon'ble Patna High Court in CWJC No. 11695/2015 dated 18.08.2015.

[iii] The Judgement passed by the Hon'ble Supreme Court of India in SLP (Civil) No. 20041/2008 dated 30.09.2011 and other analogous SLPs. (Annexure P/2 series refer).

[viii] The learned counsel for applicant submitted that since catena of orders and direction has been passed by the Hon'ble Apex Court of India as well as Hon'ble High Court and this Tribunal with respect to grant of pension to the railway employee of Group 'D' by considering the period of temporary status as 100 % qualifying service period for the purpose of grant of pension and also 50 % of the service period of casual labourer till temporary status was granted. The claim of applicant is squarely covered by the said judgements. However, the respondents have not considered the legitimate claim of applicant and deprived from the benefit of pension whereas identically situated other railway employees were granted benefit of pension therefore, the applicant is also entitled for the equal treatment and entitled for the pension as prayed for.

3. In response to the notice, the respondent had filed their written statement and submitted that the applicant was initially engaged as casual labour and he was acquired temporary status on 12.11.1985 as per extant rules. Thereafter, the applicant was absorbed/posted on regular post in Group 'D' i.e as Gangman with effect from 24.07.1991. He superannuated from railway service on 31.12.1997. it is submitted that the qualifying service of the applicant for the purpose of pension and other pensionery benefits was calculated as half the period of service from the date of attaining temporary status to the date of regular absorption on regular post as gangman i.e from 12.11.1985 to 23.07.1991 and quantum of full period from regular absorption on regular post till superannuation i.e from 24.07.1991 to 31.12.1997 in accordance with Railway Board's letter no. E(NG) 11/78/CL/12 dated ` 14.10.1980 circulated under CPO's Circular no. 193/80 and para 2005 (a) of IREM Volume-II and para -20 of Master Circular no. 54 dated 30.03.1994, RBE No. 14/94 and according to it the total qualifying service was calculated duly vetted by associate accounts as 09 years 03 months 13 days i.e 9.1/2 years for the purpose of pension and retiral benefits whereas minimum 10 year of qualifying service is essential for granting pension in terms of rule 69 of railway service (Pension) rule 1993. Since total qualifying service of the applicant

was less than 10 years as such the claim of applicant was not approved for the pension as per extant rules. (Annexure R/1 to R/4 refer).

It is further submitted that the respondents had not received any representation of the applicant and as the applicant has not fulfil the requirement of minimum 10 years of qualifying service for grant of pension, the applicant is not entitled for any relief.

4. Heard the parties and perused the records.

5. In the present OA it is an admitted fact that the applicant was granted temporary status of Gangman on 12.11.1985 and thereafter with effect from 24.07.1991 his service was regularised as permanent employee in Group 'D' i.e as a Gangman, he retired from the service on 31.12.1997 from the post of Gangman. The respondents had admitted that before granting temporary status to the applicant, the applicant was engaged as casual worker/labour in railway department.

6. The applicant was denied the pension on the ground that applicant had not completed minimum 10 years of qualifying service as permanent employee/regular employee in the Railway Department. It is the contention of respondents that as per the provision of extant rules and guidelines of Railway Department as well as per the terms of rule 69 of pension rules (Annexure R/1 to R/4 referred) the respondents had considered only 50% of Temporary Service period i.e 12.11.1985 to 23.07.1991 and quantum of full period from regular absorption of the applicant on regular post till his superannuation i.e, from 24.07.1991 to 31.12.1997 for the purpose of calculation of qualifying service period with respect to grant of pension and other pensioner benefits.

7. The learned counsel for the applicant submitted that as per the various rulings of Hon'ble Apex Court, High Court and this Tribunal, the respondents ought to have considered 100 % of the service period of temporary service till he was regularized instead of counting 50 % of it. Further, it is submitted that respondents also ought to have considered 50 % of the service period of his engagement as casual labourer till he was granted temporary status. If this period

could have been considered by the respondents, in that eventuality, the total service period of the applicant became more than 10 years which will entitle him to receive the pension under the extant rules of the respondents. It is submitted that in identical cases, this Tribunal had allowed the claims of the identically situated labours/reailway servants, The orders were confirmed by the Hon'ble High Court of Patna also upheld by the Hon'ble Hon'ble Apex Court. To substantiate the said submission, the learned counsel for the applicant placed reliance on the various orders passed by this Tribunal in identical cases i.e OA 657/12 & other analogous cases order dated 07th November 2014. The said orders passed by this Tribunal were upheld by the Hon'ble High court in CWJC No. No. 10535/2015 and other 24 separate Writ Petition vide order dated 18.8.2015 and accordingly, the respondents had granted the pension to the identically Railway employee. Therefore, the applicant claims for pension also requires to be considered in pursuance to various rulings of Hon'ble High Court and Apex court.

8. From the above submission of the learned counsel for the parties and material on record, the issue of counting the qualifying service of Railway servant Group 'D' i.e Gangman herein, rendered in casual, temporary status and regular basis is recently decided by the Hon'ble Supreme Court in the case of Union of India vs. Rakesh Kumar reported in 2018 (1) SCC (L&S) 51=2017 (13) SCC 388. The Hon'ble Apex Court had removed all the clouds with regard to counting of qualifying service in respect of casual employees for the purpose of pension. The Hon'ble Apex Court in the said judgment, after referring various judgments passed by the Hon'ble Bench as well as Hon'ble High Court and also considering the provisions of the Railway Service (Pension) Rules, 1993, Rule 2005 of the Indian Railway Establishment Manual, held that the judgment passed by the Hon'ble High Court of Andhra Pradesh in the case of South Central Railway vs. Abdul Khadar reported in (2004) 1 SLR 214 is not correctly decided and the judgement of the Andhra Pradesh High Court in the case of South Central Railway vs. A. Ramanamma decided on 1.5.2009 (2009 SCC Online AP 933) lays down the correct law except the conclusion that 50% of service as casual labour cannot be counted.

It is appropriate to reproduce the relevant observation and conclusion of the Hon'ble Apex Court in the case of Union of India vs. Rakesh Kumar (Civil Appeal

No. 3938 of 2017 decided on 9.3.2017 with analogous other civil appeals as under :-

"2. The respondents to the appeal were initially appointed as casual labour in the Northern Railway, after working for one or more years, they were granted temporary status and subsequently regularised against regular posts. For example, the Respondent No. 1 was engaged on casual basis from 27.06.1984 and w.e.f. 22.06.1985 he was granted temporary status. Subsequently, w.e.f. 31.12.1996 he was regularised against a post and has been working in such capacity at New Delhi Railway Station. Respondent No. 1 raised a grievance regarding granting him full service benefit from 22.06.1985 to 31.12.1996 instead of 50 per cent service benefit. Similarly, Respondent Nos. 2 to 24 were engaged initially on casual basis and after one or two years were granted the temporary status and thereafter were regularised w.e.f. 31.12.1996. All the respondents raised the same grievance i.e. giving full service benefit for the period during which they were working, having temporary status. Respondent Nos. 1 to 24 filed O.A.No.2389 of 2014 before the Central Administrative Tribunal Principal Bench, New Delhi.

3. Before the Tribunal the applicants claimed for following reliefs:- "(a) To direct the respondents to count the services rendered by the applicants in the capacity of 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 pensionary benefits and other benefits as a qualifying service.

(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, accordingly the respondents be directed to examine the cases of the applicants in accordance with law.

(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.

4. The Tribunal relying on its earlier order dated 29.05.2014 in a similar case being O.A.No.1921 of 2014, Shri Prem Pal vs Union of India and Ors. allowed the Original Application filed by the respondent. Tribunal in its order dated 18.07.2014 referred to various orders passed by it wherein Tribunal had held that a casual labour after having been granted temporary status is entitled to reckon 100 per cent period of service with temporary status for the pensionary benefit.

5. Tribunal disposed of the Original Application by issuing following directions:

"In view of the above position, we dispose of this OA at the admission stage itself with the direction to the respondents to examine the cases of the applicants in the light of the aforesaid Orders of this Tribunal. If applicants' cases are also covered by the said Orders, they shall also be accorded the same benefits. In any case, the respondents shall pass appropriate order in this case within a period of two months from the date of receipt of a copy of this Order. There shall be no order as to cost.

6. The Union of India and Railway Authorities aggrieved by the aforesaid directions of the Tribunal filed writ petition before Delhi High Court being Writ Petition No. 7783 of 2014. The case of the appellant before the High Court was that only 50 % of the temporary status of service can be counted for the purpose of the pensionary benefit. It was pleaded in the writ petition that the judgment of Andhra Pradesh High Court in General Manager, South Central Railway, Secunderabad & Anr. vs. Shaik Abdul Khader reported in 2004 (1) SLR 2014 had been dissented by the Andhra Pradesh High Court itself in a subsequent judgment dated 01.05.2009 in Writ Petition(C) No. 10838 of 2001, General Manager, South Central Railway, Secunderabad vs. A. Ramanamma. It was further pleaded that Para 2005 of IREM permits only 50 per cent of temporary status service to be counted for purposes of pensionary benefit.

7. Delhi High Court vide its judgment and order dated 14.11.2014 dismissed the writ petition following its earlier judgment dated 10.11.2014 in W.P.(C) 7618 of 2014 in Union of India vs. Prem Pal Singh. It is useful to extract the entire judgment of the Delhi High Court dated 14.11.2014:

The dispute in this case is as to the manner in which the respondents/applicants' period of service to be counted for the purpose of terminal and pensionary benefits.

The petitioner Union of India is aggrieved by an order of the Central Administrative Tribunal dated 18.07.2014. At the outset, it was pointed out that this Court in W.P.(C)7618/2014 and connected case (Union of India & Ors. vs. Prem Pal Singh), decided on 10.11.2014 had occasion to deal with an identical matter. The only

difference was that the orders of the CAT in those cases was made on 06.02.2014 and 29.05.2014. The Court had on that occasion taken into consideration the Railway Service (Pension) Rules, specifically Rule 20 as well as the Master Circular no.54 (paragraph 20) and paragraph 2005 IREM. In addition, the Court had considered various rulings including those of the Supreme Court and held that 50% of the period spent by casual employee subject to his being conferred temporary status and eventual regularisation was entitled to reckon for the purposes of pensionary and terminal benefits and likewise the entire period of temporary service subject to regularisation was eligible to be counted for the purposes of pension and terminal benefits.

Following the said decision in W.P. (C) 7618/2014 decided on 10.11.2014, this petition is accordingly dismissed.

16. Judgment of Delhi High Court dated 10.11.2014 had been followed in all other cases. We shall refer to the judgment of the High Court dated 10.11.2014 as the impugned judgment while considering all these appeals.

17. We have heard, Mr. Maninder Singh, learned Additional Solicitor General on behalf of the appellants. We have also heard Mr. M.C. Dhingra, and other learned counsel appearing for the respondents in support of the judgment of the Delhi High Court.

18. Learned Additional Solicitor General in support of the appeal contended that the High Court committed error in holding that a casual employee is entitled to reckon the 100 per cent period after getting temporary status for computation of pension. He submitted that the computation of pension is governed by statutory rules, namely, Railway Services (Pension) Rules, 1993 (hereinafter referred to as 'Rules, 1993'), under which only 50 per cent period can be counted of a casual labour, who attains a temporary status as per Rule 31 of Rules, 1993. He contended that the judgment of Andhra Pradesh High Court in General Manager, South Central Railway, Secunderabad & Anr. vs. Shaik Abdul Khader reported in 2004 (1) SLR 2014 which is the basis of the judgment of the High Court, had itself been dissented and not followed by the Andhra Pradesh High Court in General Manager, South Central Railway vs. A. Ramanamma(Supra) decided on 01.05.2009. It is contended that casual labourer who is granted temporary status is paid out of contingency and is governed by Rule, 31 of Rules, 1993.

19. He further contended that the issue is completely covered by the judgment of the Apex Court reported in General Manager, North West Railway & Ors. vs. Chanda Devi, 2008 (2) SCC 108 and High Court as well as Tribunal had committed error in holding that casual worker after obtaining temporary status is entitled to reckon 100 per cent period of service. He submitted that the Delhi High Court has committed error by not following the judgment of this Court in Chanda Devi case (Supra) and inappropriately distinguished the same by saying that it did not consider Rule, 20 of Rules, 1993.

20. Learned counsel for the respondents refuting the submission of counsel for the appellants contended that the High Court has not committed any error in dismissing the writ petition of the appellants. It is contended that after obtaining the temporary status entire service is to be reckoned for computation of pension. It is further contended that under Rule, 20 of Rules, 1993 qualifying service to a Railway Servant commences from the date he takes charge of the post either substantially or in officiating or in temporary capacity of employment. The respondents were granted temporary status, their working is in temporary capacity and they are entitled for the benefit under Rule, 20 of Rules, 1993. It is contended that the judgment of the Andhra Pradesh High Court in General Manager, South Central Railway vs. Shaik Abdul Khader(Supra) had rightly been relied by the High Court.

21. Mr. M.C. Dhingra contended that there is no difference between Railway Servants, one who is paid out of Contingency or one that who is paid out of Consolidated Fund. He submitted that no distinction can be made from the source of payment.

22. From the above submissions of the learned counsel for the parties and materials on record, the only issue which arises for consideration in these appeals is:

Whether the entire services of a casual worker after obtaining temporary status till his regular absorption on a post is entitled to be reckoned for pensionary benefit or only 50 per cent period of such service can be reckoned for pensionary benefit?

23. In so far as reckoning of 50 per cent casual period, there is no challenge and it is clear that the said reckoning is in accordance with Rule 31 of Rules, 1993 and the benefit of said 50 per cent services of casual period had already been extended to the respondents. Thus, we need to answer in these appeals the only question as noted above.

24. The Tribunal as well as High Court has referred to Para 20 of the Master Circular No. 54, Para 2005 of Indian Railway Establishment Manual (IREM) as well as Rules, 1993.

25. Para 20 of the Master Circular No. 54 is quoted as below:

20. Counting of the period of service of Casual Labour for pensionary benefits: - Half of the period of service of casual labour (other 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.

26. Next Provision need to be noted is Para 2005 of IREM, which is as follows:

"2005 IREM:

2005. Entitlements and privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 day or 360 days of continuous employment (as the case may be).

(a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D & A rules. However, their service prior to absorption in temporary/ permanent/ regular cadre after the required selection/ screening will not count for the purpose of seniority vis-a-vis other regular/ temporary employees. This is however, subject to the provisions that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions of otherwise, the seniority so determined shall not be altered.

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.

.....

27. Railway Services (Pension) Rules, 1993 have been framed under proviso to Article 309 of the Constitution of India. Rule 20 and Rule 31 of Rules, 1993 which are relevant for our purpose, are extracted as below: - "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:

Provided that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post:

Provided further that

(a) in the case of a railway servant in a Group D service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose; and

(b) in the case of a railway servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity. 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 on a monthly basis and which, though not analogous to the regular scales of pay, borne some relation in the matter of pay 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.

NOTE - (1) the provisions of this rule shall also apply to casual labour paid from contingencies.

(2) The expression absorption in regular employment means absorption against a regular post.

28. The perusal of para 20 of the Master Circular indicates that only half of the period of service of a casual labour after attainment of temporary status on completion of 120 days continuous service if it is followed by absorption in service as a regular Railway employee, counts for pensionary benefits.

29. Para 2005 of Indian Railway Establishment Manual also contains the same scheme for reckoning the period for pensionary benefit. Para 2005 contains the heading:

2005. Entitlements and Privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 days of continuous employment (as the case may be).

30. The above heading enumerates the privileges admissible to casual labour who are treated as temporary. Clause(a) of para 2005 provides:

"...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.

43. The Delhi High Court in impugned judgment has not relied the subsequent judgment of Andhra Pradesh High Court in A.Ramanamma dated 01.05.2009 and did not follow the judgment of this court in Chanda Devi case (Supra) on the ground that Rule 20 specifically the proviso has not been considered. This Court in Chanda Devi's case did not refer to Rule 20 since Rule 20 had no application in the facts of that case because the appointment of husband of respondent in Chanda Devi's case was not against any post. Rule 20 being not applicable non-reference of Rule 20 by this Court in Chanda Devi's case is inconsequential. In para 8 of the impugned judgment, the Delhi High Court for not relying on A.Ramanamma and Chanda Devi case gave following reasons:

"8. In the opinion of this Court, the subsequent ruling of the Andhra Pradesh High Court in Ramanamma(supra), with respect, does not declare the correct law. Though the judgment has considered certain previous rulings as well as the provisions of the IREM and Rule 31 of the Railway Services(Pension) Rules, the notice of the Court was not apparently drawn in that case and the Court did not take into account Rule 20, especially the proviso which specifically deals with the situation at hand. Likewise, Chanda Devi(supra) did not consider the effect of Rule 20, which, in the opinion of this Court, entitles those who work as casual labourers; are granted temporary status, and; eventually appointed substantively to the Railways, to reckon the entire period of temporary and substantive appointment for the purposes of pension.

44. The judgment of Andhra Pradesh High Court in A.Ramanamma case had considered in detail the judgment of this Court in Chanda Devi's case as well as Para 20 of Master Circular and para 2005 of IREM and has also considered other case of this Court and has rightly come to the conclusion that casual labour after obtaining temporary status is entitled to reckon only half of the period. It may, however, be noticed that in A. Ramanamma case the Andhra High Court has also held that 50% of service as casual labour cannot be counted, which is not correct. Rule 31 of Rules,

1993 provides for counting of service paid from contingencies. Note 1 of Rule 31 provides:

"The provisions of this Rule shall also apply to casual labour paid from contingencies when Note 1 expressly makes applicable Rule 31 to the casual labour they are also entitled to reckon half of casual services paid from contingencies.

45. *Thus except to the above extent, the judgment of Andhra Pradesh High Court in A. Ramanamma case lays down the correct law.*

46. *As observed above, the grant of temporary status of casual labour is not akin to appointment against a post and such contingency is not covered by Rule 20 and the same is expressly covered by Rule 31 which provides for half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment subject to certain conditions enumerated there in. Thus Rule 31 is clearly applicable while computing the eligible services for calculating pensionary benefits on granting of temporary status.*

47. *In the impugned judgment of the Delhi High Court it is held that entire services of casual labour after obtaining temporary status who was subsequently regularised is entitled to reckon. Casual labour who has been granted temporary status can reckon half of services for pensionary benefits as per Rule 31. The reasons given by the Delhi High Court in the impugned judgment in para 6, 7 and 8 having been found not to be correct reasons, we are of the view that judgment of Delhi High Court is unsustainable and deserved to be set aside.*

48. *We, however, are of the view that the period of casual labour prior to grant of temporary status by virtue of Note-1 Rule 31 has to be counted to the extent of 50% for pensionary benefits.*

49. *There is one more aspect of the matter which needs to be noted. There is specific rule in Rules, 1993 i.e. Rule 107, which empowers Pension Sanctioning Authority to approach the Ministry of Railways(Railway Board) for dispensing with or relaxing the requirement of any Rule operation of which causes hardship in any particular case. Rule 107 is quoted as below: "107. Power to relax Where the pension sanctioning authority is satisfied that the operation of any of these rules causes undue hardship in any particular case, that authority, may for reasons to be recorded in writing, approach the Ministry of Railways (Railway Board) for dispensing with or relaxing the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner. The Ministry of Railways(Railway Board) shall examine each such case and arrange to communicate the sanction of the President to the proposed dispensation or relaxation as it may consider necessary keeping in view the merits of each case and keeping in view of an other statutory provisions:*

Provided that no such order shall be made without concurrence of the Department of Pension and Pensioners' Welfare, in the Ministry of Personnel, Public Grievances and Pensions, Government of India.

50. *Thus, in cases of those railway servants who are not eligible as per existing rules for grant of pension and there are certain mitigating circumstances which require consideration for relaxation the proposals can be forwarded by Pension Sanctioning Authority to Railway Board in an individual or group of cases. We, thus, while allowing this appeal and setting aside the judgment of the High Court leave it open to the Pension Sanctioning Authority to recommend for grant of relaxation under Rule 107 in deserving cases.*

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 regularised 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 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.*

56. *In result, all the appeals are allowed. The impugned judgments of Delhi High Court are set aside. The writ petitions filed by the appellants are allowed, the judgments of Central Administrative Tribunal are set aside and the Original Applications filed by the respondents are disposed of in terms of what we have held in para 55 as above."*

9. It is required to note here that the Hon'ble Apex Court in the aforesaid judgment abundantly made it clear that the casual worker, after obtaining temporary status, is entitled to reckon 50 % of his service till he is regularized on a regular/temporary post for the purpose of calculation of pension and also held that 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 the date of taking charge of such post as per rule 20 of 1993 Rules. In the present case, it is not in dispute that the respondents have calculated 50% of the service from the date of attaining temporary status to the date of regular absorption on regular post as Gangman, i.e from 12.11.1995 to 23.7.199. The respondents had also calculated the entire service period of the applicant after he had taken charge of regular post, on being his regular absorption on regular post till his superannuation i.e. from 24.7.1991 to 31.12.1997 which comes to 9 years three months and 13 days = 9.1 /2 years for the purpose of pension and retiral benefits. In view of this fact and the law laid down by the Hon'ble Supreme court of India (supra) the judgements relied upon by the applicant is not applicable in the present case.

In the present case, it is noticed that the respondents had found the applicant service less than 10 years of qualifying service and therefore he was not provided any pension as per the extant rules. However, while calculating the qualifying service for the purpose of grant of pension the respondents had not calculated or considered applicant's service as casual worker before attaining the temporary service. It is noticed that the applicant was initially engaged in Railway as casual labour and had worked for more than 1064 days as such and his name had been placed at serial no. 107 of the list of casual workers (Annexure P/1 series page no. 14 of OA). The applicant had submitted that he was

serving as casual labour since 1959-60 and was granted temporary status in the year 1985 followed by regular appointment in 1991. The said fact had not been denied by the respondents in their written statement. The respondents had admitted in the written statement that the applicant was initially engaged in Railway as casual labour and that he had acquired temporary status on 12.11.1985. The respondents are under obligation to consider and calculate 50 % of the said period for which the applicant was working in a capacity of casual worker. The Hon'ble Apex Court in the aforesaid judgment (Supra) also held that the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for the purpose of pension. The record reveals that in the case of the applicant, the respondents had failed to calculate the said period of casual worker before he obtained the temporary status. Therefore, the applicant's case is required to be considered afresh by the respondents for the purpose of grant of pension and other retiral dues.

10. In view of dictum of Hon'ble Apex Court, as discussed hereinabove, and considering the factual matrix of the present case, this Tribunal remit the case of the applicant with direction to the respondents to recalculate the qualifying service of the applicant in the light of the observations of the Hon'ble Apex Court in the case of Union of India vs. Rakesh Kumar (Supra) in accordance with service record of the applicant and in case the applicant is found to have acquired qualifying service, in that eventuality, the applicant shall be entitled to get pension with admissible interest on arrears of pension. It is further directed that if the applicant's service is found short of qualifying service, in that case, it is open to the Pension Sanctioning Authority to invite written request from the applicant for relaxation of requirement of any rule to the Railway Board as per provision of rule 107 of 1993 rules. The whole exercise be completed within a period of three months from the date of communication of this order.

In sum, the OA is partly allowed in terms of the above direction. No order as to costs.

(J.V. Bhairavia) M [J]

/cbs/mks/

