CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00644/2017

DATED THIS THE 22ND DAY OF FEBRUARY, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Narashimaiah,
Age: 67 years,
S/o Late Krishnappa,
Retired MTS Peenya SI PO
Bangalore – 560 022,
Residing at:
C/o Ramakrishna Reddy,
1961, 11 Cross,
MCFCHS Layout,
Jakkur,
Bangalore – 560 064 .....Applicant

(By Advocate Shri P. Kamalesan)

Vs.

1. Union of India,
Represented by Secretary,
Department of Post,
Dak Bhavan,
New Delhi – 110 001

2. Chief Post Master General,
Karnataka Circle,
Bangalore – 560 001

3. Director of Accounts (Postal)
Karnataka Circle,
Bangalore – 560 001

4. Senior Superintendent of Post offices,
Bangalore West Division,
Bangalore – 560 086 ….Respondents

(By Shri V.N. Holla, Senior Panel Counsel)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J)

The matter is covered by the Hon'ble Apex Court judgment in Civil Appeal No. 3938/2017 dated 24.03.2017, which we quote:

*"**J U D G M E N T***

ASHOK BHUSHAN, J.

These appeals have been filed by the Union of India, Divisional Railway Manager, Northern Railway alongwith few other Railway Authorities challenging judgments of Delhi High Court by which writ petitions filed by the appellants have been dismissed. All the appeals raise similar questions of law and are based on almost identical facts. It shall be sufficient to note the facts of C.A. No.3938 of 2017 arising out of SLP (C) No. 23723 of 2015 in detail for appreciating the issues raised in this batch of appeals.

CA NO. 3938 2017(ARISING OUT OF SLP(C) NO.23723 OF 2015)

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 – 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 appellants before the High Court was that only 50 per cent 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."***

C. A. NO. 3939 2017 (ARISING OUT OF SLP (C) 23725 OF 2015)

8. This appeal has been filed against the judgment of the Delhi High Court dated 10.11.2014 in W.P. (C) No. 7627 of 2014 ***Union of India & ors. vs. Shyam Pyare Yadav & Ors****. by which judgment dated 10.11.2014 two writ petitions being W.P. (C) No. 7618 of 2014,* ***Union of India vs. Prem Pal Singh*** *and W.P. (C) No. 7627 of 2014,* ***Union of India & Ors. vs. Shyam Pyare Yadav & Ors****. had been decided.*

9. The respondents to the writ petition were also casual

employees in a construction organisation, who were granted temporary status subsequently and were regularised against permanent posts. They also claimed benefit of 100 per cent service after grant of temporary status for the purpose of pension. They filed O.A.No.3745 of 2012, which was allowed by Central Administrative Tribunal by its judgment dated 06.02.2014 against which W. P. (C) No. 7627 of 2014 was filed by Union of India, which was dismissed by Delhi High Court on 10.11.2014

C.A.NO. 3940 OF 2017(ARISING OUT OF SLP(C)NO.3382 OF 2016)

*10. The appeal had been filed against the judgment of the Delhi High Court dated 18.11.2014 in W. P. (C) No. 7913 of 2014. The W. P. (C) No. 7913 of 2014, following the judgment dated 10.11.2014 in **Union of India & Ors. vs. Prem Pal Singh (Supra)**, has been dismissed. The respondents were also appointed as casual labourers who were subsequently granted temporary status and were thereafter, regularised against permanent posts. They also claimed entire period of temporary status to be considered for pensionary benefit. An **O.A.No.2221 of 2013** was filed which was allowed on 23.05.2014 against which W.P.(C) No. 7913 of 2014 was filed, which was dismissed on 18.11.2014.*

C. A. NO. 3941 OF 2017(ARISING OUT OF SLP(C)NO.28597 OF 2016)

*11. The appeal has been filed against judgment of Delhi High Court dated 18.01.2016 in W.P. (C) No. 10202 of 2015 and other connected writ petitions. The High Court following its earlier judgment dated 10.11.2014 in **Union of India & Ors. vs. Prem Pal Singh (Supra)** had dismissed the writ petitions. The respondents were also casual employees, who were granted temporary status and thereafter, regularised. They claimed reckoning of the 100 per cent service period performed by them after obtaining temporary status for the purpose of pensionary benefit. Original Application was filed before the tribunal which was allowed against which the writ petition was filed.*

C.A.NO. 4384 OF 2017(ARISING OUT OF SLP(C) NO.821 OF 2017)

*12. The appeal had been filed against the judgment and order dated 18.01.2016 passed by Delhi High Court in W.P.(C) No.10706 of 2015. The High Court relying on its earlier judgment dated 10.11.2014 in **Union of India & Ors. vs. Prem Pal Singh (Surpa)** dismissed the writ petition. The respondents were also casual labourers, who were granted temporary status and thereafter, regularised against the permanent posts. Original Application was filed before the Tribunal which was allowed against which judgment, the writ petition was filed, which got dismissed.*

C.A. No.3943 OF 2017[ARISING OUT OF SLP(C)No.8365 OF 2017 (CC NO. 1516)]

*13. The appeal has been filed against the judgment of the Delhi High Court dated 31.03.2016 in W.P.(C)No. 9286 of 2015. The High Court relying on its earlier judgment dated 10.11.2014 in **Union of India & Ors. vs. Prem Pal Singh (Supra)** had dismissed the writ petition. The respondents were also engaged as casual labourers, who were accorded temporary status and thereafter were regularised. Original Application filed by the respondents were allowed holding that they were entitled to reckon the entire period of temporary service for pensionary benefit, which order was affirmed by the High Court.*

C.A. No.3944 OF 2017(ARISING OUT OF SLP(C)No. 3719 OF 2017)

*14. This appeal has been filed against the judgment and order dated 18.01.2016 in W.P.(C) No.11521 of 2015. The High Court relying on its earlier judgment dated 10.11.2014 in **Union of India & Ors. vs. Prem Pal Singh (Supra)** dismissed the writ petition. The respondents were also initially appointed as casual labourers and thereafter, granted temporary status and subsequently, were regularised for the permanent posts. They filed an O.A. before the Central Administrative Tribunal, claiming reckoning of entire period of temporary service for pensionary benefit, which application was allowed, aggrieved by which order Union of India had filed an application, which had been dismissed.*

15. From the facts, as noted above, it is clear that all the writ petitions filed by the Union of India giving rise to the above appeals have been dismissed relying on the judgment of the High Court dated 10.11.2014 in W. P.(C) No. 7618 of 2014 and W. P.(C) No. 7627 of 2014. Against the judgment dated 10.11.2014 in W. P.(C) No. 7618 of 2014, an SLP (C) No. 23720 of 2015 had been filed, which was heard on 08.03.2017. SLP (C) No. 23720 of 2015 had been disposed of in view of the statement made by the learned counsel for the respondents as noticed in the order dated 08.03.2017. However, against the same judgment dated 10.11.2014 rendered in W.P(C)No. 7618 of 2014 and W.P.(C) No. 7627 of 2014 the Union of India has filed SLP(C) No. 23725 of 2015 arising out of W.P.(C)No. 7627 of 2014 which is also taken up for consideration in this batch of appeals.

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 Tribuanl 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."

31. Let us now look into the judgment of High Court dated 10.11.2014 to find out the reasons for holding that the casual labour after obtaining temporary status is entitled to reckon entire period of service for pensionary benefits. In Para 7 of the judgment the High Court refers to para 20 of the Master Circular and para 2005 of IREM as administrative instructions clarifying that half the period spent as casual labourers would be eligible to reckon for the purpose of pension. In Para 6 of the judgment following was stated by the High Court:

"6. It would be immediately apparent that the Master Circular No. 54 and para 2005 of the IREM deal with a situation where casual labourers/workers are eventually regularised after attainment of temporary status. The combined effect of these is to entitle the individuals who work as casual workers for a period, to reckon half of that period for the purpose of pension..."

32. The High Court in the impugned judgment has relied on Rule 20 of Rules, 1993 and judgment of Andhra Pradesh High Court in ***General Manager, South Central Railway, Secunderabad & Anr. Vs. Shaikh Abdul Khader (Supra)****. Andhra Pradesh High Court in the above case after referring to Rule 31 of Rules, 1993, para 20 of Master Circular No.54 of 94 and para 2005 of IREM as well as Rule 20 laid down following:*

> *"...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 carries forward not only the leave to his credit but also carries forward the service in full. Half on 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:*
>
> > *"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).....(b).....”*
>
> *Therefore, we hold that the respondent was entitled to get the service counted in full from January 1, 1983. He was also entitled to get half of the service counted before January 1, 1983 from the date he had joined in the railways as casual labour.”*

33. The above judgment of Andhra Pradesh High Court was subsequently considered by the Andhra Pradesh High Court itself in Writ Petition No. 10838 of 2001, the ***General Manager, South Central Railway, Secunderabad & another Vs. A. Ramanamma***

*decided on 01.05.2009 wherein earlier judgment of Andhra Pradesh High Court in **Shaikh Abdul Khader (Supra)** was not followed after referring to judgment of this High Court in **General Manager, North West Railway & others Vs. Chanda Devi, 2008 (2) SCC 108.***

*34. Following are reasons given in subsequent judgment for not following **Shaik Abdul Khader (Supra):***

> *" 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."*

*35. The Judgment of this Court in **Chanda Devi's case (Supra)** considered the nature of employment of casual labour who was granted temporary status. In the above case, Smt. Santosh, the respondent was widow of Sh. Ram Niwas who was a project casual labour. Under the scheme framed by Union of India in pursuance of order of this court in **Inderpal Yadav Vs. Union of India, 1985 (2) SCC 648,** Ram Niwas was treated as temporary employee w.e.f 01.01.1986. After the death of Ram Niwas, her widow filed the claim for grant of family pension which was rejected by the Railway against which the widow approach the Central Administration Tribunal. The Tribunal allowed the claim, Writ Petition filed by Union of India was dismissed by the Rajasthan High Court against which the appeal was filed. After referring to Rule 2001, Rule2002 and Rule 2005 of IREM, this Court held that Rule 2005 clearly lays down the entitlement and privileges admissible to casual labour who are treated as temporary i.e. given temporary status.*

36. This Court further held that there is a distinction between the casual labour having a temporary status and temporary servant, para 24 of the judgment is relevant which is quoted as below:

> *"24. The contrast between a casual labour having a temporary status and a temporary servant may immediately be noticed from the definition of a temporary railway servant contained in Rule 1501 occurring in Chapter XV of the Manual:*
>
> > *"1501.(i) Temporary railway servants Definition- A 'temporary railway servant' means a railway servant without a lien on a permanent post on a railway or any other administration or office under the Railway Board. The term does not include 'casual labour', including 'casual labour' with temporary status', a 'contract' or 'part*

time' employee or an 'apprentice'."

37. This Court in the above case has also disapproved the judgment of Gujarat High Court wherein it was held that casual labour after obtaining temporary status becomes a temporary railway servant. The reasons given by Gujarat High Court were extracted by this Court in para 27 of the judgment, and in para 31 of the judgment Gujarat High Court's judgment was disapproved. Para 27 and para 31 are extracted as below:

> *"27. The Gujarat High Court in **Rukhiben Rupabhai Vs. Union of India** no doubt on analysing the scheme filed before this Court, opined:*
>
> > *"32. This change has been made by the Railways after the Apex Courts decision in **Inder Pal Yadav** case. The original definition of 'temporary railway servant' is clear, but in the abovequoted definition in Rule(1501), the Railways have included the 'casual labour with temporary status', thereby, taking them out from the category of 'temporary railway servant'. How and why this change has been made, what procedures were adopted for making the change, there is no whisper, although, this change has grievously affected the casual labour becoming temporary on completion of 360 days' continuous employment, and committed breach of the Apex Court's decision in **Inder Pal Yadav case** followed by **Dakshin Railway Employees Union Vs. GM, Southern Railway, (1987) 1 SCC 677, 1987 SCC (L&S) 73**, making casual labour 'temporary railway servant'. Since there exists only four categories, namly, (1) permanent, (2) temporary, (3) casual labour, and (4) substitutes, casual labour, under the original scheme approved in cases referred to hereinbefore, becomes 'temporary railway servant', after completion of 360 days' continuous employment, therefore, he cannot be made 'casual labour with temporary status' by subsequent gerrymandering by the Railways by its circular dated 11.09.1986, which was not brought to the notice of the Apex Court in **Dakshin Railway Employees case**. Therefore, this circular has no legal sanction against the Apex Courts decision in **Inder Pal Yadav case**, contrary to original scheme and as such, hit by Articles 14, 16, 21, 41/42 of the Constitution of India."*
>
> *But evidently the provisions of the Railway Manual were not considered in their proper perspective.*
>
> *31. The Gujarat High Court in our opinion, therefore, committed a fundamental error in opining otherwise. It failed to notice that when casual labour has been excluded from the definition of permanent or temporary employee, he with temporary status*

could not have become so and there is no legal sanction therefore. It is for the legislature to put the employees to (sic) an establishment in different categories. It may create a new category to confer certain benefits to a particular class of employees. Such a power can be exercised also by the executive for making rules under the proviso appended to Article 309 of the Constitution of India. ***Dakshin Railway employees Union Vs. GM, Southern Railway*** *whereupon reliance has been placed by the Gujarat High Court in* ***Rukhiben Rupabhai*** *does not lead to the said conclusion as was sought to be inferred by it. The question therein was as to whether any direction was to be issued to include the petitioners therein in the scheme for absorption as formulated pursuant to the directions of the Court. ”*

38. In ***Chanda Devi's case****, ultimately this Court set aside the judgment of Rajasthan High Court which held that the widow of Shri Niwas was entitled for pension. This Court held that there is a distinction between casual labour having temporary status and the temporary servant. The cases before us are all the case where casual labour has been granted temporary status. Grant of temporary status is not equivalent to grant of an appointment against a post.*

39. Much reliance has been placed by learned counsel for the respondent as well as Delhi High Court on rule 20. Rule 20 provides:

"20...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...”

40. Rule 20 provides that qualifying service shall commence from the date the employee takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. Rule 20 is attracted when a person is appointed to the post in any of the above capacities. Rule 20 has no application when appointment is not against any post. When a casual labour is granted a temporary status, grant of a status confers various privileges as enumerated in para 2005 of IREM. One of the benefits enumerated in para 2005 sub clause(a) is also to make him eligible to count only half of the services rendered by him after attaining temporary status. Rule 20 is thus clearly not attracted in a case where only a temporary status is granted to casual worker and no appointment is made in any capacity against any post. The Delhi High Court in the impugned judgment relies on proviso to Rule 20 for coming to the conclusion in para 7 of the judgment.

"7. The proviso, in our opinion, puts the controversy beyond a shade of doubt in that if an employee officiates in service or is

treated as temporary railway servant and subsequently regularized or granted substantive appointment, the entire period of his combined service as temporary appointee followed by the service spent as a permanent employee has to be reckoned for the purpose of pension. Since Rule 20 does not deal with what is to be done with the period of service spent as casual labourer, para 20 of the Master Circular 54 and para 2005 of the IREM address the said issue. Being administrative instructions, they clarify that half the period spent as casual labourers would be eligible to be reckoned for purposes of pension."

41. The proviso to Rule 20 reads as:

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

42. The above Proviso has to be read along with the main Rule 20, when main Rule 20 contemplates commencement of qualifying service from the date he takes charge of the post, the appointment to a post is implicit and a condition precedent. The proviso put another different condition that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post. The proviso cannot be read independent to the main provision nor it can mean that by only grant of temporary status a casual employee is entitled to reckon his service of temporary status for purpose of pensionary benefit.

*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.

51. Shri M.C.Dhingra, learned counsel for the respondent referred to case in ***Punjab State Electricity Board & Another Vs. Narata Singh & Another, 2004 (3) SCC 317****. In the above case, the issue for consideration was as to whether work-charged services rendered by respondent in the Department of Punjab State can be counted for the purpose of calculating qualifying service for pension payable to him as an employee of the Punjab State Electricity Board. The High Court has issued directions for counting the services rendered in the Irrigation Department of the State of Punjab for calculating pension of the respondent in Punjab State Electricity Board. Punjab State Electricity Board aggrieved by the judgment, filed SLP before this Court. This Court noticed that in the above judgment the Punjab State Electricity Board has adopted earlier decisions in which pensionary liability in respect of temporary services rendered in the Government of India and State Government were taken into consideration. Para 19 and para 20 of judgment as cited below:*

> *"19. The above-mentioned policy decisions taken by the Central Government and the Government of Punjab were taken into consideration by the Board which issued a Memo dated 25-11-1985 with reference to the subject of allocation of pensionary*

liability in respect of temporary service rendered in the Government of India and the State Government and adopted the policy decision reflected in the Letter dated 20.05.1982 of the Government of Punjab, w.e.f. 31.03.1982 as per the instructions and conditions stipulated in the said letter. This is quite evident from Memo No. 257861/8761/REG.6/V.5dated 25.11.1985 issued by the Under Secretary/P&R/for Secretary, PSEB, Patiala.

20. The effect of adoption of the policy decisions of the Central Government and the State Government was that a temporary employee, who had been retrenched from the service of the Central /State Government and had secured employment with the Punjab State Electricity Board, was entitled to count temporary service rendered by him under the Central/State Government to the extent such service was qualified for grant of pension under the rules of the Central/State Government."

52. With regard to the work-charged services, Punjab High Court had taken note of the judgment in ***Kesar Chand Vs. State of Punjab, (1988) 5 SLR 27(Punjab & Haryana)*** *wherein Rule 3.17(ii) of the Punjab Civil Services Rules providing that period of service in work-charged establishments as not qualifying service was struck down. Thus the work-charged services rendered by respondent in the State Government was counted.*

53. The above judgment in no manner helps the respondent in the present case. This Court in the above case interpreted statutory rules and circulars issued by the State Government as well as by the Board. The said judgment has no application in the facts of present case.

54. Another judgment relied by Shri Dhingra is in CWP No.2371 of 2010 [Harbans Lal versus State of Punjab & Ors.] decided on 31.08.2010. In the said case also Punjab and Haryana High Court considered the Punjab Civil Services Rules and pension scheme which came into effect w.e.f. 01.01.2004. The said judgment was on different statutory rules and in facts of that case, which does not help respondent in the present case.

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."

2. Shri V.N. Holla, learned counsel for the respondents, relies on Annexure-R3, which we quote:

"DEPARTMENT OF POSTS INDIA
Office of the Sr. Superintendent of Post Offices
Bangalore West Division – Bangalore – 560 010

Memo No. A2/2/Dlgs/Bangalore – 10/Dated: 05.10.1988

In modification of this office Memo of even No. Dated: 19.09.1988 the posts of part time contingent watchmen at Jalahalli Seshadripura and Yeshwanthpur are hereby retained until further order.

Sd/-
Sr. Suptd. Of POS,
Bangalore West Dn
Bangalore – 560 010

Copy to

1. The Sr. PM, Rajajinagar HO, Bangalore for information
2. The DDA (P) Bangalore through the Sr. PM, Rajajinagar HO.
3. The ASPOs, BG West Sub Dn 1 & II Rajajinagar IV Block, Bangalore – 10 for information.
4. The SPMS of the above office YDR
5. Estt files of above office
6. Est Register
7. Spare"

3. Applicant relies on the certificate issued by the Sub Postmaster dated

23.01.1994, which is Annexure-A1, which we quote:

"CERTIFICATE

It is to certified that Sri. Narasimhaiah, Contingent Watchman working at this office for the past 14 years and he is working 12 hours from 5.30 PM to 8.00 AM. He is drawing monthly emoluments of Rs. 924/- (Rupees Nine hundred and twenty four only). He is honest punctual in duties. His conduct is good.

Sd/-
Sub Post Master (LSG)
Yeshwanthpur,
Bangalore

Bangalore – 560 022.
Date: 23.01.1994"

It indicates that applicant had been working in Yeshwanthpur post office for 12 hours from 5.30 PM in the evening to 8 AM in the next morning. But then the respondents says that this official cannot give certificate for 14 years.

4. But then rationale and logic must prevail even in adjudication. Once a night watchman is appointed, then it is taken for granted that for the entirety of the night he will be in station. Therefore, Annexure-A1 seems to be the correct explanation of the things. Without any doubt, when the office closes down in the evening, he will have to come for duty. When the office opens in the next morning, he can go from duty. Till then he has got to be there even though he may be called as part-time or anything. It is hereby declared that, without any doubt, applicant had been a full-time watchman even though it may have been described otherwise by the respondents. With the contempt it deserves, this contention of the respondents is rejected. Therefore, going by the Hon'ble Apex Court judgment, applicant is eligible for the benefit as claimed for.

5. The OA is allowed. Benefit to be made available within two months next. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00644/2017

Annexure-A1: Copy of the certificate issued by SPM, Yeshwanthpur SO dated 23.01.1994
Annexure-A2: Copy of the SPO letter dated 18.02.1994
Annexure-A3: Copy of the SSPO letter dated 13.06.2011
Annexure-A4: Copy of the SSPO letter dated 15.05.2012
Annexure-A5: Copy of the letter dated 30.11.1992
Annexure-A6: Copy of the letter dated 22.07.2016
Annexure-A7: Copy of the SSPO letter dated 11.09.2017
Annexure-A8: Copy of the Director of Accounts letter dated 13.10.2017
Annexure-A9: Copy of the SSPO letter dated 16.10.2017
Annexure-A10: Copy of the Central Administrative Tribunal, Bangalore Bench order dated 19.06.2017 in OA No. 288/2017
Annexure-A11: Copy of the Hon'ble Apex Court order dated 24.03.2017 in CA No. 3938/2017

Annexures with reply statement

Nil

Annexures with rejoinder

Annexure-R1: Copy of the SPO, Yeshwanthpur note dated 31.12.1985
Annexure-R2: Copy of the SPM, Yeshwanthpur Memo dated 05.01.1988
Annexure-R3: Copy of the SSPO letter dated 05.10.1988
Annexure-R4: Copy of the temporary status scheme

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