

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01316-01327/2018

DATED THIS THE 26th DAY OF APRIL, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

1. Sri.G.Gunasekar

S/o Late R.Govindan

Aged about 50 years

Hospital Attendant

Railway Hospital, S.W.Railway

Bangalore-560023.

2. Sri N.Vinayagam

S/o Late M.Natesan

Aged about 51 years

Khalasi Helper/TRD/OHE, S.W.Railway

Bangalore-560023.

3. Sri.C.V.Chandran

S/o Late Venkatesh Naidu

Aged about 53 years

Store Watchman/Engineering

O/o Section Engineer (Works)

S.W.Railway, Bangalore-560023.

4. Sri.V.Ravi

S/o Late Varadappa

Aged about 53 years

Helper/Electrical, S.W.Railway

Yeshwanthpur, Bangalore.

5. Sri.K.Jagadeesan

S/o Late Kuppusamy

Aged about 57 years

Trackman, SSE/P.Way/S.W.Railway

Kengeri, Bangalore.

6. Sri.J.Mohan

S/o.Sri.Jayaram

Aged about 50 years

Pointman, S.W.Railway

Bangalore-560023.

7. Sri.N.Vijayan
S/o Late Narayanasamy
Aged about 54 years
Technician/Electrical AC
S.W.Railway, Bangalore-560023.

8. Sri.M.Ashokan
S/o Late Murugesan
Aged about 52 years
Helper/Electrical
S.W.Railway, Bangalore-560023.

9. Sri.E.Ravi
S/o Sri.Ethiraj
Aged about 57 years
Trackman, SSE/P.Way/O/Hosur.

10. Sri.B.Vijayan
S/o Sri.Baskar Reddy
Aged about 52 years
MSM/II/Engineering
S.W.Railway, Yeshwanthpur.

11. Sri.Ramachandran M.
S/o.Muniyan
Aged about 53 years
Trackman, SSE/P.Way/O
S.W.Railway, Dharmapuri.

12. Sri. Neelamegam
S/o Sri.Dekkan
Aged about 62 years
Rtd Trackman, S.W.Railway
Dharmapuri.

....Applicants

(By Advocate Sri K.Shivakumar)

Vs.

1. Union of India
Rep. By General Manager
South Western Railway
Hubballi.

2. Senior Divisional Personnel Officer
South Western Railway
Bangalore.

...Respondents

(By Advocate Sri N.Amaresh)

ORDER(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicants have filed the present OA with a prayer to count 50% of the service rendered by them as Piece Rate Labourers(PRL) for pensionary benefits at the time of retirement as in the case of casual labourers of engineering department and the salary paid vendors of catering unit in commercial department of Railways wherein 50% of the service rendered prior to regular absorption is being counted for arriving qualifying service to calculate the pensionary benefits at the time of retirement.

2. The case of the applicants is that they worked in the transshipment yard at Byappanahalli as PRL for transhipment of goods from Meter Gauge to Broad Gauge and vice versa before the Uni-Gauge policy was brought into force. They were stopped from work in 1993 due to conversion to Broad Gauge from Meter Gauge. Due to closure of the transshipment yard at Byappanahalli, the PRLs were placed out of employment and they approached the Tribunal in OAs.No.1208-1486/1988 seeking regular absorption in Railways but the same was dismissed by the Tribunal. Aggrieved by the same, the PRLs approached the Hon'ble Supreme Court under SLPs.No.8148-8426/91. During pendency of the SLPs, the Hon'ble Supreme Court ordered on 28.1.1993 asking the Railways to formulate a scheme within six weeks for the absorption of the transshipment labour. Accordingly, an affidavit was filed by the Divisional Railway Manager(Commercial) spelling out the scheme for absorption of the PRLs and the same was accepted by the Supreme Court and the SLPs were disposed vide order dtd.7.2.1994. As per the scheme, 15% of vacancies arising every year in the traffic department would be filled up by considering the retrenched PRLs and they were being engaged in a phased

manner. As the number of vacancies arising in the traffic department was very less and it might take a long time for absorbing all the retrenched PRLs and some may cross the age of superannuation also, it was decided in the South Western Railway in 2004 to absorb them in other departments also. Based on that decision the applicants were absorbed in Railways only in 2007 though the decision was taken in 2004 itself. The delay in implementing the decision was purely due to administrative reasons and the applicants cannot be penalized for that delay in implementation by the respondents.

3. The applicants further submit that they are placed on the same line of the casual labourers and salary paid vendors. When 50% of their service rendered before being regularly absorbed is being counted for pensionary benefits, the same is being denied to the PRLs and different treatment cannot be accorded to the similarly placed employees. By considering their demand, the respondents are not put in a disadvantageous position where as the applicants would get the benefit of only 2 months basic pay plus dearness allowance as addition to the DCRG payable at the time of retirement. Since the said benefits are deprived to the applicants, they have submitted their representations dtd.10.8.2017 & 1.2.2018(Annexures-A1 & A2) to the respondents, but there is no reply on the same. Aggrieved by the same, the applicants have filed the present OA seeking the relief stated above.

4. The respondents, on the other hand, submitted in their reply statement that before the Uni-gauge policy brought into force in Railways for transshipment of goods from Broad Gauge to Meter Gauge and vice versa, transshipment of goods was done at the transshipment shed of Byappanahalli(BYPL), Bangalore. The transshipment work at BYPL was handled by private contractors till 1972. After

1972, the Railway administration dispensed with the middlemen i.e. contractor and allowed the labourers originally engaged by the erstwhile contractor to continue as a group to handle the gauge to gauge transshipment of goods at BYPL. They were paid at rates sanctioned by the Railway administration from time to time on per tonne/wagon basis and therefore, were called Piece Rate Labourers(PRL). The PRLs were engaged on daily wage basis and they were stopped due to the conversion of MG to BG in the year 1993.

5. The respondents submit that due to closure of transshipment yard at BYPL , the PRLs approached the Tribunal in OAs.No.1208-1486/1988 seeking regular absorption in the Railways. As it was pleaded that the said PRLs were not Railway servants and have no locus standi to approach the Tribunal, after considering all aspects of the matter, the OA was dismissed. Aggrieved by the same, they approached Hon'ble Supreme Court in SLP.No.8148-8426/91. During the pendency of SLP, the Hon'ble Supreme Court directed the Railway administration to formulate a scheme for their absorption. Accordingly, a scheme was formulated and submitted before the Supreme Court wherein it was stated that 15% of the vacancies arising every year in the Traffic Department are to be filled up by considering the PRLs and accordingly, they were engaged in a phased manner. Subsequently, the PRLs have filed several OAs before the CAT, Bangalore seeking absorption in Railways. Since the number of vacancies arising every year in Traffic department of Bangalore Division was less, the administration could not absorb all the PRLs at a time. However, as per the scheme, PRLs were absorbed in traffic department to the extent of 15% vacancies every year. The absorption of PRLs was a long drawn process and also keeping in view the interest of PRLs, the Railways decided to absorb the PRLs in other departments also subject to screening by the committee

and also according to their medical fitness.

6. The respondents further submit that the applicants who were PRLs were not governed by rules governing either regular Railway servants or casual labourers of the railway administration who, unlike the applicants, are subject to specific terms and conditions of recruitment like age limit, passing of medical test etc., and departmental discipline of attending to the work allotted within the prescribed hours and regular attendance which is strictly monitored through a regular roll with provision for penal action by the Railway administration in the event of their defaulting in their duty. Whereas the PRLs were free to turn up for work and organize themselves in groups on their own to do goods transshipment depending upon their volume and nature of goods to be handled and the work of these PRLs was not supervised by the Railway administration except to ensure that the goods were properly handled without damage or loss and transshipped into their gauge wagons as per Railway Rules prescribed for carriage of commodities. No Muster Roll was maintained by the Railways for the PRLs since there was no commitment from the part of any of the PRLs to turn up for work on any day. The CAT, Bangalore have rightly held that the benefit given to the regular employees cannot be extended to the applicants other than those benefits that the Railway administration had voluntarily given to them from 1979 onwards. The PRLs are not even casual labourers under Rule No.2301 in Chapter XXIII of IREM. A temporary Railway servant means a Railway servant without a lien on a permanent post of a railway or any other administration or office under the Railway Board. The term does not include casual labourer, a contract on part-time employees or an apprentice. Therefore under the statutory rules of the Railways, neither the casual labourers nor the PRLs are to be taken as temporary railway servants. Moreover PRLs have not

even the status of casual labourers and they are only part time labourers. There were no recruitment rules governing the appointment of PRLs as Railway employees and as such they hold no civil post in the Railway administration. In the representations submitted by the applicants, it is admitted that they were appointed in the year 2007 and hence they were covered by New Pension Scheme. They are governed by the instructions of the Railway Board letter dtd.31.12.2003 as per which 10% of their basic pay plus DA will be recovered from their monthly salary from the date of appointment to the working post. Since the applicants were PRLs, they were empanelled for regular absorption and was advised to express their willingness or otherwise. The PRLs are not governed by the rules governing the regular servants or casual labourers of the Railway department and the benefit legally given to regular employees cannot be extended to them. They are neither similarly situated with casual labourers nor salary paid vendors. PRLs were only part time labourers and their claim is not supported by any statutory provision, IREC or IREM or any Railway Rules. Hence there is no different treatment with the applicants as alleged by them.

7. We have heard the Learned Counsel for both the parties and perused the materials placed on record. The facts in this case are not in dispute and have been admitted by the respondents also. As rightly elaborated by the respondents, the applicants are not on the same footing with other regular Railway servants or casual labourers in the Railway administration who are subjected to specific terms and conditions of recruitment and who have to be subjected to departmental discipline of attending to the work allotted to them with regular prescribed hours, regular attendance monitored through the muster roll with provisions for penal action by the Railway administration in the event of their defaulting in duty etc. The Piece Rate

Labourer is free to turn up for work or not and the respondents state that they do not maintain any muster rolls and as such they cannot be considered even as casual labourers under Rule 2301 of IREM. The respondents are operating the scheme as accepted before the Hon'ble Apex Court and are taking the Piece Rate Labourers into employment as per that scheme. Therefore, there is no merit in the contention of the applicants that they are being discriminated against and that their services as Piece Rate Labourers should also be considered. Therefore, there is no other option except to dismiss the OA. OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicants in OA.No.170/01316-1327/2018

Annexure-A1: Representation dtd.10.8.2017

Annexure-A2: Representation dtd.01.02.2018

Annexures with reply statement:

-NIL-
