

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00126/2017

Wednesday, this the 27th day of March, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

N. Rajendran, aged 63 years, S/o. Nanu,
 (Retd. Gate Keeper/Office of the Sr. Section Engineer/
 Southern Railway/Kottayam), Residing at Lakshmi Bhavanam,
 Nakrath Colony, Mannarsala PO, Harippad, Alappuzha District,
 Pin – 690 514. **Applicant**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager,
 Southern Railway, Headquarters Office, Park Town PO,
 Chennai – 600 003.
2. The Sr. Divisional Personnel Officer, Southern Railway,
 Trivandrum Division, Trivandrum – 695 014. **Respondents**

(By Advocate : Mr. V.A. Shaji)

This application having been heard on 14.03.2019, the Tribunal on
 27.03.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant is as under:

“(i) Declare that the applicant must be deemed to have attained the status of a temporary employee with effect from 15.9.1972 by operation of law and direct the respondents accordingly;

(ii) Direct the respondents to deem the applicant to have attained temporary status with effect from 15.9.1972 and direct further to reckon the 50% of the applicant's service with effect from 15.9.1972 to 22.4.1985 for the purpose of grant of the 3rd financial upgradation benefits under the MACPs and direct the respondents to grant the same with effect from

1.1.2009 in PB-1 + GP of Rs. 2,400/- with all its consequential benefits, including revision of pension and other retirement benefits within a time frame as may be found just, fit and proper by this Hon'ble Tribunal;

- (iii) Award costs of and incidental to this application;
- (iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicant is a retired Gate Keeper belonging to the Civil Engineering Department of Southern Railway, Trivandrum Division. The applicant is aggrieved by the non-feasance on the part of the respondents to reckon a substantial part of the applicant's service for the purpose of grant of financial upgradations and also for pensionary benefits, resulting in substantial injustice and recurring monthly losses. The applicant superannuated from service on 31.03.2013. The applicant submitted Annexure A4 representation dated 1.2.2015 to the 2nd respondent but there is no response to the same. Applicant has relied on the decision of this Tribunal in an identical matter in OA No. 960 of 2012 dated 22.7.2015 which was upheld by the Hon'ble High Court of Kerala in OP (CAT) No. 57/2016 dated 17.2.2016. Respondents have implemented the above judgment of the Hon'ble High Court and the applicant was under the bonafide belief that similar benefits would also be extended to him also. However, nothing happened and the applicant is subjected to substantial prejudice, irreparable injury and recurring monthly losses. Aggrieved the applicant has filed the present Original Application with the above relief.

3. MA No. 180/179/2017 had been filed by the applicant to condone the delay of 196 days in filing the OA. The reasons stated by the applicant is

that he was under the bona fide belief that the respondents would be fair enough to consider his grievance taking into consideration his service of more than 40 years rendered to the respondents Railway.

4. Notices were issued to the respondents and they have filed a detailed reply statement contending that the claim of the applicant is severely hit by limitation in as much as Annexure A4 representation claiming the benefit of 50% of the casual labour project service between 15.9.1972 to 27.2.1985 was preferred only on 1.2.2015 i.e. after a period of 22 months without assigning any reason after the applicant's retirement on 31.3.2013. The fact remains that the cause of action arose immediately after his retirement i.e. on 31.3.2013. They have relied on certain decisions i.e. ***Bhagmal v. Union of India*** - (1987) 2 SLJ (CAT) 543, wherein it was held that delay cannot be condoned unless sufficient ground is shown. Further in ***Mohd. Khalid v. Union of India*** – (1997) 3 SLJ (CAT) 54, wherein it was held that no application shall be admitted by the Tribunal unless it is made within a year from the date on which the final order had been given.

5. On merits the respondents contend that the applicant was given all benefits duly counting his 50% temporary status service. However, inadvertently he was granted temporary status w.e.f. 1.1.1983 instead of 1.1.1981. Steps are being taken to correct the date of temporary status and to grant consequential benefits and it will be paid shortly. Applicant was given the benefits as per the order of the Hon'ble Supreme Court in ***Inder Pal Yadav & Ors. v. Union of India & Ors.*** - 1985 SCC (2) 648. Though the

applicant had completed 30 years of service (i.e. 30 years 1 month and 44 days) from 1.1.1981 (temporary status) till retirement i.e. on 31.3.2013 (50% of service between 1.1.1981 to 31.4.1985) he had 53 days of non-qualifying service. The non-qualifying service period of 53 days has to be deducted from the total qualifying service for the purpose of counting regular service to grant MACP benefits. After deduction of non-qualifying service the applicant's total service is 29 years, 11 months and 12 days only.

Therefore, respondents pray for dismissing the OA.

6. Heard Shri T.C. Govindaswamy, learned counsel for the applicant and Shri V.A. Shaji, learned counsel for the respondents. Perused the original service records of the applicant produced by the respondents.

7. In the present case the relief claimed by the applicant is of a nature of recurring monthly losses to the applicant which attracts the decision of the Hon'ble Supreme Court in *M.R. Gupta v. Union of India & Ors.* - 1995 SCC (5) 628 wherein the apex court held that incorrect pay fixation is a recurring cause of action, since the last pay drawn by the applicant also has a ramification on fixation of pension even after retirement also incorrect pay fixation of the applicant would be treated as recurring cause of action to espouse his grievance in the present OA. Therefore, for the reasons stated in the application MA No. 180/179/2017 to condone the delay of 196 days is allowed and the delay is condoned.

8. The only question to be decided in the present case is whether the applicant is entitled to claim the benefit of 50% of the casual labour project service between 15.9.1972 to the date of his attaining the temporary status i.e. on 1.1.1981 for the purpose of grant of financial upgradations and also for pensionary benefits ?

9. As per the reply statement filed by the respondents inadvertently the applicant was granted temporary status w.e.f. 1.1.1983 instead of 1.1.1981. Therefore, the respondents are taking all steps to correct the date of temporary status and to grant consequential benefits, which will be paid to him shortly. Thus, the period from 15.9.1972 to 1.1.1981 is in dispute. The Hon'ble Supreme Court in ***Union of India & Ors. v. Rakesh Kumar & Ors.*** - AIR 2017 SC 1691 held as under:

“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.”

(emphasis supplied)

10. Therefore, in view of the law laid down by the apex court in *Rakesh Kumar*'s case (supra) the applicant is entitled to reckon 50% of casual service from 15.9.1972 to 1.1.1981 i.e. before obtaining the temporary status and further also to reckon 50% of his services from the date of obtaining temporary status till he is regularised i.e. from 1.1.1981 to 22.4.1985 on a regular/temporary post for the purpose of granting him the benefits of financial upgradation as well as revision of pension and all other consequential benefits. Ordered accordingly. The respondents shall pass appropriate orders in this regard within two months from the date of receipt of a copy of this order.

11. The Original Application is allowed as above. There shall be no order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

“SA”

Original Application No. 180/00126/2017**APPLICANT'S ANNEXURES**

Annexure A1 – True copy of letter submitted by the applicant dated 10.7.2015 to the 2nd respondent.

Annexure A2 – True copy of Railway Board order bearing RBE No. 101/2009 dated 10.6.2009.

Annexure A3 – True copy of Railway Board order bearing RBE No. 215/2009 dated 4.12.2009.

Annexure A4 – True copy of representation dated 1.2.2015 addressed to the 2nd respondent.

Annexure A5 – True copy of order in OA No. 960/2012 dated 22.7.2015 rendered by this Hon'ble Tribunal.

Annexure A6 – True copy of judgment in OP (CAT) No. 57/2016 dated 17 Feb 2016, rendered by the Hon'ble High Court of Kerala.

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of the calculation sheet.

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