

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 21/887/2018

Reserved on: 04.02.2019

Pronounced on: 05.02.2019

Between:

Narsi Reddy, S/o. Sathi Reddy, aged about 59 years,
Occ: Khalasi Helper,
In the O/o. Senior Section Engineer (P.Way),
South Central Railway, Khatkesari,
R/o. Peddakaprti (P),
Ramannapet Taluk, Nalgonda District.

... Applicant

And

Union of India, Rep. by

1. The General Manager, South Central Railways,
Rail Nilayam, Secunderabad.
2. The Senior Divisional Personnel Officer,
South Central Railway,
Secunderabad Division, Secunderabad.
3. The FA & CAO, South Central Railway,
Rail Nilayam, Secunderabad.

... Respondents

Counsel for the Applicant	...	Mr. K. Siva Reddy
Counsel for the Respondents	...	Mr. S.M. Patnaik, SC for Rlys

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
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ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. Applicant being aggrieved for not counting 50 percent of casual service rendered by the applicant as qualifying service has filed the OA

3. Applicant worked from 28.1.1980 to 31.3.1985 (1878 days) as casual labourer in the respondents organisation. As per Railway Board lr. dt 1.6.1984, casual labourers on completion of 3 years (1095 days) of service are conferred

with temporary status. Applicant was accordingly granted temporary status on 1.1.1984 and his services were also regularised from 2.7.1997. He was promoted as Khalasi helper on 19.7.2006 and was granted two financial upgradations under MACPs (Modified Career Progression Scheme). Applicant is eligible for 3rd financial upgradation, but since respondents have not taken 50% of casual service and also shown the date of regularisation incorrectly, it was not granted. The action of the respondents is against the Honourable Supreme Court Order in the matter and hence illegal. Therefore, the OA.

4. The contention of the applicant is that, if the casual service rendered and the correct date of regularisation is taken, then the applicant would have more qualifying service to get higher terminal benefits and 3rd financial upgradation under MACPs. His case is fully covered by the Honourable Supreme Court Judgment in U.O.I v Rakesh Kumar in CA No.3938/2017 dt 24.3.17.

5. Respondents object that the applicant without representing to the proper authority has filed the OA violating section 20 of AT act. However, they confirm that the applicant was engaged as casual labourer from 28.1.1980 and was granted temporary status on 1.1.1985. Subsequently he was provided lien as CMR gangman in civil engineering department of Secunderabad Division w.e.f 2.7.1997 and later posted as regular gangman under Section Engineer on 17.4.1999. Railway Board order 215/2009 ordains that 50% of temporary status casual service on regular absorption may be taken into account for financial upgradation under MACPs on the analogy that the same is also taken as qualifying service for pension. Hence 50% of service from date of attaining temporary status (1.1.1985) to the date of regularisation (17.4.1999) has been taken into consideration while granting MACP. By doing so the applicant is having only a service of 27 years of service and not the 30 years required to be

eligible for 3rd financial upgradation. Rule 14 (ii) of Railway Services (Pension) Rules 1993 prohibit considering casual labour services for granting pensionary benefits. Besides, Rule 31 (c) & (d) of Pension Rules and para 2005 of Indian Railway Establishment Manual stipulate that half the service paid from contingencies have to be taken into account for calculating pensionary benefits on being regularly absorbed. Therefore the casual service rendered by the applicant cannot be considered. The Honourable Supreme Court has held that 50% of the service rendered after being granted temporary service till the date of regularisation to be taken for pension calculation by distinguishing temporary status casual labourer and a temporary employee.

6. Heard both the counsel. Sri K. Siva Reddy, learned counsel appeared for the applicant and Sri S.M. Patnaik, learned Standing Counsel on behalf of the respondents. Arguments made by the learned counsel were as per the written submissions. Perused the documents and the material papers submitted.

7(i) The issue revolves around the length of qualifying service put up by the applicant. There is no dispute that the applicant has joined the respondents organisation on 28.1.1980. Respondents claim that applicant has been granted temporary status on 1.1.1985 whereas the service book entry shows that he was given temporary status on 1.1.1984. The respondents have not contradicted the service book entry and hence the date of conferring temporary has to be taken as 1.1.1984. Coming to the date of regularisation, the respondents claim that it is from 17.4.1999, the date from which he worked as regular gangman. However, the service book entry shows that the applicant was shown the lien against the gangman post from 25.7.1997. In other words the applicant started working as gangman from this date. In the reply statement, the respondents have asserted that even if the date of regularisation is taken as 25.7.1997, applicant will fall

short of the 30 years of service to be granted the 3rd financial upgradation. By stating so, tacitly the respondents are agreeing to the fact that the applicant was regularised on 25.7.1997 and not on 17.4.1999 as claimed. Nevertheless, as the applicant got the lien against the post on 25.7.1997, his regular services commence from this date.

ii) Having cleared the cloud in regard to facts, now let us examine the legal aspect relevant to the issue in question. The Honourable Supreme court in U.O.I v Rakesh Kumar in CA no 3938/2017 dt 24.3.17 has held that 50 % of casual labour service and 50% of service rendered after attaining temporary status is to be reckoned for qualifying service to grant pension, with the rider that the employee should necessarily get regularly absorbed. The objections raised in the reply statement have been dealt in the judgment and hence require no repetition. Suffice to state that the legal principle stated above has to be picked up. True to speak, Honourable Supreme Court reduced the percentage of temporary status service from 100 %, allowed by the Honourable High Court of A.P in WP No.25260/2002 dt 18.9.2015, to 50% by distinguishing temporary status casual labourer from a temporary employee. On telescoping the judgment to the facts of the case, the outcome as on 31.01.2019 i.e. the date of superannuation, will be as under:

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|------|---|----------------|
| I. | 50% Of casual labour service from 28.1.1980 to 31.12.1983 | |
| | | = 1 y 11m 17 d |
| II. | 50% of temporary service from 1.1.1984 to 24.7.1997 is | |
| | | = 6 y 9 m 12 d |
| III. | Regular service rendered from date of regularisation | |
| | i.e 25.7.97 till date of retirement i.e.31.1.2019 will be | |
| | | = 21 y 6 m 7 d |
| IV. | Total qualify service would then be | = 30 y 3m 6 d |

Therefore the qualifying service is more than 30 years and hence the applicant is eligible for 3rd financial upgradation under MACPs.

iii) Lastly, the learned counsel for the respondents has made a submission that the Honourable Supreme Court judgment dealt with the qualifying service of casual labourers in the context of grant of pensionary benefits, whereas the present case is about grant of MACP and hence the cited judgment is not applicable. The submission is contrary to the instructions contained in Railway Board Order 215/2009 wherein it was stated that 50% of temporary status casual service on regular absorption may be taken into account for financial upgradation under MACPs on the analogy that the same is also taken as qualifying service for pension. The word “analogy” used by the Railway Board in the context of grant of MACP vis a vis pension, answers the objection of the learned respondent counsel. The respondents also took objection that there is no representation by the applicant to the respondents thereby violating Section 20 of the Administrative Tribunals Act 1985. The respondents taking objection at this late stage after the OA has been admitted does not have much substance to comment upon. Coordinate Benches of this Tribunal have delved on this aspect and observed that once admitted, taking objection under Section 20 of the At Act would not stand to reason.

The verdicts of the Honourable Chandigarh (OA 1679/JK of 1991), Allahabad (OA 287/1986), Jodhpur (OA 84 of 1986), New Delhi (OA 259 & 260 of 1987) Bangalore (OA 1895 of 1988) support this view.

iv) Therefore, based on the merits of the case and the observation of the Honourable Supreme court the OA fully succeeds. The action of the respondents is arbitrary in denying a legitimate a benefit to the applicant. Hence the respondents are directed to consider as under:

- a) To consider grant of terminal benefits by granting 3rd financial upgradation under MACPs on the date due to the applicant.

- b) Time permitted to implement the order is 3 months from the date of receipt of the order.
- c) No order to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 5th day of February, 2019

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