Central Administrative Tribunal
Principal Bench

MA No. 2179/2015 in
OA No. 4286/2013

Order reserved on: 05.04.2019
Order pronounced on : 07.05.2019

Hon'ble Mr. Pradeep Kumar, Member (A)

Sh. Ishwar Dass
S/o Shri Nathu Ram,
Retd. Office Superintendent,
Diesel Shed, Northern Railway,
Tugalkabad, New Delhi.

Residential Address:-

RC-191, Bharat Nagar,
Khora Colony, Ghaziabad.

... Applicant

(By Advocate: Shri G.D. Bhandari)

Versus

Union of India, through

1. The General Manager,
   Northern Railway,
   Baroda House,
   New Delhi.

2. The Divisional Railway Manager,
   Northern Railway,
   State Entry Road, New Delhi.

... Respondents

(By Advocate: Shri S.M.Arif)

ORDER

The applicant was appointed on 28.05.1976 as a casual labour at daily wage rates, under IOW Electrification for the

period 28.05.1976 to 10.01.1979 and as a Storeman w.e.f. 11.01.1979 to 09.08.1981. Thereafter, he worked as a casual labour under IOW Horticulture, New Delhi w.e.f. 10.08.1981 to 16.12.1981. Thereafter, he applied for Substitute Diesel Khalasi in Diesel Shed Tuglakabad in the year 1981. On being found successful, an appointment letter was issued on 07.12.1981 and he joined as Substitute Diesel Khalasi w.e.f. 26.12.1981 in the scale of Rs.196-232. Thereafter for regularisation, a screening test was held on 30.04.1987 and he was declared fit and regularised.

2. He appeared for certain vacancies of LDC in Diesel Shed, Tuglakabad. However, he was not appointed despite being successful in the relevant test. Being aggrieved, he filed OA No.1933/1996, which was allowed vide orders dated 17.10.1997. The respondents challenged the same in Writ Petition (Civil) No.1359/1998 which was dismissed on 06.05.1999. Thereafter, matter was agitated before the Hon'ble Apex Court in SLP, which was also dismissed on 13.08.2001. In compliance, he was promoted as LDC and proforma promotion was given w.e.f. 25.10.1989 at par with his junior.

In due course, he was promoted as Senior Clerk, Assistant Superintendent and thereafter as Office

Superintendent from where he superannuated on 30.04.2013. The PPO that was issued, showed his appointment date as 30.04.1987 and accordingly qualifying service for pension was worked out as 28 years 8 months 2 days. Accordingly, as per instructions in force, 33 years qualifying service for full pension, the pension was reduced on pro-rata basis. Accordingly, DCRG amount and leave encashment amount was also worked out to certain lower value. The applicant preferred representations dated 10.05.2013 and 07.06.2013. There was no response. Applicant preferred an RTI query which was replied on 28.06.2013 wherein it was shown that date of appointment was 26.12.1981 and as per extant rules 50% of service between 26.12.1981 to 30.04.1987 is to be taken into account to work out the qualifying service.

However, applicant pleaded that 100% of his service as substitute between 26.12.1981 to 30.04.1987 and 50% of his casual service w.e.f. 28.05.1976 to 16.12.1981 is also to be taken into account for qualifying service. When this was not agreed, he preferred an OA No.4286/2013.

3. The respondents pleaded that he was screened and regularised w.e.f. 30.04.1987 and thus subsequent period is counted for as 100% and the earlier period after he was given

temporary status was counted for 50% and thus qualifying period worked out as 28 years 8 months and 2 days was correct and the OA was opposed.

4. Matter was heard by the Tribunal and decided vide order dated 17.02.2015 with the following directions:

> "7. In view of the above position, I allow this O.A and direct the respondents to re-determine the qualifying service of the applicant by counting his 50% of the casual service and 100% of the substitute service and then re-determine his pensionary benefits. The detailed calculation sheet of the qualifying service and compilation of pensionary benefits shall also be furnished to the applicant. He shall also be paid the difference in pensionary and other terminal benefits with 9% interest p.a. within a period of two months from the date of receipt of a copy of this order."

5. The respondents filed RA No.259/2016 seeking review of these directions. This RA was disallowed vide orders dated 23.01.2018. Meanwhile, the applicant had also filed MA No.2179/2015 seeking compliance of directions dated 17.02.2015.

6. Once RA was disallowed, respondents preferred a writ in Hon'ble High Court vide WP (C) No.8623/2018 which was dismissed vide orders dated 17.08.2018. The operative part is reproduced below:

> "7. Having heard the learned counsel and on perusing the impugned orders as also the record, we find no infirmity in the orders passed by the Tribunal. The record shows that the respondent had not only filed a copy of his service book, but also enclosed with his OA, a copy of the appointment letter dated 07.10.1981 issued by the Divisional Office of the Northern Railway, New Delhi/ Petitioner No. 2 clearly showing that he had been appointed

> as a substitute Diesel Khallasi vide order dated 07.12.1991, which averment had not been denied by the petitioners in their reply before the Tribunal. In the absence of any denial by the petitioners to the appointment letter annexed by the respondents with the Original Application showing his appointment as a substitute Khallasi, in our view the Tribunal was justified in accepting the claim of the respondent that he had been appointed as a substitute Khallasi w.e.f. 26.12.1981, vide letter dated 07.12.1991 prior whereto, he was a casual labour from 28.05.1976. As a result, the Tribunal's order directing the petitioner to include not only the respondent's entire substitute service from 26.12.1981 to 30.04.1987, as also 50 % of his casual service from 28.05.1976 to 16.12.1981, in accordance with the Railway Board's Circular dated 25.02.2010, cannot be faulted."

7. The respondent-Railway has now submitted a compliance affidavit dated 17.12.2018 wherein it is indicated that the period 26.12.1981 to 30.04.1987 has now been counted for full towards qualifying service and with this, qualifying service has now worked out to 31 years 4 months and on account of this, certain additional payment of Rs.42,863/- also became due which has since been released on 03.12.2018.

8. The applicant, however, pleads that the casual service prior to 26.12.1981 has not been counted for as was directed in OA No.4286/2013 (para 4 supra) which was upheld by Hon'ble High Court (para 6 supra). It is MA No.2179/2015 which is presently under adjudication.

9. The respondents opposed the plea made by the applicant in respect of counting of casual service prior to

26.12.1981. It was pleaded that applicant was never granted temporary status. However, he was appointed as Substitute Khalasi w.e.f. 26.12.1981 and he was granted the benefit as is due to a Substitute as per Railway Board policy and nothing more is due.

9.1 The respondents also relied upon a judgment by Hon'ble Apex Court in Civil Appeal No.3938/2018 arising out of SLP (C) No.23723/2015 decided on 24.03.2017 (**Union of India vs. Rakesh Kumar and ors.**). This was a common order passed in 7 Civil Appeals which had individually arisen out of respective SLPs. It was pleaded that the entire question of how much service is to be counted to work out the qualifying service has been considered and adjudicated by the Hon'ble Apex Court, and nothing more is due to the applicant as per this adjudication.

10. In the relied upon judgment by Hon'ble Apex Court in Civil Appeal No.3938/2018, one of the petitioners, namely, Rakesh Kumar was appointed as casual labour on 27.06.1984. He was granted temporary status w.e.f. 22.06.1985 and thereafter was screened and regularised w.e.f. 31.12.1996. The said Sh. Rakesh Kumar pleaded before Chandigarh Bench of the Tribunal in OA No.2389/2014 that 100% of his service after grant of

temporary status till he was regularised, is to be counted to the extent of 100% instead of 50%. It was pleaded that the initial period of working as a casual labour w.e.f. 27.06.1984 should be counted for 50% of the time while period spent after temporary status, should be accounted to the extent of 100%. This was allowed by the Tribunal vide orders dated 18.07.2014. While granting relief the Tribunal relied upon another decision in OA No.1921/2014 dated 29.05.2014. The respondent – Railway challenged these orders in Hon'ble High Court of Delhi in WP (C) No.7618/2014. This was decided on 10.11.2014. The operative part of this decision is reproduced below:

> "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.
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> 9. For the foregoing reason, the Court is of the opinion that the impugned order does not call for interference. The writ petitions are accordingly dismissed along with the pending applications."

11. It was this judgment by the Hon'ble High Court of Delhi which came to be scrutinised in Civil Appeal No.3938/2017.

While deciding this Civil Appeal, the Hon'ble Apex Court observed as under:

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

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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.

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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."

12. With this decision by Hon'ble Apex Court, the decision by the Tribunal and Hon'ble High Court of Delhi was set aside and the guiding principles were laid own as are shown in para 55 of the judgment by Hon'ble Apex Court as reproduced above.

13. It was pleaded that in view of the foregoing, no more benefits are admissible to the applicant and MA seeking compliance needs to be dismissed as infructuous as the entire relief has already been given.

14. Matter has been heard at length. Sh. G.D. Bhandari, learned counsel represented the applicant and Sh. S.M. Arif, learned counsel represented the respondents.

15. The respondents-Railways have issued instructions with regard to casual labour which are contained in Indian Railway Establishment Manual Vol. II. The provisions therein in regard to grant of temporary status and the payments to be made are given at Chapter XX, which reads as under:

> "(b) ..... Such of those casual Labour engaged on open line (revenue) works, who continue to do the same work for which they were engaged or other work of the same type for more than 120 days without a break will be treated as temporary (i.e. given "temporary status") on completion of 120 days continuous employment.
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> Casual Labour on projects who have put in 180 days of continuous employment on works of the same type are entitled for 1/30th of the minimum of the appropriate scale of pay plus Dearness allowance."

16. The entitlement and privileges admissible to casual labour who are treated as temporary (i.e. given temporary status) are contained in Para 2005 of Indian Railway Establishment Rules. The relevant para is reproduced below:

"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 XX III 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 and the date of their regular appointment after screening/selection shall determine their seniority vis-a-vis other regular/temporary employees. This is however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or 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.

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(d) Casual labour who have acquired temporary status and have put in three years continuous service should be treated at par with temporary railway servants for purpose of festival advance/Flood Advance on the same conditions as ARE applicable to temporary railway servants for grant of such advance provided they furnish two sureties from permanent railway employees."

17. In the instant case, the applicant had worked on daily wage rate for the period 28.05.1976 to 09.08.1981 under Electrification Department. Thereafter, he worked as casual labour under another organisation namely

Delhi Division. He was appointed as a Substitute Khalasi in the pay scale of Rs.196-232 w.e.f. 26.12.1981 in a third organisation namely Diesel Shed, where he was regularised w.e.f. 30.04.1987. He was never granted temporary status. The grant of substitute status w.e.f. 26.12.1981, does not count for regularisation. Had it been regularisation, there would have been no need to conduct screening test followed by regularisation w.e.f. 30.04.1987.

18. With this in view, as per extant provisions of IREM, the qualifying service to the extent of 50% between 26.12.1981 to 30.04.1987 and 100% of the service w.e.f. 30.04.1987 onwards is required to be counted towards qualifying service. The period spent prior to 26.12.1981 shall not count for any such benefit.

19. In the instant case, the Tribunal vide their orders dated 17.02.2015 has ordered for 50% of the casual service and 100% of the substitute service to be counted towards qualifying service. These orders are contrary to the extant provisions of IREM. These orders are also not in conformity with adjudication by Hon'ble Apex Court. (Para 11 supra).

It is noted that it is para 55 (iii) of the adjudication by Hon'ble Apex Court which is attracted in the instant case, as applicant was directly granted substitute status on

26.12.1981 against some post in Diesel Shed, without being granted temporary status at any earlier stage and thus it is only the period after 26.12.1981 which will count for qualifying service and it shall be to the extent of 100%. To this extent, there is contradiction in the decision by the Tribunal for the period prior to 26.12.1981. However, it is the decision of Hon'ble Apex Court that will prevail now.

20. Now since the entire period after 26.12.1981 has already been counted fully towards qualifying service (para 7 supra), nothing more survives in this petition. The same is dismissed being devoid of merit. No cost.

(Pradeep Kumar)
Member (A)

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