

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.2922 of 2017

This the 19th day of August 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Peeru, aged 62 years,
s/o Sh. Kewal,
Retired as Gangman/Trackman, From Northern Railway
Station, Gurgaon,
r/o Vill/Jundali Sarai,
PO Patli Station,

....Applicant

(By Advocate : Shri Yogesh Sharma)

VERSUS

1. Union of India through the General Manager
Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Delhi Division,
State Entry Road, New Delhi.

.....Respondents

(By Advocate : Shri Krishna Kant Sharma)

O R D E R (Oral)

Heard learned counsel for the parties.

2. By filing this OA, the applicant is seeking the following
reliefs:-

“(i) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to count entire (full) temporary status i.e. w.e.f. 17.6.74 to 16.8.89 for the purpose of granting pensionary benefits and consequently, pass an order directing the respondents to recalculate all the retirement benefits of the applicant with all the consequential benefits including the difference of amount with interest.

- (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the department to count entire service i.e. w.e.f. 17.6.74 to 16.8.1989 as a qualifying service for granting the benefits of MACP scheme and consequently, pass an order directing the department to grant 3rd financial upgradation to the applicant under MACP scheme in Grade Pay of Rs.2400/- from due date with all the consequential benefits including the re-fixation of pay, re-fixation of retirement benefits, arrears of difference of pay and allowance with interest.
- (iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation."

3. Brief facts of the case as stated by the applicant are that he was initially appointed in the Railway department as casual basis in January 1974 to the post of Gangman and subsequently granted temporary status w.e.f. 17.6.1974 and was regularized w.e.f. 17.8.1989 and has been retired from the post of Gangman while posted at Northern Railway Station, Gurgaon on 23.4.2013.

3.2 According to the applicant, he completed more than 15 years and 2 months temporary status service and completed 24.5 years regular service and therefore, completed more than 39 years of service.

3.3 Applicant has averred that Govt. of India introduced an ACP Scheme w.e.f. 9.8.1989 providing two financial upgradation on completion of 12 & 24 years of service.

3.4 Applicant has further averred that 50% casual service with temporary status was decided to be counted on the basis of the same analogy of counting 50% of casual service for the purpose of pensionary benefits vide Railway Board Circular dated 31.3.2004. The Railway Board vide Circular dated 17.8.2004 further clarified that the entire temporary status service of substitutes following by regularization without break may be taken into account towards the minimum service of 12/24 years for the purpose of grant of benefit of ACP Scheme.

3.5 Applicant also averred that w.e.f. 1.9.2008, the Govt. of India, Ministry of Railway introduced the Modified Assured Career Progression Scheme by which a Govt. servant is entitled for three financial upgradation on completion of 10, 20 and 30 years of service without any promotion and further as per the Railway Board circular dated 25.2.2010, the entire temporary status service of substitute following by regularization without break may be taken into account towards the minimum service of 10, 20 and 30 years for the purpose of grant of benefit under the MACP Scheme.

3.6 The applicant further stated that even after counting half of the casual labour with temporary status service, the applicant completed more than 30 years of service, but he has been granted only 1st and 2nd financial upgradation under MACP whereas he should have also been granted 3rd financial

upgradation and his retirement should be in Grade Pay of Rs.2400/-.

3.7 The applicant has filed his detailed representation dated 9.2.2017 to the respondents and when no response was received for certain months, the applicant sent a legal notice dated 27.6.2017 to the respondents and the DRM Office vide letter dated 21.7.2017 forwarded the same to the subordinate office but till date no final decision has been taken. Aggrieved by inaction on the part of the respondents on his aforesaid representation and legal notice, the applicant has filed this OA seeking the reliefs as quoted above.

4. In the counter affidavit filed by the respondents dated 17.7.2018, it is clearly stated that the applicant was initially appointed as Casual labour in Jan, 1974 and has been granted temporary status w.e.f. 17.8.1989 and has retired from service from the post of Gangman on 23.4.2013. They further stated that the portion of temporary status has been taken into consideration upto 50% of temporary status period and as per the rules of MACP, the applicant was not eligible/entitled for 3rd MACP as per the qualifying period. They have also stated that half of qualifying service period during temporary status from 17.6.1974 to 17.8.1989 has to be counted for pension and pensionary benefits.

5. However, the respondents have subsequently filed their tabulated form of clarification on applicant’s employment period dated 24.7.2019, which reads as under:-

Date	Particulars
Jan-1974	The applicant was appointed on casual labour basis
23.01.1981	The applicant was engaged on casual labour with temporary status
18.08.1989	The applicant was screened and regularised against sanctioned vacant post.
23.04.2013	The applicant retired from service after getting all the superannuation benefits as per rules.

They further averred that the applicant’s superannuation benefits have been paid as per information given below:-

Period for counting of service	Percentage of service counted for qualifying service period
23.01.1981 to 17.08.1989 This is the period of casual labour with temporary status	50% period has been counted for qualifying service period.
18.08.1989 to 23.04.2013 This is the period from Screening to the date of retirement	100% period has been counted for qualifying service period.

6. The issue involved in this case is no more *res integra*, as this issue of counting of casual labour service and temporary service as qualifying service for the grant of pensionary benefits have been raised in plethora of cases before this Tribunal, High Courts and the Supreme Court and finally the Hon’ble Supreme Court in the case of **Union of India and**

others vs. Rakesh Kumar and others (Civil Appeal No.3938 of 2017 decided on 24.3.2017 after elaborate discussion on the rule position as well as of the previous judgments on this issue, including the judgment of Andhra Pradesh High Court in ***General Manager, South Central Railway, Secunderabad & Anr. Vs. Shaikh Abdul Khader (supra)*** held as follows:-

“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.”

7. From the above, it is clear that qualifying service of the casual labour, who were granted temporary status and subsequently regularized, has to be calculated as devised by the Hon'ble Apex Court supra. From the counter affidavit as well as subsequent tabulated form of clarification on applicant's employment period, it is clear that respondents have not taken into consideration 50% of casual labour service rendered by the applicant towards qualifying service and further the date of grant of temporary status is also different as according to the applicant, he was granted temporary status on 17.6.1974 whereas respondents have averred that the date of grant of temporary status was 23.01.1981, which is strongly disputed by the applicant by filing his aforesaid representation as well as legal notice, which have not yet been responded to by the respondents.

8. In view of the above, for the foregoing reasons, the instant OA is allowed with the direction to the respondents to re-calculate the qualifying service of the applicant in terms of the judgment of the Apex Court in the case of **Rakesh Kumar** (supra) and also see the actual date of grant of temporary status to the applicant, as the date of grant of the same is in dispute and immediately give him benefits of the said judgment or otherwise pass a reasoned and detailed speaking

order within a period of 30 days from the date of receipt of a certified copy of this Order and also specifically deal with the issue of grant of 3rd MACP Scheme benefits in accordance with the rules and instructions on the subject. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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