

**Central Administrative Tribunal  
Ernakulam Bench**

OA No.180/00269/2018

Monday, this the 2<sup>nd</sup> day of September, 2019.

CORAM

**Hon'ble Mr.Ashish Kalia, Judicial Member**

P.J.Varghese, aged 60 years  
S/o Jacob  
Retired Sanitary Jamaidar  
Railway Hospital, Ernakulam South.  
Residing at Parackal, Avanamcode,  
Chowara P.O.

Applicant

(Advocate: Mr. P. Ramakrishnan)

**versus**

1. Union of India, represented by  
the Secretary. Ministry of Railways,  
Rail Bhavan, New Delhi-110 001.
2. The Senior Divisional Personnel Officer,  
Southern Railway, Thiruvananthapuram-695 033.
3. The Divisional Railway Manager,  
Southern Railway,  
Thiruvananthapuram-695 033.

Respondents

(Advocate: Mr. Thomas Mathew Nellimoottil, Sr.PCGC)

The OA having been heard on 2<sup>nd</sup> September, 2019, this Tribunal delivered the following order on the same day:

**O R D E R (oral)**

The applicant, a retired Sanitary Jamaidar from Southern Railway, is aggrieved by non-consideration of his service from February, 1981 to December, 1998. The applicant had joined as a casual mazdoor with the Railways on 13.2.1978 and attained temporary status in February, 1981. His services were terminated as per order dated 5.6.1981 on the ground that he was medically unfit. The said order of the respondents was set aside as per Annexure A1 judgment of Hon'ble High Court of Kerala, vide its order dated 25.11.1981 and directed the Railway Administration to deal with the matter afresh. Pursuant to Annexure A1, the applicant was reinstated in service. However, after considering the applicant's representation, an order dated 22.4.1982 was issued by the 2<sup>nd</sup> respondent confirming the applicant's termination w.e.f. 5.5.1981. Challenging the above order dated 22.4.1982, the applicant filed OP No.7349/1982 before the Hon'ble High Court of Kerala. The O.P was transferred to this Tribunal as T.A.No.36 of 1987. The operative portion of the order passed by this Tribunal reads as follows:

*“For the reasons stated above, the application is allowed and the order of termination is set aside. It is, however, open to the respondents to take such action as is warranted on the basis of the medical report after giving due notice to the applicant and after hearing his objections in this regard.”*

2. Thereafter, the respondents passed fresh termination order dated 30.3.1989. Challenging this, the applicant filed OA No.489 of 1993 followed by another OA No.192 of 1998. Consequently, the applicant was re-engaged by the respondents as a Sanitary Cleaner w.e.f. 3.8.1998 in preference to his junior.

The respondents counted his services as Sanitary Cleaner only with effect from the date of his re-engagement as Sanitary Cleaner w.e.f. 24.12.1998. He had superannuated on 31.7.2017. Feeling aggrieved by non-consideration of his casual labour service for the purpose of pensionary benefits, the applicant has approached this Tribunal with the present OA. The reliefs sought by the applicant are as follows:

*(i) Direct the respondents to re-fix the applicant's pension counting his service from 02/1981 onwards till his retirement on superannuation on 17.7.2017.*

*(ii) Hold that Annexures A10 to A11 to the extent they ignore the period 02/1981 to 23/12/1998 are arbitrary and illegal.*

*(iii) Direct the respondent to re-fix the applicant's pension reckoning the period 02/1981 to 17.7.2017 as service and disburse monthly pension, arrears of pension, gratuity and other benefits.*

3. Notices were issued. Sri Thomas Mathew Nellimoottil, Sr.PCGC put in appearance on behalf of the respondents and filed a detailed reply statement.

4. The basic contention raised by the respondents is that the applicant was appointed as a Substitute Sanitary Cleaner on 3.8.1988 and granted temporary status w.e.f. 24.12.1998. Subsequently, his date of absorption was antedated to 19.3.1990. Immediately after knowing that the applicant was granted retirement benefits, they had issued a revised PPO dated 21.2.2019, a copy of which is handed over to Bench across the Bar and also to the counsel for the applicant. It is further stated that an amount of Rs.1,47,262/- as difference in DCRG was credited in the applicant's SB account with SBI. Thus the applicant's prayer for counting his service w.e.f. 19.3.1990 had been acceded to and due DCRG benefits for the qualifying service to the tune of Rs.1,47,262/- had been

credited in his account. Further it is submitted that due to advancement of date of absorption, the applicant's 2<sup>nd</sup> MACP granted in Grade Pay of Rs.2000 w.e.f. 1.1.2012 had been revised to be w.e.f. 29.8.2010 and difference in salary due to MACP to the tune of Rs.12,209/- would be paid shortly. According to the respondents, since the grievance has been substantially redressed, the OA is liable to be dismissed.

5. Heard learned counsel on both sides at length and appreciated the legal points put forth during the course of the arguments.

6. The applicant has put forward his grievance that his entire services should be counted for the purpose pensionary benefits in accordance with law. The contention raised by the applicant needs to be examined whether it is covered by judicial dictum or not. The applicant was initially engaged as a casual mazdoor w.e.f. 13.2.1978 and he was conferred temporary status, according to the respondents, with effect from 4.8.1990 and the entire service benefits were granted to him. However, the fact remains that the applicant was subjected to various litigations upto High Court from Labour Court and to this Tribunal, which had ordered reinstatement of the applicant time and again with back wages to the tune of 50%. This fact depicts only one thing which is that applicant was continued in his service. Initially, applicant had approached the Hon'ble High Court of Kerala, which directed the respondents to consider the termination on medical ground by setting aside the order of the Railways but Railways which were adamant to dispense with the services of the applicant without giving any reasons, again terminated his service.

7. Thereafter, when the applicant re-approached this Tribunal, this Tribunal had once again set aside the order passed by the respondents terminating his services without giving due notice on 18.3.1988, meaning thereby that the applicant's services are continued till the date this Tribunal had set aside the order passed by the Railways without giving proper opportunity to defend the applicant himself, which is contrary to the principle of *audi alteram partem* - "nobody should be condemned unheard". This Tribunal rightly did so by reinstating the applicant in service but the respondents had passed a fresh termination order on 30<sup>th</sup> March, 1989. While disposing of the OA No.489/1993 filed by the applicant, this Tribunal had observed that since the applicant's junior one Sri C.K.Purushan who is similarly situated medically categorized has been re-engaged by the respondents, thus the applicant being senior to Sri Purushan, he was also considered and re-appointed w.e.f. 4.8.1990.

8. In the entire gamut of facts, one thing emerges that the applicant's services are, in one way or other, found to be continued by the intervention of Labour Court, this Tribunal and of the Hon'ble High Court of Kerala. Learned counsel for the applicant has relied upon a judgment passed by the Apex Court in the matter of *Union of India vs. Rakesh Kumar* wherein the Apex Court has observed 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 regularized 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”.*

9. In view of the same, I have no hesitation to hold that the applicant is entitled to count his service for the pensionary benefits with effect from 13.2.1978 by counting 50% of his casual service for grant of pensionary benefits. With this observation, I hereby allow this OA with a direction to the respondents to re-fix the applicant's pension within a period of 90 days by counting 50% of his casual service with effect from 13.2.1978 to the date of regularization i.e., 4.8.1990. The pension of the applicant be re-fixed. Accordingly Annexures A10 & A11 are set aside being illegal. The aforesaid exercise shall be completed within a period of three months from the date of receipt of this order. The pitiable circumstance of the applicant has been callously ignored by the Railway Administration. The attitude of the Railways is not appreciated by this Tribunal. With these observations, the OA stands allowed.

**(Ashish Kalia)**  
**Judicial Member**

aa.

Annexures filed by the applicant:

- Annexure A1: Copy of the judgment dated 25.11.1981 in O.P.No.4582 of 1981.
- Annexure A2: Copy of the order dated 18.3.1988 in T.A.No.36 of 1987.
- Annexure A3: Copy of order dated 22.6.1994 in OA No.489 of 1993.
- Annexure A4: Copy of order dated 5.4.2000 issued by the 2<sup>nd</sup> respondent.
- Annexure A5: Copy of office order dated 13.2.2006 issued by the 2<sup>nd</sup> respondent.
- Annexure A6: Copy of order dated 5.3.1992 issued by this Tribunal.
- Annexure A7: Copy of order dated 18.10.1994 in CP No.28/1992 issued by the Labour Court, Ernakulam.
- Annexure A8: Copy of order dated 11.8.1997 issued by the Labour Court, Ernakulam in CP No.6 of 1995.
- Annexure A9: Copy of order dated 30.6.2006 in CP No.18 of 2016.
- Annexure A10: Copy of service certificate issued to the applicant.
- Annexure A11: Copy of Pension Payment Order issued to the applicant.