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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00189/2019

Monday, this the 28th day of October, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

Shri S.Paul Raj,
Aged 71 years,
S/o late Selvamani,
Retired Senior Trackman,
PF No.4293319,
Trivandrum Division,
Southern Railway,
Residing at Pulliyan Vilai,
Mangari P.O.,
Karangal,
Kanyakumari District.Applicant

(By Advocate M/s.Varkey & Martin)

V e r s u s

1. The Union of India
represented by the General Manager,
Southern Railway,
Park town,
Chennai – 600 003.

2. The Senior Divisional Personnel Officer,
South Railway,
Trivandrum Division,
Trivandrum 14.Respondents

(By Advocate Mr.V.A.Shaji, ACGSC for Respondents)

This application having been heard on 25th October, 2019, the Tribunal
on 28th October, 2019 delivered the following :

ORDER

OA No.189/2019 is filed by Shri S.Paul Raj. He seeks the following reliefs:

- I) Declare that the applicant is entitled to reckon the 50% of his casual service rendered by him from the year 1972 onwards prior to his absorption, as qualifying for pensionary benefits and to direct the respondents accordingly.
- II) Direct the respondents to revise and disburse the pensionary benefits to the applicant on the basis of the above declaration.
- III) Pass such other orders or directions as deemed fit.

2. The applicant claims that he has 9 ½ years of regular service in Railways as also 983 days of casual service. He had been initially engaged as a casual labourer under the Permanent Way Inspector (Construction), Southern Railway, Poddanur from 16.12.1972 and was terminated for want of work from 09.11.1974. True copy of the service card issued to the applicant for the said period of casual service is at Annexure A1. Thereafter, in 1978 he was again engaged as casual labourer at Nagercoil, continuing up to 1981. Again he claims to have been engaged from 22.03.1989 to 29.04.1989. A copy of the order of re-engagement is at Annexure A2. He states that the fact of his 983 days of casual service under the Trivandrum Division of Southern Railway is accounted for in the Live Register maintained in pursuance to the direction of the Hon'ble Supreme Court in **Inder Pal Yadav's** case.

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3. He was regularised as Trackman in the Trivandrum Division with effect from 10.03.1999. He retired from Railways on 30.09.2008 on attaining the age of superannuation. Thus he had 9 $\frac{1}{2}$ years of qualifying service, but was declared ineligible for getting monthly pension as he was not having 10 years qualifying service. In accordance with the service certificate issued to him (Annexure A3), the settlement dues were paid to him (Annexure A4).

4. The applicant had approached this Tribunal by filing OA No.326 of 2010 seeking a declaration that he is entitled for antedating his absorption to 12.02.1996 on par with one Shri K.Viswanathan, who was junior to the applicant in the Live Register. This OA came to be rejected on the ground that Shri K.Vishwanathan had been regularised in 1996 owing to a mistake. The entire casual service of the applicant of nearly 5 years was not reckoned as qualifying service for pensionary benefits. This is in violation of directions of Hon'ble Supreme Court in **Union of India and Other V. Rakesh Kumar and Others in Civil Appeal No.3938 of 2017**, wherein it had been held that the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for pension. Going by the dictum of this judgment, applicant has more than 4 years of service and if 50% of the same is taken into account, his services would qualify for pensionary benefits. The applicant had submitted a representation to the 2nd Respondent on 28.11.2018 (Annexure A5) but he is yet to receive a reply.

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5. In the reply statement filed by the respondents, his regular service amounting to 9 ½ years is admitted. However, no credit can be given to his casual service in the absence of original casual service card. The judgment of the Apex Court in **Rakesh Kumar** is subject to verification of genuineness of casual service and in the absence of necessary records, it is not found feasible to give the applicant credit for his casual service. The applicant's claim is for having worked for 983 days as casual labourer but this is not supported by any document. Thus nothing can be confirmed other than his regular service extending from 10.03.1999 to 31.03.2008 amounting to 9 ½ years of service in total. He was granted retirement benefits as at Annexure A4. His demand for monthly pension was declined as there is no evidence that he possesses the required minimum qualifying service of 10 years.

6. Rejoinder was filed by the applicant in which he has produced a copy of Live Register as "Merged seniority list of casual labourers retrenched prior to 01.01.1981 and after 01.01.1918", Annexure A8. In the list he is found included as No.1773 and the length of service shown as 983 days.

7. Heard Shri Martin G.Thottan appearing on behalf of the applicant and Shri V.A.Shaji, learned ACGSC on behalf of the Railways. The applicant is seen as having worked 9 ½ years in a regular post. He seeks credit for his service as a casual worker for a period extending upto 983 days. Respondents while admitting the fact of his regular service have taken a

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view that there is no evidence on hand to prove his casual service. However, it is seen that a copy of the Live Register produced along with the rejoinder as Annexure A8, clinches the issue as it clearly establishes that the applicant had put in 983 days as a casual worker. He is eligible for 50% of casual service to be admitted for calculating along with full service and when this is done applicant would be eligible for monthly pension. Following the judgment of the Apex Court in **Rakesh Kumar**, the same view has been taken by the Principal Bench of this Tribunal.

8. Under the circumstances, the OA succeeds. The applicant is entitled to minimum monthly pension from the date of superannuation which has to be paid to him. However, arrears is restricted to 3 years prior to filing of this OA. Orders in this regard are to be issued within 60 days of receipt of a copy of this order. No costs.

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

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List of Annexures in O.A. No.180/00189/2019

- 1. Annexure A1:** True copy of the service card issued to the applicant.
- 2. Annexure A2:** True copy of the order No.V/P.407/I/Engagement of CLs. dated 21.03.1989
- 3. Annexure A3:** True copy of the service certificate issued to the applicant.
- 4. Annexure A4:** True copy of the order No.V/P.626/Statement dated 05.10.2008..
- 5. Annexure A5:** True copy of the representation dated 28.11.2018 submitted by the applicant.
- 6. Annexure A6:** True copy of the letter No.V/P.407/I/TVB/Vol.XII dated 26.06.2019.
- 7. Annexure A7:** True copy of the letter dated 01.07.2019 submitted by the applicant.
- 8. Annexure A8:** True extract of the merged seniority list maintained by Trivandrum Division of Southern Railway.
