

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

OA No.171/2007
MA No.252/2007
connected with
O.A.No.1091/1999

Dated this *Thursday* the *24th* day of *October*, 2019

Coram: Dr. Bhagwan Sahai, Member (Administrative)
R.N.Singh, Member (Judicial).

(Applicant in O.A.No.171/2007)

1. Kamal Vitthal Zalte
Aradhnana Colony,
Kashiram Nagar,
Savakare Building
(Vedi Mata Mandir)
At Post: Bhusawal,
Dist. Jalgaon (Maharashtra).

... Applicant.

(By Advocate Shri R. P. Saxena)

Versus.

1. Union of India, through
The General Manager,
Central Railway,
Mumbai-CST.
2. Divisional Railway Manager,
Central Railway,
Bhusawal.

... Respondents.

(By Advocate: Shri V.S. Masurkar)

(O.A.No.1091/1999)

Shri Keroo Waloo Bhalerao,
since expired on 08.01.2001,
through his legal representative

1. Maruti Keroo Bhalerao
Son of Keroo Waloo Bhalerao
Age-65 years, Occ. Pensioner.
2. Smt. Shashikala Ram Bhalerao
Widow of Ram Keroo Bhalerao,
The son of the Keroo Waloo
Bhalerao, Both r/at-Bhaje,
P. O. Malwali, Tal. Maval,
Dist. Pin, Pin.410405.
3. Smt. Meena Suresh Salve
Age: about 50 years,
Occ. Household widowed daughter
of Keroo Waloo Bhalerao,
R/at.Qtr No.T.Y.25,
Swaraj Nagar, Lonawala,
Tal.Maval, Dist. Pune.

... Applicants.

(By Advocate Shri J. M. Tanpure).

Versus

1. Union of India
through the General Manager,
Ministry of Railways,
Rail Bhawan, New Delhi-110011.
2. The Section Engineer (WKS)
Central Railway Lonawala,
Tal.Mawal, Dist.Pune.

3. The Divisional Railway Manager(P)
Central Railway, Chhatrapati
Shivaji Terminus, Mumbai.

... Respondents.

(By Advocate Shri V. S. Masurkar).

Order reserved on: 12.07.2019

Order pronounced on: 24.10.2019.

O R D E R

Per: R.N.Singh, Member (Judicial)

1. We have heard Shri R. P. Saxena, learned counsel for the applicant in OA No.171/2007 and Shri J. M. Tanpure, learned counsel for the applicant in OA No.1091/1999. Shri V.S. Masurkar, learned counsel for the respondents in both the OAs and carefully considered the facts and circumstances, law points and rival contentions in both the cases.

2. In the aforesaid original application no.171/2007, filed under Section 19 of the Administrative Tribunal's Act, 1985 the applicant, widow of one Shri Vitthal Digamber Zalte has challenged the order dated 18.10.1999 (Annexure-A) vide which the respondents have rejected her claim for grant of family pension on the ground that her husband was not eligible for pension.

3. In the present OA, the applicant has prayed for the following reliefs:-

"(a) to hold and declare that 50% of casual service rendered by the husband of the applicant late Shri Vitthal Digamber Zalte from 19.05.1975 to 31.12.1980 as Casual & MRCL Khalasi and service rendered as Temporary Khalasi on conferment of temporary status from 01.01.1981 to 23.11.1989 is liable to be reckoned for the purpose of pensionary benefits.

(b) to hold and declare that the husband of the applicant had more than 10 years qualifying service at the time of his retirement on 30.11.1994 and thus he was entitled to pensionary benefits.

(c) to hold and declare that the applicant is entitled for family pension with effect from 07.09.1998 after the death of her husband.

(d) to quash and set aside the impugned orders dated 13.11.2006, 18.10.1999, being arbitrary, capricious and illegal and direct Respondent no.2 to make the payment of pension along with arrears with effect from 01.12.1994 to the applicant with interest @12% per annum.

(e) to order cost and such other relief as deem fit and proper in the conspectus of facts and circumstances of the case."

4. Though the applicant has declared in para-III of the OA that the OA is within limitation.

However, she avers that as a matter of abundant precaution, she has filed the aforesaid MA for condonation delay, if any, in filing of the aforesaid OA.

5. The undisputed facts are that late husband of the applicant was an employee of the Central Railway and before retiring on attaining the age of superannuation on 30.11.1994, he had rendered his services to the respondents for more than 19 years, the details of which are as under:-

Sr. No.	Period	Post held	Under whom worked
1.	19.05.1975 to 31.12.1980 (05 y. 07 m. 13 d.)	Casual and MRCL Khalasi	Dy. Chief Engineer (c) Central Railway, Bhusawal.
2.	01.01.1981 to 23.11.1989 (08 y. 10 m. 23 d.)	Temporary Khalasi	Dy. Chief Engineer (c) Central Railway, Bhusawal.
3.	24.11.1989 to 30.11.1994 (05 y. 07 d.)	Gangman	Chief P.W.I. (ML) Central Railway, Bhusawal.

The applicant states that her husband retired on 30.11.1994 on superannuation after attaining age of 58 years, but pension was not granted to him.

6. The applicant's late husband had submitted

a detailed representation dated 30.07.1997 to the respondent no.2 for grant of pensionary benefits and his such cause was also taken up by the All India SC and ST Railway Employees Association, Central Railway, Bhusawal vide their letter dated 31.07.1997. However, before his such representation could be considered and disposed of by the respondents, he unfortunately expired on 06.09.1998. The applicant had made a representation dated 05.10.1999 to the respondent no.2 (Annexure A-4) for grant of pensionary benefits and family pension. However, the said representation was rejected by the respondents vide impugned order dated 18.10.1999. Thus, the applicant has filed the aforesaid OA.

7. The respondents have filed affidavit dated 06.08.2007 in reply to aforesaid OA to oppose the claim of the applicant and submit that the policy laid down by the Railway Board does not entitle the applicant's husband to count the service on casual basis to be taken into consideration for grant of pension. They submit that the applicant's husband got temporary status w.e.f. 01.01.1981 and he was granted regular status w.e.f. 24.11.1989 and thus he

was having only 09 years and 24 days of service in his credit which is less than 10 years and in view of the provisions of Rule-102 of manual of Railway Pension Rules (MRPR) 1980, he was not entitled for grant of pension in as much as the said provisions provide that one has to put minimum 10 years of qualifying service for grant of pension.

8. After completion of pleadings, the matter was heard and the OA was allowed by this Tribunal vide order dated 31.01.2008 with directions to the respondents to duly take into consideration 50% of the service rendered by the husband of the applicant, late Shri Vitthal Digamber Zalte from 19.05.1975 to 31.12.1980 as ~~Casual~~ and MRCL Khalasi and full service rendered as temporary Khalasi on conferment of temporary status w.e.f. 01.01.1981 to 23.11.1989 for the purpose of pensionary benefits and were also directed to work out the arrears, etc on account of pension and other pensionary benefits and pay the same with interest at the rate of 6% per annum from the date of entitlement i.e. on pension and other pensionary benefits w.e.f. 01.12.1994 and family pension w.e.f. 07.09.1998 till the actual

payment.

9. The aforesaid order dated 31.01.2008 of this Tribunal was challenged by the respondents before the Hon'ble High Court of Judicature at Bombay vide WP No.5201/2008. The Hon'ble High Court disposed of the aforesaid WP vide order/judgment dated 16.11.2017 which reads as under:-

"6. Having regard to the submissions made by learned Counsel for the parties, we are of the opinion, that the matter needs to be remitted back to the Tribunal for a fresh decision. We find that the Apex Court in the case of **Union of India & Ors. Vs. Rakeshkumar**(supra) has taken into consideration the aspect that the decision of the Hon'ble Andhra Pradesh High Court in case of **Shaik Abdul Khader** (supra) was subsequently considered by the Andhra Pradesh High Court itself in Writ Petition No.10838 of 2001 in case of **General Manager, South Central Railway, Secunderabad vs. A. Ramanamma** wherein decision in **Shaik Abdul Khader's** case was not followed. We also notice that the Tribunal except for making reference to the said Rules, has not considered the relevant provisions for the said Rules. In the submission of the learned Counsel for the petitioners, Rule 14 and 31 are material. Learned Counsel for the respondent tried to support the order of the Tribunal placing reliance on Rule 31 of the said Rules, however, we find that there is no discussion whatsoever by the Tribunal on this aspect.

7. In this view of the matter, in our opinion, OA needs to be remitted back to the Tribunal for a fresh decision on merits and in accordance with law. Hence, the following order.

O R D E R

i) The impugned order passed by the Tribunal dated 31.01.2008 in OA/117/2007 is quashed and set aside.

ii) OA/171/2007 is remitted back to the file of the Tribunal for a fresh decision on merits and in accordance with law.

iii) All contentions on merits are kept open and we may not be understood to have expressed any opinion on the merits of the matter.

iv) The Tribunal is requested to hear and decide the OA as expeditiously as possible and in any event, within a period of 4 months from today.

8. Rule is partly allowed with no order as to costs."

10. In view of the aforesaid order of the Hon'ble High Court, the matter was listed for hearing afresh on various dates. However, the same could not be decided within the time stipulated by the Hon'ble High Court in view of the fact that the learned counsels for the parties needed time on account of bonafide reasons.

11. In OA No.1091/1999, the applicant has prayed for the following reliefs:

"(a). For the declaration that the applicant is entitled for Monthly Pension after his retirement alongwith the arrears of Pension from the date of his retirement with 24% interest thereon.

(b). For the declaration that the applicant is entitled for enhanced T. Gratuity and D.C.R.G., Provident Fund, and all the terminal benefits, etc. Along with the 24% interest thereon.

(c). The applicant is entitled for compensation for not paying pension in time, compensation for mental agony/torture etc. to the tune of Rs.2,00,000/- and heavy costs of this application.

(d). For the declaration that the letter dated 10.12.1997 at Exh.A-4 be declared null and void, illegal, and absurd."

12. The applicant has also filed MA No.703/2000 praying therein for condonation of delay in filing of the OA. The precise facts leading to the present OA are that late. Shri K. W. Bhalerao, Ex-Maison, Grade-III with the Central Railway, Lonawala was initially appointed on daily rated basis w.e.f. 30.01.1978 and was brought on monthly rated basis w.e.f. 01.01.1983, regularized w.e.f. 19.04.1990 and

retired from the services of the respondents on 30.09.1994 (Annexure A-1 and Annexure A-3). As the said Late. Shri K.W. Bhalerao could get only the gratuity and DCRG and did not get pension and provident fund, he made representation to various authorities under the respondents. However, the respondent no.3 vide his letter dated 10.12.1997 (Annexure A-4) intimated him that he had not completed the minimum qualifying service of 10 years to be eligible for grant of pension. Aggrieved by the same Late Shri Bhalerao approached this Tribunal by filing application under Section 19 of the Administrative Tribunal's Act, 1985. He submitted in the OA that the application is within limitation. However as a matter of abundant precaution he filed MA No.703/2000 seeking condonation of delay.

13. In the said MA, it has been asserted that pension is a continuous cause and therefore the OA has been filed within limitation. However, in view of objections raised by the respondents the applicant has filed the MA as abundant precaution. It is further asserted therein that in absence of any monthly pension since 1994 it was very hard for

the applicant to engage a counsel. However, when the present counsel has accepted his request to file the case on charity basis, it could become possible for him to approach this Tribunal by way of the present OA. The respondents filed their reply opposing the prayer made by the applicant in OA as well as in the MA. After completion of pleadings the OA and MA were allowed by this Tribunal with directions vide order dated 11.01.2001.

14. The respondents filed a Review Petition No.15/2001 in the aforesaid OA and this Tribunal has dismissed the same vide order/judgment dated 31.10.2002. The respondents filed MA seeking extension of time for implementation of the orders of this Tribunal and accordingly CP filed by the applicant was disposed of vide order dated 20.06.2003. The learned counsels for the parties submit that for some period the directions of this Tribunal were complied with. However, the respondents herein have challenged the order of this Tribunal before the Hon'ble High Court of Judicature at Bombay vide WP No.283/2003 and the same was disposed of vide order/judgment dated 01.02.2018

which reads as under:-

"Heard learned Counsel for the petitioners. Shri Suresh Kumar appearing for the petitioner-Union of India in all fairness submits that controversy involved in present petition is similar to one that arises in WP No.5201 of 2008. By order dated 16th November, 2017 passed in WP No.5201 of 2008. OA was remitted back to the Tribunal for a fresh decision on merits and in accordance with law. For the same reasons mentioned in WP No.5201 of 2008, he submits that order passed by the Tribunal may be quashed and set aside and OA be remitted back to the Tribunal for a fresh decision on merits and in accordance with law. Hence, the following order:-

O R D E R

(i) The impugned order passed by the Tribunal is quashed and set aside.

(ii) OA No.1091 of 1999 is remitted back to the file of the Tribunal for a fresh decision on merits and in accordance with law.

(iii) All contentions on merits are kept open.

(iv) The Tribunal is requested to hear and decide the OA as expeditiously as possible in any event, within a period of four months from today.

(v) It is further requested that the Tribunal may hear OA No.1091 of 1999 along with OA No.171 of 2007.

2. The Writ Petition is accordingly disposed of.

3. Rule is partly made absolute with no order as to costs."

15. In view of the order/judgment dated 01.02.2018 of the Hon'ble High Court, the matter is heard afresh along with OA No.171/2001. During the pendency of the OA, as the applicant in present OA as well as his wife expired, their legal heirs approached this Tribunal by way of MA No.428/2018 for coming on record and in view of no objection on behalf of the respondents the same was allowed vide order dated 04.09.2018.

16. In view of the admitted position on behalf of the parties that issue raised in both the OAs are same and also keeping in view the order/judgment dated 01.02.2018 of the Hon'ble High court Judicature at Bombay in WP No.283/2003, and with consent of the parties both the OAs have been heard together and are being disposed of by a common order.

17. The learned counsel for the applicant in OA No.171/2007 places reliance on Railway Services (Pension) Rules-1993 (hereinafter referred to as Rules-1993). He submits that the very preface dated

04.11.1993 of the Railway Board with the said Rules clearly records that these rules supersede all the rules and orders on the subject prevailing hitherto and as the applicant has retired on 30.11.1994, the Rules-1993 will be applicable in considering the case of the applicant's husband for grant of pension. He draws our attention to Rule-31 of Rules-1993 which reads as under:-

"31. Counting of service paid from Contingencies- In respect of a railway servant, in service on or after the 22nd day of August, 1968, half the service paid from contingencies benefits on absorption in regular employment, subject to the following condition namely: -

(a) the service paid from contingencies has been in a job involving whole time employment;

(b) the service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned such as posts of malis, chowkidars and khalasis;

(c) the service should have been such for which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly basis and which, though no analogous to the regular scales of pay, borne some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period

by staff in regular establishments;

(d) the service paid from contingencies has been continuous and followed by absorption in regular employment without a break; Provide that the weightage for past service paid from contingencies shall be limited to the period after 1st January 1961 subject to the condition that authentic records of service such as pay bill, leave record or service-book is available.

NOTE -

(1) the provisions of this rule shall also apply to casual labour paid from contingencies.

(2) The expression "absorption in regular employment" means absorption against a regular post."

18. He submits that the applicant had been initially engaged on casual basis, his daily wages were computed on daily wage basis but was paid on monthly basis and therefore in view of the provisions of Rule 31-C of the Rules-1993 read with note-1 and 2 there under, it was incumbent upon the respondents to take into account half of the service of the applicant's husband on casual basis for calculating pensionary benefits on his absorption in regular employment. He further argues that reliance of the respondents on any circular, or any

regulations which already stood superseded by the Rules-1993 is arbitrary, discriminatory as being contrary to relevant extant the Rules-1993 and also law settled on the subject. He further places reliance on the judgment of the Hon'ble Andhra Pradesh High Court in case of General Manger, South Central Railway, A. P. v. Shaik Abdul Khader, 2004

(2) in WP No.10897/2001 dated 23.06.2003, para-5

whereof reads as under:-

"5. Now different provisions of Master Circular 54 of 1994 shall have to be gone into to which a reference has been made by the Tribunal. Para-20 of the Master Circular No. 54 lays down;

"20. Counting of the period of service of casual labour for pensionary benefits:

Half of the period of service of a casual labour (either than casual labour employed on Projects) after attainment of temporary status on completion of 120 days continuous service if it is followed by absorption in service as regular railway employee, counts for pensionary benefits. With effect from 1-1-1981, the benefit has also been extended to Project Casual Labour."

Reference has been made to another extract of para-2005 of Indian Railway Establishment Manual, Volume-II. Sub-para-1 of para 2005(a) lays down;

"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."

If this sub-para is read with para-20 and also with rule-31, there remains no doubt that on absorption whole of the period for which a casual labour worked after getting temporary status would have to be counted and half of the period has to be counted of the period for which a casual labour worked without being absorbed. Once he is given temporary status that means that he has been absorbed in the department. Even para 2005 (a) has been drafted in the same way because of the fact that even such casual labour who have attained temporary status are allowed to carry forward the leave at their credit in full to the new post on absorption in regular service. Therefore, we have no doubt in our mind that once temporary status is granted to a person who is absorbed later on in regular service carries

forward not only the leave to his credit but also carries forward the service in full. Half of the service rendered by him as casual labour before getting the temporary status has to be counted. Therefore, we do not feel that the Tribunal was wrong in coming to the conclusion it has, although we may not agree with the reasons given by the Tribunal. The view taken by us is further strengthened by mandate of rule-20 of Railway Services (Pension) Rules which lays down;

"20. Commencement of Qualifying service - Subject to the provisions of these rules, qualifying service of a railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

Provided that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post.

Provided further that-

(a)

(b)"

Therefore, we hold that the respondent was entitled to get the service counted in full from 1-1-83. He was also entitled to get half of the service counted before 1-1-83 from the date he had joined in the railways as casual labour."

19. He has also placed reliance on an order dated 06.02.2014 of a Division bench at the

Principal Bench of this Tribunal in OA No.3745/2012
in case of Shyam Pyare Yadav and Ors. Vs. Union of
India and Ors. Para 6 and 7 whereof reads as under:-

"6. On the question of limitation, the applicants explained that several judgments of the Courts were received upto 2009. The applicants then preferred representation dated 16.09.2012 before the respondents but with no response. Thereafter, they filed the present OA. In any case, several orders of the Honble Courts were under challenge in the Honble Supreme Court in UOI Vs. Sarju (supra) and finally the Honble Supreme Court disposed of the matter only in 2012. Therefore, we do not find that there has been any delay. This was an issue which was affecting large number of employees and it was only reasonable for them to wait till the matter is decided by the Honble Courts and now there are several judgments in favour of the petitioners.

7. The OA is, therefore, allowed and the respondents are directed to count the services rendered by the applicants in the capacity of temporary status till regularization as a 100% qualifying service for the purpose of pension and pensionary benefits as well as other benefits. They are further directed to extend the benefits of judgment of Sheikh Abdul Khader as well as other judgments delivered by the Tribunal for the purpose of counting 50% of the service rendered by the applicants before granting temporary status as well. The aforesaid directions shall be implemented within a period of three months from the

receipt of a certified copy of this order. No costs."

20. The learned counsel for the applicant has also referred to and relied upon an order dated 13.10.2014 of co-ordinate bench of this Tribunal in case of Pitchamani V. Alias V. Pitchamani Vs. Union of India and Anr. in OA No.486/2013 wherein the relevant paras reads as under:-

"5. It appears from the pleadings and the record of this Original Application that the issue involved in this Original Application is that the respondents are required count 50% of causal service, 100% of service on temporary status as qualifying service for the purpose of pension and other retirement benefits."

6....

7....

8....

9. This Tribunal decided the O.As. bearing No.2120/2008, 2221/2009, 2151/2007 and 2163/2007 touching the similar question of fact and law. While deciding the aforesaid O.As. by a common order dated 24.01.2014, this Tribunal followed the judgment passed by the Hon'ble High Court at Delhi in the case of Union of India through General Manager, Northern Railway & Anr. Vs. Sita Ram, W.P.(C) No.4300 of 2012 and W.P.(C) No.6399 of 2012 decided on 04.01.2013 as well as the judgment passed by Central Administrative Tribunal,

Principal Bench in OA No.1921/2014 (Shri Prem Pal Singh Vs. Union of India & 2 Ors. and the Hon'ble High Court of Andhra Pradesh in Writ Petition No.10837 of 2001 in the case of General Manager, South Central Railway, Rail Nilayam, Secunderabad, A.P. and another Vs. Shaik Abdul Khader, 2004(2) ATJ 23.

10. Learned counsel for the applicant has relied on the judgment passed by the Central Administrative Tribunal, Lucknow Bench in the case of Nadir Ali Vs. Union of India & Ors (OA No.145/2010 decided on 04.10.2013). In the said case, the Central Administrative Tribunal, Lucknow Bench considered the relevant provisions of Railway Establishment Manual as well as Railway Servants (Pension) Rules, 1993. In para 6 the Tribunal, Lucknow Bench held that the only question required to be determined whether the applicant was entitled for counting of 50% of the service rendered as a casual labour or not for the purpose of pensionary benefits. Para 8 and Para 9 of the said judgment are set out herein below:-

"8. Since the pensionary rights are the statutory and constitutional right of the applicant, the principle of estoppel therefore, will not apply in this case. Rule 20 and Rule 31 of the Railway Servants (Pension) Rules, 1993 reads as under:-

"20. Commencement of Qualifying Service- Subject to the provisions of these rules, qualifying service of a Railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.
Provided that officiating or temporary service is followed, without

interruption, by substantive appointment in the same or another service or post:

Provided further that :

"(a) in the case of a Railway servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose; and

(b) in the case of a Railway servnat not covered by Clause (a) service rendered before attaining the age of sixteen years shall not count, except for compensation gratuity."

The Rule 31 of Railway Services (Pension) Rules, 1993 inter-alia provides as under:-

"3.Counting of service from contingencies - In respect of a Railway servant, in service on or after the 22nd day of August, 1969, half the service paid from contingencies shall be taken into account for calculating pensionary benefits; on absorption in regular employment subject to the following conditions, namely-

(a) the service paid from contingencies has been in a job involving whole time employment;

(b) the service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned as posts of mails, chowkidars and khalasis;

(c) the service should have been such for which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly basis and which, though not analogous to the regular scales of pay, bears some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period by staff

in regular establishment;

(d) the service paid from contingencies has been continuous and followed by absorption in regular employment without a break;

Provided that the weightage for past service paid from contingencies shall be limited to the period after 1st January, 1961 subject to the condition that authentic records of service such as pay bill, leave record or service book is available."

9. On perusal of Rule 20 read with Rule 31, it clearly transpires that applicant will be entitled for calculation of $\frac{1}{2}$ of the service rendered by the applicant as casual labour before acquiring temporary status. Respondents however, submit that authentic record of service of the applicant are not available and have already been destroyed. Hence this period cannot be taken into consideration for deciding the benefits of the applicant as per proviso Sub rule (d) of Rule 31 of Railway Services (Pension) Rules, 1993. The period from 1963 to 1973 will however, be relevant in this context as the records for the said period are available with Railway authorities for verification. A Master Circular No.54/99 issued by the Railway Board lays down the following guidelines for calculation of pensionary benefits:-

"20. Counting of the period of service of casual labour for pensionary benefits - Half of the period of service of a casual labour (either than casual labour employed on projects) after attainment of temporary status on completion of 120 days continuous service if it is followed by absorption in service as regular Railway employe, counts for pensionary benefits. With effect from 01.01.1981, the benefit has also been

extended to Project Causal Labour."

Extract of para 2005 of Indian Railway Establishment Manual, Volume .II Sub Para 2005(a) also states:-

"Casual Labour including Project Casual shall be eligible to count only half the period of service rendered by them after attaining the 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 causal 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 causal labour will not entitled to these benefits."

In para 11 the Tribunal held that once an employee is given temporary status that means he has been absorbed in the department. On the basis of this interpretation of relevant circulars issued by Railway Services (Pension) Rules, 1993, the applicant would be entitled to get half of the service counted for the period prior to grant temporary status.

11. The Central Administrative Tribunal, Principal Bench in OA No.1921/2014 (Shri Prem Pal Singh Vs. Union of India & 2 Ors.) in the similar tone directed the respondents to count the entire 100% temporary status causal service and 50% of causal service of the applicant before them as qualifying service for the purpose of grant of benefit of under MACP/pensionary benefits etc.

12. The Hon'ble High Court at Delhi in the case of Union of India Through General

Manager, Northern Railway & Anr. Vs. Sita Ram (supra) relied on the judgment of High Court at Andhra Pradesh. Para 9, 10 & 11 are set out herein below:-

"9. Though the Andhra Pradesh High Court has not juxtaposed regular employment vis-a-vis permanent employment, but in our opinion the same is implicit in the reasoning of the High Court when we notice that the High Court thereafter proceeded to consider a Master Circular No.54 of 1994, para 20 thereof reads as under:

"20. Counting of the period of service of casual labour for pensionary benefits - Half of the period of service of a casual labour (either than casual labour employed on Projects) after attainment of temporary status on completion of 120 days continuous service if it is followed by absorption in service as regular Railway employee, counts for pensionary benefits. With effect from 1.1.1981, the benefit has also been extended to Project Casual Labour."

10. The Andhra Pradesh High court thereafter proceeded to note para 2005 of Indian Railway Establishment Manual, Volume-II which reads as under:

"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 causal 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 causal labour will not be entitled to these benefits."

and then proceeded to hold that para 20 of the Master Circular No.54 and Para 2005 of the Railway Establishment Manual Volume-II bring out, to give clarity, that with respect of causal labour other than causal labour employed on projects, on attaining temporary status, if followed by absorption as a regular Railway employee, half service as causal labour has to be reckoned while calculating length of service meaning thereby the entire service rendered while on temporary status.

11. We agree with the reasoning of the High Court, against which decision Leave to Appeal was dismissed by the Supreme Court and second time when a Division Bench of this Court simply followed the law declared by the Andhra Pradesh High Court, once again Leave to Appeal was refused by the Supreme Court."

13. Having regard to the facts and law as stated above, the letter dated 07.08.2013 is quashed and set aside. The respondents are directed to count the entire 100% temporary status service and 50% of casual service of the applicant as qualifying service for the purpose of grant of pension, medical facilities and complimentary passes. The respondents are directed to examine the case of the applicant in the light of the aforesaid orders/judgments and if it is found that the applicant's case is covered under the aforesaid judgments, the respondents

shall pass fresh order with regard to enhancement of pension and grant of other benefits including medical facilities and complimentary passes. The respondents shall complete this exercise within a period of three months from the date of receipt of a copy of the order. No order as to costs.

21. The said order dated 13.10.2014 of this Tribunal has been affirmed by the Hon'ble High Court of Judicature at Bombay vide order/judgment dated 23.04.2018 in WP No.430/2015 wherein by referring to the order/judgment of the Hon'ble Apex Court in case of Union of India and Ors Vs. Rakesh Kumar & Ors. 2017 SCC Online SC 274, the Hon'ble High Court ruled as under:-

"12. The decision of the CAT, is quite consistent with the law laid down by the Hon'ble Supreme court in the case of Rakesh Kumar (supra)."

22. Further reliance has been placed by the learned counsel for the applicant on the order/judgment dated 24.06.2015 of the Hon'ble High Court of Judicature at Bombay, Nagpur Bench at Nagpur in WP No.4513/2014 titled Union of India and Anr. Vs. Anandrao Shankarrao. The Hon'ble High Court after considering various judgments relied upon on

behalf of the parties held as under:-

"On hearing the learned counsel for the parties and on a perusal of the order of the Tribunal, it appears that there is no scope for interference with the impugned order in exercise of the writ jurisdiction. The Tribunal has considered the relevant Rules of 1993. The Tribunal has also considered the judgments of the Andhra Pradesh High Court and the Delhi High Court, reported in 2004(1) SLR 214 and 2013 (3) SLR 296 (Delhi), respectively. The issue fell for consideration before the Andhra Pradesh High Court and the Andhra Pradesh High Court, by the judgment reported in 2004(1) SLR 214, dismissed the petition filed by the Railways while upholding the order of the Tribunal. The Andhra Pradesh High Court mainly relied on Rule 31 of the Rules of 1993 and Master Circular No.54/1994 for counting 50% of the service rendered by the employee as a casual labourer for reckoning the qualifying service. It is clearly stated in Master Circular No.54/1994 that half of the period of service of a casual labourer counts for pensionary benefits after his absorption in service as a regular employee. The Tribunal has rightly held that it was necessary for the petitioners to grant the benefits flowing from Master Circular No.54/1994 to the respondent while counting his service for grant of pensionary benefits. It was held by the Andhra Pradesh High Court that there was no doubt that once the temporary status is granted to a person, who is absorbed as a regular employee, half of the

services rendered by him as a casual labourer before getting temporary status, has to be counted for granting pensionary benefits to the employee. The Andhra Pradesh High Court also considered the provisions of Rule 31 and Rule 20 of the Rules of 1993. The judgment of the Andhra Pradesh High Court was challenged by the petitioners before the Hon'ble Supreme Court. The Special Leave Petition was, however, withdrawn. The same issue then came up before the Delhi High Court in a petition filed by the Union of India and the Railways against the order of the Tribunal granting pensionary benefits to an employee after counting half of his services as a casual labourer. While the Delhi High Court considered the provisions that were considered by the Andhra Pradesh High Court and also some other provisions of the Rules of 1993 and para-2005 of the Railway Establishment Manual, Volume-11 to hold that 50% of the services of a casual railway employee, who was later absorbed in regular service, could be considered for calculating the length of service for grant of pensionary benefits. The reliance placed by the learned counsel for the petitioners on Rule 2(23) of the Rules of 1993 to state that the respondent would not be entitled to the pensionary benefits as he does not fall within the definition of the term "Railway Servant", is not well founded as Rule 31 of the Rules of 1993 clearly provides that half of the service of a railway servant paid from contingencies, shall be taken into account for calculating the pensionary benefits and Note-1 to Rule 31 of the

Rules of 1993 further provides that the provisions of Rule 31 shall also apply to a casual labourer paid from contingencies. Note-1 to Rule 31 was considered by the Tribunal and also by the Andhra Pradesh High Court and Delhi High Court to hold that half of the period of services rendered by a casual labourer could be considered for grant of pensionary benefits after absorption of an employee in regular service. It is observed by the Delhi High Court in the judgment reported in 2013(3) SLR 296 that against the previous judgment of the Delhi High Court, an appeal was preferred by the petitioners before the Hon'ble Supreme Court and the leave to appeal was dismissed. It is rightly submitted on behalf of the respondent that the judgments of the Hon'ble Supreme Court, reported in (2008)2 SCC 108 and (1997)6 SCC 580 and relied on by the learned counsel for the petitioners, cannot be made applicable to the facts of this case. In both the cases before the Hon'ble Supreme Court, the casual labourer was not absorbed in the service of the Railways and though, the Railway employee was holding the temporary post, a prayer was made before the Tribunal for grant of pensionary benefits. In the said cases, it was held by the Hon'ble Supreme Court that a temporary workman would not be entitled to the pensionary benefits. In the instant case, the services of the respondent were regularized on 21.09.1987 in Group 'D' post and hence, by the impugned order, the Tribunal has rightly considered Master Circular No.54/1994, Rule 31 of the Rules of 1993 and the judgments of the

Andhra Pradesh High Court and the Delhi High Court to grant the pensionary benefits to the respondent. We do not find any illegality in the impugned order so as to interfere with the same in exercise of the writ jurisdiction.

In the result, the writ petition fails and is dismissed with no order as to costs. Rule stands discharged."

23. The learned counsel for the applicant has also placed reliance on the law laid down by the Hon'ble Apex Court in case of Union of India and Ors Vs. Rakesh Kumar and Ors. wherein after considering the judgment in a catena of cases and after dealing with the aforesaid Railway Service (Pension) Rules 1993 particularly 20 and 31 thereof the Hon'ble High Court ruled as under:-

"53. In view of the foregoing discussion, we hold:

53.1. 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.

53.2. The casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for the purpose of pension.

53.3. 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 of such post as per Rule

20 of the 1993 Rules..
53.4."

24. Shri J. M. Tanpure, learned counsel for the applicant in OA No.1091/1999, after submitting the factual matrix of the OA has adopted the legal submission as advanced by Shri S. P. Saxena, learned counsel for the applicant in OA No.171/2007. He has further added that in view of the settled law, the pension becomes admissible to Late Shri Bhalerao, Ex-Employee of the respondents and the same could not be construed as a bounty from the respondents. He further submits that after unfortunate demise of Shri Bhalerao his wife and after her death the legal heirs of Late Mr. and Mrs. Bhalerao became entitled for the benefits admissible to them.

25. Per contra the learned counsel for the respondents argues that the OA is not maintainable for being barred by limitation, delay and laches. He further argues that in OA No.171/2007 the Railway Servant retired on 30.11.1994 and expired on 06.09.1998 and the OA has been filed in the year 2007. He further submits that even the pension has not been claimed by the ex-employee of the

respondents in as much as even after his retirement he did not file any OA all along for four years and the applicant, the widow of the deceased employee has filed the OA claiming pension, pensionary benefits and the family pension after many years of the retirement and demise of the deceased employee. He opposes the other OA also for being barred by limitation, delay and laches. So far the factual matrix of the cases are concerned, it has not been disputed by him.

26. He submits that at Rule-14 of the Railway Servants (Pension) Rules, 1993 stipulates that the period which is not treated as service for pensionary benefits includes casual service at casual market daily rates. He further refers to and places reliance on a judgment of Hon'ble Apex court in case of Union of India Vs. K. G. Radha Krishnan and Ors, reported in 1998(5) SCC 111 and submits that the reliance of the applicant on the judgment of the Hon'ble Apex Court in case of Rakesh Kumar (supra) is of no help in as much as the judgment of the Hon'ble Apex Court in K. G. Radha Krishna (supra) is of three judges bench and the same was

not considered and discussed therein the case of Rakesh Kumar (supra). He further argues that the rules governing the pension at the relevant point in time the MRPR 1950 and the minimum qualifying service required for pension is 10 years and as the ex-employees of the respondents in the above OAs have put less than such stipulated years of service, hence they are not entitled for grant of pension.

27. We have considered the pleadings on record and have also considered the relevant rules and judgments referred on behalf of the parties. So far the objections raised by the respondents with regard to limitation in OA No.171/2007 is concerned, we are of the considered view that after retirement when her late husband was not granted pension and pensionary benefits, he had made representation and during the pendency of the representation, he expired on 06.09.1998. Thereafter, within one year the applicant preferred a representation for grant of pension and family pension which was also rejected by the respondents vide impugned order. The applicant is stated to be an illiterate person and being in indigent condition could not approach this

Tribunal immediately after the rejection of her claim vide the impugned order. Similarly, the applicant in other OA was in financial hardship and other difficulties as stated above.

28. Besides, we also find that while dealing with the objection of limitation, this Tribunal in Shyam Pyare (supra) has found that as several orders of the Hon'ble High Court were under challenge before the Hon'ble Apex court in Union of India Vs. Sarju (supra) and finally the Hon'ble Apex Court has disposed of the matter only in the year 2012, the limitation will not come in the way of the applicant. Besides we find force in the submissions of the learned counsel for the applicants that right to receive pension or for that matter family pension is a continuing right and the failure of the employer in granting such pension would constitute a continuing wrong. Moreover, pension is earned by an employee and is not a bounty granted by the respondents as settled by the Hon'ble High Court and Hon'ble Supreme Court.

29. In view of the facts and circumstances, we reject the preliminary objections raised by the

respondents and hold that the present OAs are not barred by limitation, delay and laches.

30. Accordingly the MA No.252/2007 and MA No.703/2003 filed for condonation of delay in the respective OAs are disposed of.

31. It is trite that pension is not a bounty of the state, rather the same is earned by the employee and therefore it cannot be said that as the employee has expired, his widow/legal heir is not entitled to claim the pension or family pension in his absence. Accordingly, objections of the respondents to this effect are also rejected.

32. So far as the contentions of the respondents that Rule-14 of the Rules-1993 disentitles the applicant's husband to count his services on casual basis to be taken into consideration for grant of pension/pensionary benefits are concerned, we are of the view that the Rule-14 is required to be read along with Rule-31 of the Rules-1993 and on harmonious consideration the same does not help the defence of the respondents. Reliance placed by the learned counsel for the respondents on the judgment of Hon'ble Apex Court in

K. G. Radha Krishnan (supra) also does not help the stand of the respondents in as much as the same has been considered by the Hon'ble Apex Court in its order/judgment dated 30.09.2011 in SLP (Civil) No.20041/2008 titled Union of India and Ors Vs.

Sarju wherein it has been held as under:-

"..... The judgment of the Court in Union of India Vs. K.G. Radhakrishnan Panickar (supra) on which reliance has been placed by learned counsel for the petitioners is clearly distinguishable. In that case, the Court was called upon to consider whether the services rendered by the employees as Project Casual Labour can be treated as part of the qualifying service for the purpose of calculation of the retiral benefits and whether the cut off date fixed in the policy framed by the Railway Administration for counting half of the service rendered as Project Casual Labour was discriminatory and violative of Article 14 of the Constitution. After advertng to the relevant policy decisions, this Court held that the policy of the Railways does not suffer from any constitutional infirmity. That judgment has no bearing on the decision of the issue whether temporary service, which was followed by regularisation should be counted as part of the qualifying service for the purpose of retiral benefits. As a matter of fact, if the respondents had prayed for counting half of the service rendered by them as Project Casual Labour as part of qualifying service, we may have examined the

issue in detail and decided whether the said prayer should be granted. However as they did not challenge the orders of the Tribunal before the High Court, we refrain from expressing any opinion on the issue.

The special leave petitions are accordingly dismissed. The petitioners are directed to calculate the pension and other retiral benefits payable to the respondents keeping in view the directions given by the Tribunal and pay the arrears within next three months with interest at the rate of 12% from the dates of their retirement on attaining the age of superannuation."

33. From the aforesaid it is evident that the provisions of Rule-20 and 31 of the Rules 1993, Para-2005 of Indian Railway Establishment Manual, Vol.II, Sub Para-2005(a), Master Circular No.54, RBE 69/2004 dated 31.03.2004 have been considered in the aforesaid judgments relied upon by the applicants at length while holding the employee entitled for reckoning 50% of his/her casual service for grant of pension and 100% of his service after obtaining temporary status till he was regularised on a regular/temporary post. The Hon'ble High Court of Judicature at Bombay in order/judgment dated 23.04.2018 has also taken into consideration that

judgment of Hon'ble Supreme Court in case of Rakesh Kumer (Supra). The Hon'ble High Court of Judicature at Bombay, Bench at Nagpur after considering the judgment of the Hon'ble Delhi High Court, Hon'ble Andhra Pradesh High Court and the relevant circulars, judgment of Hon'ble Supreme Court and the relevant rules has passed the order/judgment dated 24.06.2015 in Anandrao Shankarrao (Supra) which also supports the claim of the applicants in the aforesaid OAs.

34. From the aforesaid it is evident that after taking into consideration the relevant Rules and instructions of the respondents, it has been consistently ruled by the Hon'ble Apex Court and Hon'ble High Courts in the aforesaid cases that the 50% of the casual service and 100% of the service with temporary status followed by regularization should be part of the qualifying service in counting the pension and pensionary benefits.

35. In the cases, referred to above, the Hon'ble High Courts and the Hon'ble Supreme Court have considered the relevant rules including the Rule 14 and Rule-31 of Rule-1993 etc and therefore

they are no more required to be considered any further by us.

36. In view of the relevant Rules and binding precedents, we are of the considered view that the above OAs deserve to be allowed and the same are accordingly allowed with following directions:

(i) the respondents are directed to count the services of their ex-employees in the aforesaid OAs rendered in the capacity of the temporary status till the regularization as 100% qualifying service for the purpose of pension and other pensionary benefits.

(ii) the respondents are further directed to count 50% of the services of the ex-employees in the aforesaid OAs before grant of temporary status to them as qualifying service for the purpose of pension and other pensionary benefits.

(iii) the respondents shall pass necessary orders keeping in view the above at (i) and (ii).

(iv) in view of the above, respondents shall also consider and pass necessary order regarding claim of family pension to the legal heirs in accordance with the relevant rules.

(v) the applicants shall be entitled for the arrears of pension, family pension as admissible under the relevant rules with interest at rate of 6% p.a. on the aforesaid arrears of pension and family pension, from the dates when they became due.

(vi) the aforesaid exercise shall be completed by the respondents within 90 days of receipt of a certified copy of this order.

37. In the facts and circumstances, there is no order as to costs.

(R. N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

V.

JD
25/10/19