

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00499/2017

Wednesday, this the 27th day of June, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

P.K. Sasi,
Mate (Works), (Retd),
Southern Railway, Trivandrum Division,
Puthusserry House, Chettupuzha P.O.,
Thrissur.

..... **Applicant**

(By Advocate – Mr. Siby J. Monippally)

V e r s u s

1. Union of India rep. by General Manager,
Southern Railway, Chennai - 3
2. Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 8.

..... **Respondents**

(By Advocate – Mr. K.G. Mathews)

This Original Application having been heard on 13.06.2018, the Tribunal on 27.06.2018 delivered the following:

ORDER

Per: E.K. Bharat Bhushan, Administrative Member

1. OA No. 180/499/2017 is filed by Shri. P.K. Sasi, Retired Mate (Works), Southern Railway seeking a direction by the respondents to grant the benefits of Railway Board order dated 17.08.2012 regarding his up-gradation and to reckon 50% casual service and 100% temporary status service for pension and other benefits. The prayer contained in the OA is as below:

- a) To declare that the applicant is entitled to get grade pay of Rs. 2800/- with effect from 17/8/2012 and calculate terminal benefits accordingly and grant arrears with interest and other consequential benefits.
- b) To direct the respondents to draw the pension in accordance with prayer A.
- c) To reckon 50% of casual service (1977 to 1/1/1985) 100% (1/1/1985 to 30/11/2016) of the applicant for all benefits.
- d) Grant such further and other reliefs as the nature and circumstances of the case may require.

2. The applicant submits that he had joined Railway as a Khalasi and was appointed as Moppila Khalasi w.e.f. 1978. He was granted appointment as Trolleyman (temporary status) w.e.f. 01.01.1985. The order issued by the respondent employer dated 01.01.1985 is annexed and marked as Annexure A1. He was granted regular appointment on 31.03.1997. He gained promotion as Mate (Works) w.e.f. 2004 and went on to retire from service on superannuation on 30.11.2016 as Mate (Works). A copy of the pension payment order is annexed and submitted as Annexure A2.

3. The applicant is claiming the benefit offered in the Railway Board order dated 17.08.2012, copy of which was submitted along with MA No. 643/2017 which was allowed by this Tribunal, wherein restructuring and reorganization of staff pattern of Trackmen was ordered. The applicant claims that he is entitled to get Grade Pay of Rs. 2800/- with effect from the date of the Railway Board order while the PPO, which has been issued for him, mentions his Grade Pay as only Rs. 1,900/- when he retired in the capacity of Mate (Works). Further, he also claims that he is entitled to get 50% of his casual service from 1977 to 1985 and 100% of his service dating from 01.01.1985, which he states was the time when he got temporary status. Annexure A1 is a copy of his fixation of pay, which mentions that he had

been a Trollyman on temporary status and the fixation order is dated 01.01.1985. By filing MA No. 643/2017, a copy of the Railway Board order S. No. PC-VI/297 No. 2010/CE-I(Spl)/GNS/15(Pt.) dated 17.08.2012 marked as Annexure A3 is also been submitted.

4. Per contra, the respondents have filed a reply statement. They have also produced a copy of RBE No. 91/2012 order dated 17.08.2012 as Annexure R1 and a copy of the office order dated 09.01.2018, which is an order granting Proforma Promotion / Up-gradation for the applicant as Track Maintainer-II w.e.f. 27.12.2014. The main defence raised in the reply statement is that the applicant is claiming a benefit of increase of Grade Pay to Rs.2800/- w.e.f. 17.08.2012 well after the date has passed. Besides, he had retired from service on 30.11.2016 and had chosen to remain silent for so long. Arguing on this point, the statement goes on to submit that the OA is hit by limitation under Section 21 of the Administrative Tribunals Act, 1985. Further, it is stated that departmental avenues for redressal of his grievances have not been exhausted. The applicant had not petitioned any of his official superiors with respect to the grievances that he has chosen to agitate before this Tribunal. This being so, considering the applicant's case would run contrary to the condition present in Section 20(1) of the Administrative Tribunals Act, 1985, wherein it is stipulated that the Tribunal shall not ordinarily accept or admit an application unless it is satisfied that the applicant had availed all remedies available to him under the relevant service rules for redressal of grievances.

5. The Tribunal had considered the objections raised in the reply statement. As the applicant had already retired from service and the benefit

he is claiming, if allowed, would have a continuing impact on his pension, the Tribunal is inclined to allow the OA and is proceeding to consider the application on merits.

6. It is not denied that as per Annexure A1 and Annexure A2, the applicant was working in the construction organization and when he retired, he was on a Pay Scale of Rs. 3050 – 4590 + Grade Pay of Rs. 1900/- as evidenced in the PPO at Annexure A2. As per the RBE order dated 17.08.2012 bearing No. 91/2012 (Annexure A3 and as well as Annexure R1) Gatekeepers and Keymen were re-designated as Track Maintainers. The following re-categorization was also brought about by the said order under the unified cadre of the Track Maintainer in the following pattern:

- “(i) The categories of Trackman / Trolleyman / Gateman / Watchman / Keyman in Civil Engineering Department (P.Way) in PB-1, Grade Pay Rs. 1800 be clubbed and given the designation of Track Maintainer Grade-IV (PB-1, Grade Pay Rs. 1800);
- (ii) The Mates (P.Way) in PB-1, Grade Pay Rs. 1900 may be re-designated as Track Maintainer Grade III (PB-1, Grade Pay Rs. 1900). This would be the next level of promotion for Track Maintainer Grade - IV;
- (iii) Posts in PB-1, Grade Pay Rs. 2400 of unified cadre of Track Maintainer to be filled from eligible staff from the next lower Grade Pay of Track Maintainer category based on seniority cum suitability and may be designated as Track Maintainer Grade II;
- (iv) Posts in PB-1, Grade Pay Rs. 2800 of unified cadre of Track Maintainer to be filled from eligible staff from the next lower Grade Pay of Track Maintainer category based on selection and may be designated as Track Maintainer Grade-I.”

7. It is admitted that the applicant was granted temporary status w.e.f. 01.01.1983 and he superannuated from service on 30.11.2016. The respondents, while calculating his qualifying service, has taken into account 50% of his temporary status service from 01.01.1983 to 09.03.1997 and once he was regularized on that latter date 100% of regular service from 10.03.1997 to 30.11.2016. Thus, he has to his credit a total qualifying service

of 26 years 9 months and 24 days. The *Union of India v. Rakesh Kumar and others*, Civil Appeal No. 3938/2017 judgment of the Hon'ble Supreme Court is also referred to and as per the said judgment, the applicant is entitled to 50% of casual labour service till attaining temporary status and 50% from temporary status to regularization. This has been taken into account while fixing his pension.

8. He had retired from service from an ex-cadre post of Mate (Works) and was getting a Grade Pay of Rs. 1900/- at the time of retirement. He was not found eligible for selection for the post of Track Maintainer Grade I. It is also to be noted that he was granted upgradation as Trackman Grade II in Scale Rs. 2650-4000 (PRS) and Proforma Promotion as Track Maintainer Grade III with Grade Pay of Rs. 1900/- w.e.f. 17.08.2012 and as Track Maintainer Grade II with Grade Pay of Rs. 2400/- w.e.f. 27.12.2014 as per order dated 09.01.2018, a true copy of which is produced as Annexure R2. Since he has retired on 30.11.2016 before participating in the selection for the post of Track Maintainer Grade I with Grade Pay of Rs. 2800/-, he has not been found entitled for the same. In view of the Proforma Promotion granted as per Annexure R2, revised PPO is set to be under issue revising his retirement benefits.

9. Heard Shri. Siby J. Monippally, learned counsel for the applicant and Shri. K.G. Mathews, learned counsel for the respondents. There are two issues to be considered here. One is his entitlement for the higher Grade Pay of Rs. 2800/- has compared to Rs. 1900/- which he was earning at the time of retirement. This issue has been appropriately addressed by the respondents in their reply statement. As per Annexure R2 document dated 09.01.2018, he

has been given promotion on Proforma basis as Track Maintainer II in PB – 1 of Rs. 5200-20200 and a post which is eligible for Rs. 2400/- GP w.e.f. 27.12.2014. This had not been brought to this Tribunal's notice by the learned counsel for the applicant possibly because orders revising the retirement benefits accordingly are yet to be issued. The respondents have stated that they are in the process of revising the pension orders and there is no reason to distrust the averment made by the learned counsel for the respondents. The second claim is specifically with reference to the judgment of the Hon'ble Apex Court in ***Union of India v. Rakesh Kumar and others***, Civil Appeal No. 3938/2017 arising out of SLP (C) No. 23723/2015, which was handed over across the Bar on the last day of hearing. The Apex Court in the said judgment has settled the entitlement of casual / temporary workers for reckoning their past service 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 service 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.”*

10. In this case, the applicant claims that he was a Khalasi on casual basis from 1977. This Tribunal has nothing before it to conclude that he had

served in that capacity. He has presented a copy of his fixation dated 01.01.1985 as a Trolleyman enjoying temporary status.

11. The respondents have gone on to concede that he had been a temporary status employee from 01.01.1983. Further, they have also explained that his pensionary benefits have been calculated on the basis of counting 50% of his temporary status service from 01.01.1983 to 09.03.1997 and once he was regularized, 100% of regular service from 10.03.1997 to 30.11.2016 when he retired. It appears that the correct estimation has been made in accordance with the first point made in the Apex Court's order, which is:

“The casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularized on a temporary / regular posts for the purposes of calculation of pension.”

12. This being so, this Tribunal is not of the view that there has been any error in the stand taken by the respondents.

13. Thus, after considering the whole issue and also taking into account the pleadings made by the learned counsel appearing on both sides, the Tribunal come to the conclusion that the OA is devoid of merit and is liable to be dismissed. This Tribunal proceeds to do so. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures of the Applicant

- Annexure A-1** - A photostat copy of the Appointment Order dated 01.01.1985.
- Annexure A-2** - A Photostat copy of the Pension Payment Order dated 30.11.2016.
- Annexure A-3** - Photostat copy of the Railway Board No. 91/2012 dated 17.08.2012.

List of Annexures of the Respondents

- Annexure R1** - True copy of Railway Board's order bearing RBE No. 91/2012 dated 17.08.2012.
- Annexure R2** - True copy of Office Order No. 01/2018/WP/ERS dated 09.01.2018.
