

*THE HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE

THE HON'BLE SRI JUSTICE SANJAY KUMAR
&
THE HON'BLE SRI JUSTICE P.NAVEEN RAO

+WRIT PETITION No.25260 of 2002

%18-09-2015

R.Rama Rao, s/o. R.C.Sastry, Aged about 64 years,
Occu: Retired employee, r/o.H.No.23-17-8A, Tadankiyari
Veedhi, Satyanarayanapuram, Vijayawada.

... Petitioner

Vs.

\$ The Railway Board and others rep.by its Member Secretary,
Railway Bhavan, New Delhi and two others.

.... Respondents

!Counsel for the petitioner : Sri J Prabhakar

Counsel for the Respondents: Sri R S Murthy

<Gist :

>Head Note:

? Cases referred:

2003 (4) ALD 560 (DB)

(2014) 8 SCC 644

(2015) 2 SCC 170

AIR 1998 SC 2073

1988 (1) SCC 306

(1996) 1 SLJ 116

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WRIT PETITION NO.25260 of 2002

Between:

R.Rama Rao, s/o. R.C.Sastry, Aged about 64 years,
Occu: Retired employee, r/o.H.No.23-17-8A, Tadankiyari
Veedhi, Satyanarayanapuram, Vijayawada.

.... Petitioner

AND

The Railway Board and others rep.by its Member Secretary,
Railway Bhavan, New Delhi and two others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED :18.09.2015

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SUBMITTED FOR APPROVAL:

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THE HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE

THE HON'BLE SRI JUSTICE SANJAY KUMAR

&

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers may : No
be allowed to see the Judgments ? :

2. Whether the copies of judgment may be marked : Yes
to Law Reporters/Journals :
3. Whether Their Lordship wish to see the fair : Yes
Copy of the Judgment ? :

THE HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
&
THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT PETITION No.25260 of 2002

ORDER: *(Per Hon'ble Sri Justice P.Naveen Rao)*

Reference to this Full Bench is on the issue as to whether a casual employee in the Indian Railways, later appointed on temporary basis, and thereafter regularly appointed is entitled to count the full service rendered by him as a temporary servant and 50 % of his casual service as qualifying service for the purpose of determination of his retirement benefits.

2. The Division Bench, having held that Rule 31 of the **Railway Services (Pension) Rules 1993** (hereinafter referred to as 'Rules') has no application to the facts of the case and that para-20 of the Master Circular No.54 of 1994 is contrary to the definition of 'Railway servant' as defined in Rule 3(23) of the Rules 1993 and that Rule 31 is applicable to Railway Servants, disagreed with the reasoning given

by the earlier Division Bench of this Court in W.P.No.24867 of 1999 and referred the matter to this Full Bench for an authoritative pronouncement on the issue.

3. Before answering the reference it may be useful to analyze the facts in the respective cases and how the issue was considered by the three Division Benches of this Court and the Delhi High court.

4. In W.P.No.24867 of 1999 the facts in issue were as under. The husband of the petitioner joined as casual labour in the construction wing on 01.01.1956 and continued in the said capacity till 31.03.1973. He was appointed as a regular Lascar from 01.04.1973 and retired from service on 31.07.1978. He was denied retirement benefits. Aggrieved thereby, he filed O.A.No.1230 of 1998 before the Central Administrative Tribunal. His claim to count his entire service for determination of pension and payment of retirement benefits was rejected by the Tribunal. The Tribunal held that the benefit of Rule 31 could not be extended to the applicant therein, holding that as a casual labourer was drawing payment from the contingent expenditure in project estimates, he cannot request for counting that service for the purpose of determining the qualifying service. The Tribunal also held that project casual labour service prior to 1.1.1981 could not be counted as qualifying service for pension. Aggrieved thereby, the wife of the deceased employee filed W.P.No.24867 of 1999. A Division Bench of this Court held that before service rendered by a Railway servant is considered for computation of qualifying service entitling him to retirement benefits, all the conditions laid down therein must be fulfilled. Holding that the conditions laid down in Rule 31 were not satisfied, the Division Bench upheld the decision of the Tribunal and dismissed the writ petition.

5. In **General Manager, South Central Railway, Rail Nilayam, Secunderabad, A.P., and another v. Shaik Adul Khader**^[1]

(W.P.No.10837 of 2001), the writ petition was instituted by the Railways challenging the decision of the Tribunal rendered in O.A.No.907 of 2000 filed by the respondent, Shaik Abdul Khader, who was initially appointed as a casual labour on 06.01.1979. He was granted temporary status w.e.f. 01.01.1983 and became a regular servant w.e.f. 01.01.1995. He retired from service on attaining the age of superannuation on 29.02.1996. He claimed computation of the total temporary service from 01.01.1983 to 01.01.1995 as qualifying service for determination of retirement benefits, whereas Railways computed only 50% of the said service as qualifying service.

6. Relying on provisions of Rules 20 and 31 of the Rules, 1993, the Master Circular No.54 of 1994 (Para-20 of the said circular) and Para-2005 of Indian Railway Establishment Manual, Volume-II, the Division Bench held that entire temporary service and half of the casual service counts as qualifying service. Though the Railways filed Special Leave to Appeal (Civil) No.24465/2003, the same was dismissed as not pressed.

7. While referring the matter for consideration by this Full Bench, though the Division Bench also took note of the decision of this Court in *Shaik Abdul Khader*, but the Court considered only the decision of this Court in W.P.No.24867 of 1999. The Division Bench noted that Rule 31 applies to only Railway servants and a 'Railway servant' as defined in Rule 3(23) did not include casual labour. It further held that according to Para-20 of the Master Circular No.54 of 1994, only half the period of a service of casual labour is counted after attainment of temporary status. It further noted that the Master Circular was contrary to the definition of 'Railway servant' as defined in Rule 3(23) of the Rules. The Division Bench noted that according to Para-20 of the Master Circular No.54 of 1994, counting the period of service as a casual labour after attainment of temporary status on completion of 120 days of service as qualifying service for retirement benefits on

absorption as regular Railway employee is clear. It further observed that establishment serial circular No.120/80 and Rule 31 have no application to the facts of the present case.

8. In W.P.(C) No.2528 of 2007, on a similar claim, a Division Bench of the Delhi High Court, following the decision in *Shaik Abdul Khader*, allowed the writ petition. SLP (Civil) CC No.7157 of 2008 preferred by the Railways against the said decision was dismissed by the Supreme Court, by order dated 13.05.2008.

9 The same issue fell for consideration before a Division Bench of the Delhi High Court again in W.P.(C) No.4300 of 2012 and WP (C) No.6339 of 2012. The Delhi High Court agreed with the reasoning assigned by this Court in *Shaik Abdul Khader*. By relying on Rule 31, Para-20 of the Master Circular No.54 of 1994 and the Para-2005 of Indian Railway Establishment Manual, Volume-II, held that on obtaining temporary status, followed by absorption as a regular Railway servant, half of the service as casual labour has to be reckoned and the entire service rendered, while on temporary status, for determination of qualifying service.

10. It is thus seen that there are three different views expressed in the decisions referred to above.

11. However, it is seen from the above four decisions, the scope of various provisions of the 1993 Rules was not considered.

12. To appreciate the issue, in the light of the different views expressed, as noted above, it is necessary to analyze relevant provisions of the Pension Rules.

13. Broadly, there are three categories of employment in the Railways, 1) casual labour/daily wagers 2) temporary servant and 3) permanent servant. Daily wagers/causal labourers are paid wages as

per the work rendered by them per day without any other incentive. A person who gets temporary status enjoys all the service benefits admissible to permanent employment, such as, pay fixation, leave encashment, scale of pay, medical facilities, leave facilities etc. They are also governed by the disciplinary and appeal rules. A temporary servant, on scrutiny of eligibility and subject to availability of substantive vacancies, is granted the benefit of regular/permanent employment.

14. The rules and the orders of the Railway Board that have bearing are; Rules 2(4), 3(22), (23), (24), Rule, 5, Rule 6, Rule 14, Rule 18, Rule 20, Rule 31 and Rule 108 of the Rules, Para-20 of the Master Circular No.54 of 1994 and Para-2005 of the Indian Railway Establishment Manual.

15. The 1993 Rules are comprehensive and deal with all aspects of determination/payment of post retirement/death benefits, payment of pension/family pension, calculation of benefits admissible, computation of pension, commutation of pensions, regulation of post-retirement conduct of ex-employee, empowers his Excellency the President of India to withhold wholly/partly, permanently/for limited period pension on account of proved misconduct while in service, recover the amounts due from retirement/death benefits. The Pension Rules are applicable to any person entering Railway service except a person appointed on contract or re-employed after superannuation or terms of appointment specifically provide to the contrary [Rule 2(4)]. It is significant to note that the word used in Rule 2(4) is 'person'. It implies application of these rules to a wide spectrum of servants working in the Railways. Various provisions of the Rules deal with the several categories of persons, who work with the Railways. Briefly, the different categories of persons covered by the Rules are casual workers, temporary servants, permanent servants, substitutes, re-employment, ex-military service employees, scientific employees,

temporary servants in the State Government prior to bringing them into Railway service, etc.

16. The Rules are divided into 12 chapters. Chapter-I provides the definitions and Chapter-II deals with general conditions; and chapter-III deals with qualifying service. Rule 3 of Chapter-I defines various terms used in the Rules. Sub-rule (23), defines '**Railway servant**'; Sub-rule (22) defines '**qualifying service**'; and Sub-rule (24) defines '**retirement benefits**'. In Chapter-II, Rule 6 deals with regulation of claims to pension or family pension; Rule 8 mandates provision of pension subject to future conduct; Rule 9 deals with power to withhold pension on proved misconduct while in service. In Chapter-III, Rule 20 deals with '**commencement of qualifying service**'. Rule 31 deals with '**counting of service paid from contingencies**'. Other Rules in Chapter III deal with various contingencies which qualify for computation of qualifying service.

17. The word 'Railway servant' defined in Rule 3 (23) includes all persons working in Railway service except casual labour or persons lent from other organizations/departments etc. The provision in Rule 6 of the Rules has to be read in consonance with the definition in Rule 3(23). A claim for grant of pension or family pension shall be regulated by the provisions of these rules as they are in force at the time when the Railway servant retired/is discharged/is allowed to resign/dies, as the case may be. Thus, the significant date relevant for application of the provisions of the Rules insofar as a Railway servant is concerned is the occurrence of the above events and not the event of entry into the service. The 1993 Rules are relevant for the purpose of determination of pensionary benefits and, therefore, Rule 6 is carefully worded to ensure application of rules as from the date of occurrence of the events mentioned in Rule 6(1). Thus, if a person is a Railway servant on the date of the occurrence of events mentioned in this rule, irrespective of his status prior to becoming permanent, he or his family

becomes eligible for drawing pensionary benefits.

18. For the purpose of determination of retirement/death benefits, qualifying service is crucial. The rules prescribe the minimum service to get eligibility for pension and the service which qualifies for full pension. It also prescribes the service required to get gratuity. The quantum of amounts a person could draw on the occurrence of the events as mentioned in Rule 6(1), depends on the amount of service rendered by him that qualifies for drawing those benefits. Various provisions of Chapter-III deal with qualifying service. What is meant by qualifying service is defined in Rule 3(22). According to this definition, service rendered while on duty or otherwise should be taken into account for the purpose of pension and gratuity. What is service rendered on duty which qualifies is dealt with in Chapter-III. Ordinarily, qualifying service of a Railway servant commences from the date he takes charge of the post, to which he is first appointed either substantively or in an officiating or temporary capacity (Rule 20). The subsequent provisions of Chapter-III deal with various contingencies in which service rendered otherwise also qualifies, such as, service on contract (Rule 24); service rendered under private Railway companies (Rule 25); counting of service of a substitute (Rule 32); counting of military service rendered before employment in the Railways (Rule 34); counting of period spent on leave (Rule 36) and spent on training (Rule 38); period of suspension (Rule 37); service paid from contingencies (Rule 31); so on. Thus, it is not necessary that a person should be Railway servant through-out his service as defined in Rule 3 (23) to compute that service as qualifying service. In addition to being regular servant in the Railways, in accordance with the definition given in Rule 3(23) other service can also be counted for the purpose of qualifying service for determination of retirement/death benefits.

19. As seen from the provisions of Rules 5, 18, 21(2) and 28(2) of

the 1993 Rules, it is clear that temporary servant is placed on par with a regular servant for the purpose of payment of pensionary benefits. As seen from Rule 18, a person who retires from the Railways as a temporary Railway servant and before such retirement, had put in 10 years of service, is entitled to all the benefits as applicable to a regular servant. He is also entitled to voluntary retirement, gratuity, family pension and death benefits. If he does not have the minimum service, he is also entitled to invalid pension. As per Rule 5, a temporary Government servant retrenched or likely to be retrenched, succeeds in securing employment in Railway service is treated as transferred and is entitled to count that service also for computation of qualifying service. In accordance with Rule 21(2), a Railway servant originally belonging to a State Government service, on his permanent transfer to the Railway service, the continuous service rendered under the State Government in an officiating or temporary capacity, if it is followed, without interruption, by substantive appointment or the continuous service rendered under the State Government in an officiating or temporary capacity shall qualify for computation of qualifying service. According to the provisions of Rule 28, while determining qualifying service, service rendered in a temporary capacity also in the State Government or the Central Government, before appointment in the Railways, counts towards qualifying service.

20. Thus, a cumulative reading of these provisions would make it clear that a temporary servant, even without being appointed permanently, is entitled to get all the benefits payable to a permanent servant and the temporary service rendered outside the Railway service also counts towards qualifying service.

21. In the above background, the provisions of Rule 20 need to be analyzed. According to this Rule, qualifying service of a Railway servant commences from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or

temporary capacity. The only requirement is such a temporary appointment should be continuous and without interruption followed by substantive appointment. The definition of a 'Railway servant' as provided in Rule 3 (23) also covers the temporary service rendered. The definition only excludes a person in casual service or a person lent from other services. Thus, the temporary service rendered by a temporary Railway servant, if it is followed by permanent appointment, and if there was no interruption between the temporary service and the permanent appointment, the entire temporary service qualifies as service for computation of pensionary benefits. The various provisions of the Rules discussed above make this very clear.

22. Detailed analysis of the various provisions of the rules makes it clear that a temporary servant is put on par with a regular Railway servant for the purpose of retirement benefits. It would lead to absurd conclusions if only 50% of temporary service is counted on his permanent appointment when he is entitled to count the full temporary service if he retires as a temporary servant only. The intendment of the rule making authority is clear and apparent. When there is no ambiguity in the rules and leads to only one conclusion, there is no scope for any other interpretation that can be given by the writ Court. It is also relevant to note that a person renders long service before he gets permanent appointment. He would hardly have any service left in permanent capacity before he retires. In most of these cases, he would not have the minimum service to qualify for pensionary benefits if the temporary service is not added. The rule making authority was conscious of this fact and, therefore, took care to protect the interest of such employees. All the provisions discussed above bear testimony to the clear intendment of the rule making authority.

23. As discussed above, various contingencies were also taken into consideration for the purpose of computation of qualifying service. In that process, Rule 31 incorporates the computation of service rendered

by a person in Railways drawing emoluments from contingencies and, 50% of such contingent service should be computed for determination of qualifying service. The provisions of Rule 31 have to be read in consonance with Rule 14. Rule 14 is in negative terms. According to this rule, employment in any of the capacities mentioned therein would not constitute service for pensionary benefits. Insofar as contingent service is concerned, the prohibition is qualified as can be seen from Rule 14 (iv). Rule 31 is an exception to the prohibition imposed in Rule 14. Thus, the prohibition imposed in Rule 14 has no application if the contingent service is covered by Rule 31. These two provisions, if read together, make it clear as to what was the intendment of the rule making authority.

24. As discussed above, what is relevant is at the time of attaining the age of superannuation/death etc., the person should be a Railway servant to claim pensionary benefits and to apply the full benefit of qualifying service.

25. On an interactive analysis of the various provisions of the 1993 Rules, it is clear that while computing the qualifying service of a Railway servant for determination of pensionary benefits, the entire service rendered by him in temporary capacity, followed, without any interruption by service in permanent capacity, counts for qualifying service and 50% of the service rendered on a casual basis counts for qualifying service. In terms of the provisions contained in Rule 31, for computation of half of the contingency service, it is mandatory that the contingent service should be followed by regular employment without interruption. Once a person is regularly appointed and answers the description of a 'Railway servant' as defined in Rule 3(23) read with Rule 6, contingent service to the extent of 50% shall also count for determination of qualifying service.

26. The various provisions of the Rules leave no ambiguity on the

extent and scope of computation of qualifying service and covering of various aspects of service associated with the Railways and prior to association with the Railways. When the rules govern the entire gamut of pension/family pension and retirement/death benefits, the scope of application of Executive instructions which are contrary to the provisions of the rules have no force and cannot be relied upon and they are deemed to be null and void. These rules are formulated in exercise of the power vested in the Central Government by the proviso to Article 309 of the Constitution of India and they shall prevail notwithstanding the Executive instructions contrary thereto. It is also relevant, in this context to note the provision contained in Rule 108. This rule is very specific that, from the date of commencement of these rules every other rule including those contained in Volume-II of the Indian Railway Establishment Manual or orders, including circulars in force immediately before such commencement, cease to operate. Para-2005 is part of Volume-II of the Indian Railway Establishment Manual. Thus, in view of the specific mandate of the statutory provisions, the relevant clauses of the executive instructions and the paras of Indian Railway Establishment Manual to the extent they are inconsistent are not valid.

27. It is settled principle of law that Executive instructions cannot supplant Rules framed under proviso to Article 309 of the Constitution, but can only supplement them [**Public Service Commission, Uttaranchal v. Jagdish Chandra Singh Bora**^[2] (para 28)].

Instructions issued by Railways to govern service conditions of employees are nullity when the field is occupied by Rules notified in exercise of the power under the proviso to Article 309 of the Constitution [**State of Punjab v. Anita**^[3] (para 18)]. Concerning the subject matter, the 1993 Rules deal with all aspects and leave no ambiguity.

28. On the above assessment of relevant provisions of the Rules and settled principles of law, the scope of Para-20 of the Master Circular No.54 of 1994 has to be understood. Para-20 envisages that half of the service of a casual labour counts for determination of qualifying service after attaining temporary status on completion of 120 days which is followed by absorption into service. This portion of the Circular is analogous to what is incorporated in Rule 31 and applies only for the purpose of determination of half of the casual service rendered prior to attaining the temporary status.

29. Para-2005(a) of the Indian Railways Establishment Manual, Volume-II also emphasises that a casual labour, after attaining temporary status followed by securing permanent employment, is entitled to count 50% of the service rendered prior to attaining permanent status towards determination of qualifying service.

30. A closer reading of the Para-2005(a) of the Indian Railway Establishment Manual Volume-II, Para-20 of the Master Circular No.54 of 1994 and the relevant provisions of Rules, 1993, makes it clear that 50% casual service counts for determination of qualifying service in addition to temporary service and permanent service. Any other interpretation would only make these orders otiose in view of the clear statutory mandate.

31. Heavy reliance is placed by the learned standing counsel for the Indian Railways on the decision of the Supreme Court in the case of **Union of India and others vs. K.G.Radhakrishana Panichar and others**^[4]. The Supreme Court held that prior to 01.01.1981, casual service was not recognised for any service benefits and therefore the same would not count for determination of retirement benefits. The said decision only deals with entitlement of casual labour prior to

01.01.1981, when scheme was introduced. After notification of the 1993 Rules, the said rules apply to all persons in service as on the date of coming into force of the 1993 Rules and occupy the field.

32. Before the notification of the 1993 Rules, the entitlement to retirement benefits of various categories of Railway employees came up for consideration before the Supreme Court in

Ram Kumar and others vs. Union of India and others^[5]. By interpreting the provisions contained in paragraph 2511 of the Indian Railway Establishment Manual, the Supreme Court agreed with the submissions made by the learned Additional Solicitor General that retirement benefits and pension were not admissible to a temporary Railway servant and casual labour acquiring temporary status. Civil Miscellaneous Petitions were filed seeking clarification of the earlier decision in **Ram Kumar**. It was brought to the notice of the Supreme Court that on the basis of the Fourth Pay Commission report, the Board had taken a decision to provide pension at the time of superannuation even to those who were temporary employees. Having regard to the same, Supreme Court directed the Railway Board to consider the claim of temporary employees for pension at the time of superannuation or otherwise. The Court also noted in para-5 of the order dated 06.09.1990 in the case of **Ram Kumar v. Union of India**^[6] that appropriate material was not placed before the Court when the Court accepted the stand of learned Additional Solicitor General. It is thus clear that even prior to notification of the 1993 Rules temporary servants granted retirement benefits. As analyzed in detail in earlier paras, the 1993 Rules comprehensively provided various benefits to various categories of persons associated with Railway service.

33. It is also settled principle of law that when a provision is

beneficial to a large section of employees of the Railways, it would have to be interpreted liberally. As noted above, if temporary and casual service is not taken into account for computation of qualifying service, such employees would lose greater portion of their service for the purpose of getting retirement benefits though they have rendered long and uninterrupted service to the Railways without blemish and for no fault of them. Retirement benefit is not a bounty. It is paid in recognition of the hard and dedicated service rendered by the Railway servant. Thus, the relevant provisions have to be given a liberal interpretation, even if there is ambiguity.

34. In the case under reference, the petitioner worked on a casual basis from 01.06.1961 to 01.12.1961 and on a temporary basis from 01.12.1961 to 31.12.1971 and became permanent on 31.12.1971. He was relieved from service on 31.3.1997. The Railways counted only 50% of his temporary service and did not count his casual service towards computation of retirement benefits. As on the date of his retirement, he was a permanent employee and was a 'Railway servant'. In accordance with the various provisions analysed above, he is entitled to count his full temporary service and 50 % of his casual service towards determination of qualifying service. Thus, Rule 31 also applies to him.

35. On the above analysis, this Court is of the opinion that a casual labour/worker working in the service of the Indian Railways appointed subsequently as a temporary servant and rendered temporary service continuously, followed by grant of permanent status, without any interruption in the temporary service and between the temporary and permanent service, is entitled to compute the entire temporary service also as qualifying service and in addition, he is also entitled to compute 50% of the casual service rendered prior to assignment of temporary status for determination of pension/family pension and retirement/death benefits.

36. The reference is answered accordingly.

DILIP B.BHOSALE, ACJ

SANJAY KUMAR, J

P.NAVEEN RAO, J

Date : 18-09-2015
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THE HON’BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
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