Central Administrative Tribunal, Principal Bench

Review Aplication No. 148 of 1999
in O.A.No.1422 of 1998

New Delhi, this the 2nd day of November, 1999

Hon'ble Mr.R.K.Ahooja, Member (Admnv)

Shri Balkishan, S/o Shri Dev Raj, R/o Dayabasti Railway Park, C/o Malihut-14, Delhi-110035 -Petitioner

(By Advocate - Shri K.K.Patel)

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.

2. Divisional Railway Manager, Northern Railway, State Entry Road, New Delhi. - Respondents

(By Advocate Shri B.S.Jain)

O R D E R

The applicant, who is petitioner herein, had come before the Tribunal in OA No.1422 of 1998 with the submission that he had been engaged during the period 6.8.1982 to 4.12.1982 as a casual labour for about 120 days under I.W.O., Northern Railway, D.R.M Office, New Delhi. On that basis, the applicant had claimed reengagement in preference to juniors and outsiders vide his representation dated nil July,1997 but as no relief was granted by the respondents, he had filed the OA seeking a direction to the respondents to reengage him on the basis of his seniority and to grant him regularisation according to the Railway Board's instructions. The OA was, however, dismissed by the Tribunal's order dated 13.5.1999 on the ground that the applicant had not rendered 180 days service as required in Para 179 (xiii)(c) of the Indian Railway Establishment Manual (in short 'IREM'). The applicant has now come in this

review petition submitting that there is an error in the order passed by the Tribunal inasmuch as the Tribunal failed to notice that subsequent circulars of the Railway Board did not prescribe any such condition of minimum engagement.

2. I have heard the counsel on both sides. Shri K.K.Patel, counsel for the petitioner submitted that as per Chapter XX of the IREM Para 2001 (i) all casual labourers engaged on open line for more than 120 days without a break will be treated as temporary i.e. given temporary status. As per Para 179(xiii) (b) a casual worker who acquires temporary status is considered for regular employment. In view of this position, the Tribunal, according to the learned counsel for the petitioner, erred in concluding that 180 days minimum casual service was required for including his name in the live casual labour register. Having carefully considered the matter I have not been able to find any substance in the argument of the learned counsel for the petitioner. Para 179 (xiii)(b) reads as follows :-

> "Substitutes, casual and temporary workmen who acquire temporary status as a result of having worked on other than projects for more than 120 days and for 360 days on projects or other casual labour with more than 120 days or 360 days service, as the case may be should be considered for regular employment without having to go through Employment Exchanges. Such of the workmen as join service before attaining the age of 25 years may be allowed relaxation of minimum age limit prescribed for Group 'D' posts to the extent of their total service, which may be either continuous or broken periods."

Similarly Paragraph 2001 (i) reads as follows :-

> ".....Such of those casual labour engaged on open line (revenue) works, who continue to do the same work or which they were engaged or other work of the same type for more than 120 days without a break will be treated as temporary (i.e.given "temporary status") on completion of 120 days of continuous employment"

3. It had already been noted in the impugned judgment that the petitioner had <u>not</u> worked for more than 120 days. In fact the petitioner's claim was also that he had approximately worked for 120 days. As the petitioner had not worked for more than 120 days, even on the basis of the submission made by the learned counsel' he was not entitled to temporary status. Admittedly, there is no prayer for grant of temporary status which would otherwise have been time barred. At the sametime the petitioner cannot seek benefit of Para 179(xiii)(b) or Para 2001(i) of the IREM to claim that the person with temporary status is not covered by the provision of Para 179(xiii)(b).

4. The learned counsel for the petitioner also argued that there is no requiement of minimum service in the circular of 1987 issued by the Railway Board. Regarding inclusion of the names of those who had worked after 1.1.1981 in the live casual labour register, he submitted that this circular also has the same statutory authority as Paragraphs 179 and 2001 of the IREM. While I agree with the learned counsel on the legal point, I also find that where a subsequent circular does not cover a point prescribed in the earlier circular then on that particular part the

provision in the earlier circular will prevail. The learned counsel was not able to show that the provisions laid down in Para 179(xiii)(b) have been specifically modified in the circular of 1987 on the subject of regularisation of casual labours. Thus, it cannot be said that the circular of 1987 has over ruled the earlier provisions included in the IREM.

5. In the result, the Review Application is dismissed.

(R.K.Ahooja)
Member(Admnv)

TRV.