

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

OA No. 268/97

Present

Hon'ble Mr.B.N. Som, Vice-Chairman(A)
Hon'ble Mr.B.V. Rao, Member(J)

Nanda Kumar Naik and Ors

-Vs-

- 1) Union of India service through the GM, S.E. Rly, Garden Reach, Calcutta - 43
- 2) The Dvl. Personnel Officer, S.E. Rly, Kharagpur
- 3) The PWI, S.E. Rly, Balasore, Orissa

For the applicants : Mr.A. Chakraborty, Counsel

For the respondents : Mr.S. Sen, Counsel

Date of Order : 13.07.06

ORDER

Mr.B.V. Rao, JM

Seven applicants have jointly filed this OA claiming temporary status with consequential benefits.

2. The applicants claim to have been engaged as Casual Labour in between 1965 and 1967 under the S.E. Rly and worked for six months, whereafter they were retrenched from service due to non availability of work. Subsequently in 1985 they were again engaged as Casual Labour for monsoon patrolling duty. They worked as such upto 1989 and claim that they had completed 120 days continuous work and therefore they were eligible to get temporary status and absorption according to their turn. They have relied on the Railway Board's Estt.



Circular 169/80 wherein it has been stated that when services of casual worker is disengaged for non availability of work and subsequently if they are reengaged, the break period will not be treated as discontinuance of service. Accordingly they made representations before the authorities and without getting any response they have filed this OA for the following reliefs :

i) Declaration that the applicants are entitled to get the status of temporary employee after completion of 120 days of continuous service as casual labour and gaps in the service will not count as break for the purpose of continuous service of 120 days in view of Establishment Sl. No.160/80.

ii) An order do issue directing the respondents to give the applicants status of temporary employee after completion of 120 days of continuous service for the purpose of extension of pensionary benefits and also to fix their pay after completion of 120 days of service.

iii) Leave may be granted to add the other applicants in the original application under Rule 4(5)(a) of the CAT Procedure Rule.


2. The respondents have contested the application. They have stated that the applicants are not eligible to get the benefit as prayed for. They have admitted that the applicants were engaged for monsoon patrolling duty for 3 months during the years 1985 and 1988 each commencing from 24th June to 23rd September, i.e. 92 days on each occasion and that such work was purely seasonal one. They have submitted that some such monsoon casual workers were granted temporary status when they completed 120 days. They have however maintained that according to Estt. Sl. No.132/81 a seasonal casual labour is entitled to get temporary status only when he is shifted to another same type of work which is more than 180 days. According to the respondents since the applicants did not work for the requisite period, they cannot claim the benefit of temporary status.

3. We have heard the learned counsel for the parties.



4. The learned counsel for the applicants has relied on a decision of this Tribunal in OA 1297/98 decided on 17-3-2004 (Prnabandhu and Ors v. S.E. Rly) on the self same issue. In that case also the applicants worked as Patrol man in 1986-89 and claimed to have completed 120 days ignoring the break. The respondents also in that case submitted that they worked for 92 days in each season during the years 1986-89 and therefore they were not entitled to claim the benefit of temporary status. The Tribunal relying on the Estt. Sl. No.169/90 read with para/Rule 2006 (ii)(b) of IREM Vol.II has held that for seasonal work invarious spells of engagement may be aggregated to count 120/180 days provided the gap between two spells of employment has been caused due to season being over and/or there being no work in such establishment. The learned counsel for the applicant submits that the present applicants are similarly circumstanced and they should also be entitled to get the benefit of the said judgement.

5. We have gone through para 2006 of IREM Vol.II. The Sub-para (ii) (a) and (b) of the said Para relates to casual waterman who are engaged in summer season. The learned counsel for the applicants has produced before us a Circular of Railway Board dated 2-4-93 wherein it has been stated that the benefit enumerated in Circular dated 25-1-85 as applicable to casual waterman, will also be made applicable in the case of casual labours engaged for monsoon track patrolling duty. The respondents have admitted that the applicants herein had worked for patrolling work during 1986-89 for a period of 92 days on each occasion and the break period is due to the season being over. Thus according to rules the applicants should be treated to have completed requisite period of

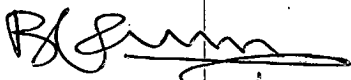


service ignoring the break to be entitled to get temporary status and benefits arising therefrom.

6. We are also of the view that the present applicants are similarly situated like the applicants of OA 1297/98 and nothing has been shown to us that the said order of the Tribunal was revised by any higher Court. Therefore, we are bound by the said decision of ours in OA 1297/98.

7. No other point has been raised before us.

8. In view of above, we allow the OA and direct the respondents to consider grant of temporary status to the applicants when they completed 120/180 days in terms of the above circular and consequential benefits as per rules may also be extended to them. This exercise should be completed within 3 months from the date of receipt of the order. No costs.


Member(I)


Vice-Chairman