IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 419 199 1
~~T. A. No.~~

DATE OF DECISION 24.4.92

N. Raghunathan Applicant (s)

Mr. P. Sivan Pillai Advocate for the Applicant (s)

Versus

Union of India through the General Manager, Southern Railway, Madras-3 and others Respondent (s)

Smt. Sumathi Dandapani Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is a man mazdoor employed in the Civil Engineering Department of the Southern Railway. He commenced his service on 19.7.78 and worked continuously in the Project (Construction) upto 5.1.82. Though he was retrenched from service, he was again engaged from 28.3.89 in the Open Line and he was allowed to work for 31 days continuously. Thereafter, he was re-engaged on 24.9.90 and while working under the respondents, there was proposal to terminate his service. He challenged the said proposal in O.A. 1209/90 and this Tribunal stayed the termination. While working in the Department, he was directed to appear for medical examination. Accordingly, he attended medical

examination and he was found unfit in B-1 class. Thereafter, he received Annexure A-4 show-cause notice proposing to terminate his service w.e.f. 1.3.91. He submitted Annex. V representation stating that he can be medically tested for categories below B-1 class and allowed to continue as casual labourer taking a sympathetic view xxx having regard to the facts that he has attained temporary status w.e.f. 1.1.1982. and was continuing in service for long period. However, Annexure-VI order has been passed stating that the service should be terminated on the afternoon of 15th March, 1991. Since many of his juniors are continuing in service without being medically examined for allowing them to continue as casual mazdoors, he filed this application with the following reliefs:

> "(a) to call for the records leading to the issue of Annexure A-6 and quash the same
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> (b) to issue such other orders or directions as deemed fit and necessary by this Hon'ble Tribunal in the facts and circumstances of the case."

2. When the application came up for final hearing, the learned counsel for the applicant submitted that identical question was considered by this Tribunal in O.A. 43/91 and as per the judgment dated 22.11.91, allowed the application to the extent of directing respondents to re-engage the applicant therein as casual mazdoor with consequential benefits, if any legally due to the applicant, under the rules giving the respondents freedom to subject the applicant for medical examination to the categories to which the applicant will be allowed to work in accordance with law.

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3. But the learned counsel Smt. Sumathi Dandapani appearing on behalf of the respondents argued that this case is distinguishable in the light of Annexure R-4 letter dated 19.6.89 read with para 2007 of Chapter XX of Indian Railway Establishment Manual Vol. II. She argued that the casual mazdoor who is found medically unfit for engagement in the cateogory for which he is proposed to be engaged, xx should not be engaged at all and there is no automatic entitlement for being considered in any other alternative category. If a casual mazdoor is engaged without any medical examination for short duration due to exigency of work, he can be examined at any time when called for re-engagement. This is made clear in the letter No. P/L/407 Rule Vol.IV dated 19.6.89 (Ext. R-4). Relying on para 2007 of Chapter XX of the Railway Establishment Manual, she further contended that when such casual employee is found medically unfit in B-1 class, he has no right to continue in service.

4. In our judgment in O.A. 43/91 we have dealt with these aspects. Annexure R-4 letter has been specifically considered and held that none of the conditions laid down/prescribed in Annexure R-4 states that a casual labourer who has attained temporary status and who is allowed to work in the Railway for a long period, if found unfit in B-1 class, should not be allowed to continue in any other category for which he is medically fit.

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5. The title of the para 2007 reads "Employment of Casual labour in skilled categories." A casual labour is defined in para 2001. It is extracted below:

> " i) Definition of Casual Labour: Casual labour refers to labour whose employment is intermittent sporadic or extends over short periods or continued from one work to another. Labour of this kind is normally recruited from the nearest available source. They are not ordinarily liable to transfer. The conditions applicable to permanent and temporary staff do not apply to casual labour."

The casual labour who comes within the definition of para 2001 and who is engaged for work for continuously for a period of 120 days in the Open line will be treated as "temporary (that is given 'temporary status') on completion of 120 days of continuous employment). Casual labour on Project who have worked for 180 days of continuous employment are entitled to 1/30 of the minimum of the scale plus D.A." So far as the casual labour is concerned, before giving regular pay plus D.A. on completion of 120 days or 180 days as the case may be, a preliminary verification in regard to age should be made. A medical examination is also contemplated along with the preliminary verification for granting regular scale of pay to the said casual employee. Under paragraph 2004, it is statutary obligation to issue a notice for termination of service of casual labour. It is also made clear in the 'Note' under the para that a casual labour should not be deliberately discharged with a view to cause him artificial break in his service. Further para 2006 of the Manual provides that absorption of a casual mazdoor as a regular group-D will be considered

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in accordance with the instructions issued by the Railway Board from time to time. Such absorption will depend upon the availability of vacancies suitability and eligibility of the individual concerned. Paragraph 2007 as indicated above, deals with the engagement of casual laboures in the skilled category. This clause states that normally, casual labours cannot be appointed in the skilled category without trade test. So there is difference between normal casual labour and a skilled casual labour. The 'note' under the para makes it very clear. The relevant portion reads as follows:

> "Note: (3) Casual labour engaged in work charged establishment of certain departments who get promoted to semi skilled, skilled and highly skilled categories due to non-availability of regular departmental candidates and continue to work as casual employees for a long period, can straightaway be absorbed in regular vacancies in skilled grades provided they have passed the requisite trade test, to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semi skilled categories. These orders also apply to the casual labour who are recruited directly in the skilled categories in work charged establishments after qualifying in the trade test.

5. In the above circumstances, it is clear that para 2007 does not apply to the facts of this case because the applicant is working as a man mazdoor and he has not been given any skilled category of work so as to bring him within the purview of para 2007.

6. Our attention was brought to the judgment of this Tribunal in O.A. 76/90 in which the question of termination of service of a casual employee who has been granted temporary status on the basis of medical report was considered. Following the decision in Varghese Vs. Union of India, 1988(2)SLJ 697, the Tribunal

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held that termination of casual workers who attained temporary status on medical ground without show-cause notice is bad. The relevant portion of the judgment is extracted below:

> "8. That the applicant did not file any appeal against his being declared medically unfit within a period of one month is an argument which illbehoves the respondents to advance, when there is nothing to show that they had taken any step to communicate the adverse medical report to the applicant. Under rule 2505 of the Indian Railway Establishment Manual, quoted above, since the applicant had already acquired temporary status, it was incumbent on the part of the respondents to serve him notice before terminating his casual service. Even as a project casual labour, having completed 6 years of service by 1.1.84 and more than 360 days of service by 1.1.81, the applicant was entitled to the protection available to temporary Railway servants in accordance with the scheme of the Railway Ministry itself of granting temporary status to even project casual labour who was in service on 1.1.81.
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> 9. It has been held by this Tribunal in V.J. Varghese Vs. Union of India, 1988 (2) SLJ 697 that casual workers with temporary status cannot be invalidated on medical grounds without show cause notice."

7. In the result, we follow the judgment in O.A. 43/91 and allow the application with the same observation and directions.

8. There will be no order as to costs.

24.4.92

(N. DHARMADAN)
JUDICIAL MEMBER

24/4/92

(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

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