

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 424/92 199

DATE OF DECISION 30.3.93

N.Thulasi _____ Applicant (s)

Shri P.Sivan Pillai _____ Advocate for the Applicant (s)

Versus

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

Mr.M.C.Cherian _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

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

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 13th March, 1992 the applicant who had been working as a Carpenter on casual basis under the Deputy Chief Engineer(Construction), Ernakulam South, has prayed as follows:-

"(a) to direct the respondents to engage the applicant for work immediately with back wages from 7.10.1988 and other attendant benefits.

(b) to direct the respondents to treat the period from 25.4.1984 to 7.10.1988 as hospital leave and pay the applicant leave salary for the period.

(c) to issue such other orders or directions as deemed fit and necessary by this Honourable Tribunal in the facts and circumstances of the case."

The brief facts of the case ^{are} as follows.

2. The applicant was initially engaged as a Casual Labour Carpenter under the Executive Engineer, Construction, Palayamkotta on 19.7.78. He was retrenched from service when the project of laying of Broad Gauge line connecting Thirunelveli-Cape- Trivandrum, was completed. He was reengaged on 21.9.81. While so, on 12.10.82 he fell from the roof of a high structure and got seriously injured and was under prolonged treatment under the medical wing of the Railways. He was declared fit on 6.5.1983 and was on duty till 25.4.1984. After 25.4.1984 nothing was heard from him till he reported for duty on 7.10.1988. According to the applicant, the injury on his spine got aggravated and he again fell sick on 25.4.1984 and was hospitalised on 25.4.1984. However when he reported for duty on 7.10.1988, he was not engaged and no pay was given to him from 25.4.1984. In the mean^ctime, however the Railway authorities on 28.7.1988 passed the order at Annexure-A1 granting him the temporary status in the scale of Rs. 260-400 with effect from 1.1.1983 and his pay in that scale was fixed at Rs.260/- from that date with next increment on 1.1.84. It was also indicated that he will be entitled to all ^{the} rights and privileges admissible to temporary Railway employees , as laid down in Chapter XIII of the Indian Railway Estt. Manual except absorption without being screened by a Committee by the process of empanelment. The applicant represented for re-engagement on 28.6.1989 (Annexure A3) . A Member of Parliament also wrote to the Railway authorities for his absorption and the Deputy Chief Engineer in his communication dated 4.7.1989 (Annexure A4) also recommended his case for re-engagement. It was indicated in that letter that between 25.4.1984 and 7.10.1988 , according to the medical certificate, he was on a long treatment which was "an off shoot of the injury caused to him while on duty on 12.10.1982". After further representations have been made by the applicant, the second respondent (Annexure A5) asked the applicant to send his position in the Casual Labour Seniority List , to which he replied on 12.2.1990(Annexure A6). A Seniority List was also furnished by the 3rd respondent at Annexure A7, but nothing was heard from the respondents till a reply was sent to the Member of Parliament

on 8th August, 1991 indicating that the question of including the name of the applicant in the Seniority List of Casual Labourer of Construction Department is under reference to the Chief Personnel Officer at Madras. The Chief Personnel Officer vide his letter dated 3.12.1991 addressed to the Hon'ble Member of Parliament, indicated that the Trivandrum Division authorities have been advised to include the name of the applicant in the Seniority List of Casual Labourers of Construction Department.

3. In the reply opposing the interim relief the respondents conceded that the applicant's name has been included in the Seniority List of Casual Labour Carpenter Grade I in the Construction Wing of the Trivandrum Division as on 1.4.1985 revised as on 30.6.1991. They have stated that the applicant is at item No.6 in that list and he is the first person to be considered for engagement if another Casual Labour Carpenter Grade I is to be engaged in the Construction wing of the Trivandrum Division. They have also stated that no person junior to him and having less number of aggregate days of service is in service as Casual Labour Carpenter Grade I in the Construction wing of the Trivandrum Division.

4. In the reply to the Original Application, while generally accepting the chronological factual position as indicated above, the respondents have stated that since he was absent from 26.4.84 till 1988 , it was presumed that he had abandoned the service. They have referred to the Supreme Court judgment in Inderpal Yadav's case in compliance of which the applicant's name was also included in the Seniority List of project Casual Labour on the basis of his previous casual service even though nothing was heard from him after 26.4.84. They have stated that because of the conferment of temporary status with effect from 1.1.83, the applicant has been given arrears of wages from 1.1.83 to 26.4.84 when he was on duty. The applicant's request for re-engagement could not be accepted as there was no work of Casual Labour Carpenter

in the Construction wing of the Trivandrum Division. They have produced the Seniority List of project Casual Labourers as on 30.6.91 as Ext.R2 in which the applicant's name is shown at Sl.No.6 with 1934 days of service. His immediate senior in that list ~~is~~ ^{was} having 3184 1/2 days of service as on 30.6.91. They have stated that no person junior to the applicant with lesser service is continuing as Casual Labour Carpenter Grade I. They have argued that since the applicant had never sent any representation or medical certificate prior to 1988, the medical certificates dated 20.5.85 and 7.10.88 which he sent after 1988 are of dubious nature. Previously in 1984 he was under the treatment of Railway Medical Officers and if he fell ill again in 1984, he should have approached the Railway Medical Authorities before approaching other doctors for getting the medical certificates. This also makes his disappearance for four years on medical grounds suspect.

5. In the rejoinder the applicant has relied upon the communication at Annexure -A4 from the Deputy Chief Engineer stating that his long treatment from 1984 to 1988 was an off-shoot of the injury caused to him while on duty on 12.10.82. Thus the entry in the service card at Ext.R1 that he left service on his own accord, is unwarranted. He has also argued that having granted him temporary status from 1.1.83, the respondents without giving him any notice or calling upon him to resume duties, could not terminate his services. The fact that his name was included in the Seniority List as on 1.4.85 also supports his contention that he had not abandoned service in 1984. Terminating his service without recourse to Discipline and Appeal Rules or Chapter XXV of the Manual or the Industrial Disputes Act, is illegal. He has further contended that right of his re-engagement as on 7.10.88 cannot be governed by his position in the Seniority List as on 30.6.91. The Seniority List as on 1.4.85 was in existence on 7.10.88 wherein he was at Sl.No.4

vide Annexure-A7. Sl.Nos. 5 and 6 in that list, according to the applicant are at Sl.Nos. 4 and 5 in the Seniority List ^{as on 30.6.1991} of 1990-91 at Ext.R2. The applicant has challenged the veracity of the Seniority List at Ext.R2 in which Sl.No.5 who has been shown to have entered the grade ^(as on 30.6.1991) on 1.1.84 has been shown to have completed ^{from 1.1.84,} 3184 1/2 days of service in that grade. The same person on 7.10.88 could not have completed more than 1741 days, whereas the applicant, according to the respondents themselves at Annexure A7 had completed 1934 days as on 7.10.88. He has also stated that Shri Murugan at Sl.No.8 in the Seniority List at Ext.R2 who had completed only 985 days, is still in service.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. In G.Krishnamurthy vs. Union of India and others, (1989)9 ATC 158, the Madras Bench of the Tribunal held that onus of proof of abandonment of service by a casual labour with temporary status leading to denial of engagement, lies on the employer. It was also held that before termination of service on the ground of abandonment, notice to resume duty ^{beginning} as well as an enquiry must be held. Since in the case before us, the applicant had been given temporary status with effect from 1.1.83, he cannot be deemed to have abandoned service from 26.4.84 without being given a show-cause notice ^{holding on} and enquiry. It is not the case of the respondents that any notice was given to the applicant before he was denied re-engagement on 7.10.88 when on 18.7.1988 the respondents themselves had issued an order granting him temporary status with effect from 1.1.83. We are also very much impressed by the applicant's contention that ^{on 7.10.88} right of re-engagement ^{cannot} be denied to him on the basis of his position in the Seniority List as on 30.6.91 at Ext.R2.

7. We have a problem of credibility in so far as the Seniority List of Ext.R2 is concerned. In that Seniority List, the applicant has been shown immediately below one Shri Coreya, whose "date of entry

in the present grade" is shown as 1.1.84 while his length of service in the grade in the TVC Divn. is shown as 3184 1/2 days. Now, the total number of days between 1.1.81 and 30.6.91 for which date the Seniority List has been prepared, would give a total time period of 7 years 6 months. If Shri Coreya had been engaged continuously even on Sundays and holidays, he could not have put in more than 2740 days of work. As against this, he has been shown to have put in more than 3184 days! Further, as on 7.10.88 when the applicant reported for duty but denied employment, Shri Coreya who had entered service on 1.1.84 could have put in only 1741 days of service, whereas according to the respondents, the applicant had put in 1934 days of service till 26.4.84. Even if his period of absence is totally ignored, his total period of service of 1934 days will be 200 days more than the service rendered by Shri Coreya between 1.1.84 and 7.10.88. The respondents have in their reply statement dated 17th June, 1992 admitted that Shri Coreya "is presently in service". Therefore, we see no reason why the applicant also should not have been re-engaged on 7.10.88. The Ministry of Railways' letter dated 11.9.86 at Annexure-A10 clearly lays down that in accordance with the direction of the Hon'ble Supreme Court, the list of project Casual Labour should be drawn up with reference to the length of service and that "the men with longest service shall have priority over those who have joined later on". The same circular further ordains that "the lists so prepared will be used for any subsequent engagement/re-engagement/discharge of project casual labour".

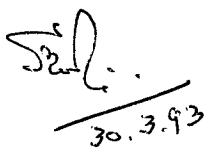
8. In the conspectus of facts and circumstances, we allow this application and direct that the applicant shall be re-engaged so long as his immediate senior Shri Coreya at Ext.R2 is retained in casual service. We refrain from determining the position of the applicant in the Seniority List at Ext.R2 in view of the fact that those who are likely to be affected especially Shri Coreya has not been impleaded

7

as one of the respondents. The applicant also has not challenged the Seniority List by amending the O.A. As regards payment of arrears of pay between 25.4.84 and 7.10.88 since there is nothing to show that the applicant reported for duty prior to 7.10.88, on the principle of 'no work no pay', no arrears can be granted. However, for the period after 7.10.88, the applicant shall be entitled to wages for the period commencing from three years prior to the date of filing of this application i.e., 16th March, 1992 and that too only during the period he was not engaged elsewhere and any person with lesser period of service than the applicant's as on 7.10.88, was engaged. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

30.3.93


(S.P.MUKERJI)
VICE CHAIRMAN

30.3.93

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