

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 43  
T. A. No.

1991

DATE OF DECISION 22.11.91

V. V. Sidhardhan Applicant (s)

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

Versus

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

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? *Yes*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The short question that arises for consideration in this case is whether a casual employee working in the Railways found medically unfit in B-1 category can be terminated from service without considering for <sup>casual</sup> alternative employment.

2. The applicant was initially engaged as Night Patrol substitute Gangman on 29.5.1975 under the Permanent Way Inspector, Southern Railway, Kottayam in the open line wing. He continued his service with intermittant breaks. The last spell of his re-engagement was from 30.1.1989

to 29.4.89. Annexure A-1 is the service card showing service particulars of the applicant. He was sent for medical examination in connection with his empanelment into regular service as Gangman. The prescribed medical category for Gangman is Bee one category for short B-1. On examination, the applicant was found <sup>unfit</sup> in B-1 class and accordingly his service was terminated on that ground w.e.f. 29.4.1989. The applicant requested for conciliation under section 12 of the I.D. Act. Accordingly the Assistant Labour Commissioner issued Annexure A-2 letter dated 19.2.90 but the matter has not been pursued further. He dropped the conciliation after joint discussion. Since a number of juniors of the applicant who were found similiarly unfit for medical B-1 class were given alternative employment as is evident from Annexures A-3 and A-4, the applicant approached this Tribunal for getting relief on the ground of discrimination and violation of articles 14 and 16 of the Constitution of India.

3. According to the applicant, medical fitness under B-1 class is a condition precedent for holding regular post of Gangman and not for the engagement of a person as casual mazdoor. Unfitness of the applicant under B-1 class will not disqualify him in continuing as a casual labourer under the respondents. Annexure A-4 indicates that persons who are found medically unfit in B-1 class are allowed to continue as casual mazdoors. He further submitted that Annexure A-5 circular No. 3/73 issued by the Railways

prescribes that a casual labourer who is found medically unfit for regularisation may be further examined to find out whether he is fit enough for accommodating in another post having lower medical classification. When the applicant was found unfit for B-1, respondents should have considered his case for a lower class i.e. B-2, C-1 or C-2 and for empanelment against posts requiring such lower classification. The applicant was neither considered for any of the posts having lower medical classification nor was he allowed to continue as casual labourer from 29.4.89. Hence the entire action taken by the respondents in this case is illegal.

4. The respondents in the counter affidavit have taken the stand that the applicant's service was terminated not on account of medical <sup>un</sup> fitness but because of the expiry of the period of his appointment. Even at the <sup>last</sup> time of his engagement w.e.f. 30.1.89, the applicant was informed as indicated in Ext. R-1 letter that his service will <sup>not</sup> be required ~~from~~ 29.4.89 and he has accepted that condition. Hence on the expiry of the period, his service was terminated. They further submitted that the applicant left the employment on his own. He was also given Annexure R-3 notice of termination. Under Annexure R-4 letter of the Railways, medical examination of an employee is absolutely essential prior to the <sup>the</sup> conferment of temporary

status. The applicant is only a daily rated casual labourer ~~eligible~~ ~~for~~ temporary status. Hence under these circumstances, he is not entitled to the benefit of alternative employment on medical categorisation.

5. The applicant denied all these allegations and filed a detailed rejoinder stating that the applicant's service was terminated not on account of want of sanction ~~but~~ but due to the fact that he is medically unfit in B-1 class. or expiry of the period of engagement. He was working under the respondents as casual labourer from 1975 and a number of juniors ~~of~~ <sup>the</sup> applicant are given engagement in spite of the fact that they are medically unfit in B-1 class.

6. The relevant provision in the Railway Establishment Manual dealing with medical examination of casual labourers reads as follows:

"4 (a) Casual labour should be subjected to medical examination as early as possible and preferably before grant of temporary status, Continued retention in employment is subject to qualifying in the prescribed medical examination. When casual labour who have put in six years service, whether continuous or in broken periods, are included in a panel for appointment to Group-D posts and are sent for medical examination for first appointment to regular service, the standard of medical examination should not be the one that is required for first appointment but should be the appropriate standard as prescribed for re-examination during service.

(b) Such of the Casual labour as are found, on medical examination, unfit for the particular category for which they are sent for medical examination despite the relaxed standard prescribed for re-examination, may be considered for alternative category being adjudged by the screening Committee, to the extent it is found possible to arrange absorption against alternative posts requiring lower medical classification."

(Chapter XX Clause 2007 of Indian Railway Establishment Manual Vol. II Revised Edition 1990)

7. Even before the introduction of the above said clause they have issued various orders pertaining to the medical examination of casual labours. One of such orders issued by the Railways dated 27.1.88 prescribes that "casual labours of Railways should be subject to medical examination for the category in which they are likely to be absorbed in regular employment in due course (subject to instructions in both from time to time for absorption of casual labours in regular employment)." This medical examination will xxx be done as early as possible, preferably before they are given temporary status, whenever they become eligible for the same in terms of existing orders." The further order dated 19.9.89 gives the following condition:

"(a) As per the existing orders of the Railway Board, when a casual labour is found medically unfit for engagement in the category in which he is proposed to be engaged, then he should not be engaged at all and there is no automatic entitlement for being engaged in any other alternative category. However, if casual labour are engaged for short durations for emergencies without medical examination, they should be examined at the time when called for re-engagement. This has already been made clear in this office letter No. P(L)407/Rules dated 31.7.80.

(b) Casual Labour not medically examined at the time of initial engagement should be examined, preferably before they are given temporary status. Casual labour not examined medically either at the time of initial engagement or while granting temporary status should be examined at the time of regular absorption.

(c) Casual labour medically found fit in a particular medical classification at the time of initial engagement or granting temporary status need not be examined at the time of regular absorption, if the medical classification for the post in which they are proposed to be absorbed, is the same appropriate classification. If, however, the medical classification of the post in which they are proposed to be regularly absorbed is higher than that in which they are initially found fit at the time of engagement, then they will have to be medically examined at the time of regular absorption also. This has already been made clear in this office letter

No. P(L)407/Rules/Vol.II dated 22.9.83.

(d) Casual labour proposed to be regularly absorbed and sent for medical examination in a higher medical classification as referred to above, if found unfit, but found fit for lower medical classification provided (a) a lower medical classification post is available for regular absorption and (b) this concession can be extended only to such of the casual labour who have put in minimum of 6 years service whether continuous or in broken periods. P(L)407/RLT dated 18.7.87 and P(RT) 407/P/Vol.XIII of 4.1.73 and 4.3.74).

(e) Under extant rules, these medical examinations will require the employee to have medical standards as applicable at the time of re-examination during service only and not the standard prescribed at the time of initial engagement. While directing the casual labourers for medical examinations during service, the medical authorities should be advised that the standard of Medical Examination should be that prescribed for re-examination during service and not the standard prescribed for initial engagement as per Para 511 and 512 of Medical Manual."

8. None of the conditions laid down by the Railways pertaining <sup>to H</sup> the medical examination of casual labourers prescribes that ~~a~~ casual labourer 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 other category for which he is medically fit or at least as a casual labour <sup>at</sup> at the time of medical examination in the same capacity in which he was working/

On the other hand, it appears that it is obligatory on the part of the Railways to medically examine the person who is found unfit in a particular category for engaging him in a lower category for which he is medically fit. In the instant case, Annexure A-1 shows that the applicant was engaged under the Railways from 29.5.1975 till 29.4.89 with intermittant breaks. It discloses that the applicant's service was terminated w.e.f. 29.4.89 because he was found unfit in B-1 class. Though the respondents have produced Annexure R-3 notice of termination, there

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is no evidence to show that such a notice has been served on the applicant. The applicant submitted that he has not received the same.

9. Relying on Annexure R-4, learned counsel for the respondents submitted that as per the existing orders when a casual labour is found unfit for engagement in the category in which he is <sup>b</sup>proposed to be engaged, there is no automatic entitlement for further engagement in any other alternative category. But the instructions and the clause in the Railway Establishment Manual referred to <sup>b</sup>make it clear above that a casual labour who has put in long ~~xxxx~~ prior service is entitled to be continued in service notwithstanding the fact that he is unfit for a particular class for regularisation or grant of temporary status. Of course, the Railway can ~~direct such~~ <sup>b</sup>a casual labour <sup>b</sup>to undergo a <sup>b</sup>medical examination for satisfying whether he is fit enough for continuing as casual labour.

10. In the instant case there is no material to show that the applicant was at any time after finding him as medically unfit in B-1 class was notified that he should be available for further medical check up for satisfying as to whether he is medically fit for continuing as casual labour and he failed to undergo such a medical check up.

11. In Annexure A-6 the applicant's name is at Sl. No. 119. Many of the juniors of the applicant are allowed to continue to work without any break from 29.4.89. Hence,

<sup>b</sup>

there is no substance in the contention of the respondents that the service of the applicant was terminated for want of work and due to expiry of his term of appointment.

Similarly Annexure A-4 also provides that casual mazdoors who are found medically unfit in B-1 class are engaged as soon as they are found medically fit in other categories.


One Shri K. K. Kunjan who was found medically unfit for B-1 category but medically fit in C-2 category was empanelled for appointment in Group D category as Gangman in the scale of Rs. 775-1025. There is no justification for denying the same benefit to the applicant. No reason is given as to why the applicant was also not considered along with persons like Shri Kunjan for filling up of the vacancies that arose after 30.6.89. Under these circumstances, we are of the view that the applicant's case of discriminatory treatment can be sustained and he is entitled to the reliefs.

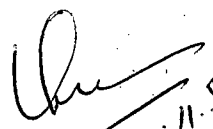
12. Accordingly, we have considered the matter in detail and allow the application to the extent of directing the respondents to re-engage the applicant as casual mazdoor with consequential benefits, if any, legally due to the applicant under the rules. We make it clear that the respondents are free to subject the applicant for medical

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examination in the categories to which the applicant will be allowed to work in accordance with law.

13. We further direct that the applicant's case for regularisation in the category to which he is medically fit should also be considered by the respondents without any delay.

  
(N. DHARMADAN)  
JUDICIAL MEMBER  
22.11.91.

  
(N. V. KRISHNAN)  
ADMINISTRATIVE MEMBER  
22.11.91

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

R.A. 24/92 in O. A. No. 43/91

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DATE OF DECISION 25-3-91

Union of India and others Applicant (s)

Smt. Sumathi Dandapani Advocate for the Applicant (s)

Versus

V.V. Sidharthan Respondent (s)

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

CORAM :

The Hon'ble Mr. N .V. Krishnan, Member (Administrative)

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *NO*
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

N.Dharmadan, M(J)

The respondents in the O.A. have filed this Review Application. They have stated that there is a patent error in the judgment. The direction in the judgment that the casual labourers are entitled to be continued in service notwithstanding the fact that they are unfit in a particular medical classification for regularisation or grant of temporary status is against the Rules and cannot be implemented. Reliance is placed on paragraph 2001 and 2007 of Chapter XX of Indian Railway Establishment Manual, Vol. II, Revised Edition. The learned counsel made an attempt to establish that the judgment rendered by us in OA 43/91 is wrong and rehearing is required in the light of the provisions.

2. When this R.A. came up for hearing on 20.3.92, the learned counsel for the Railways submitted that a similar Review Application filed by the Madurai Division of the Railways in respect of OA 1023/90

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5/4/92*

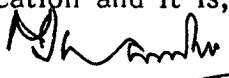
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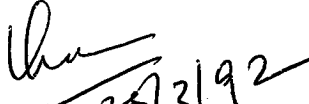
which was decided by another Bench considering the same issue is also coming up for hearing and hence this application may be adjourned for consideration after the disposal of that Review Application.

3. Today when the matter came up for further hearing it was submitted <sup>that</sup> the Review Application which is referred to above was heard by the other Bench on 3.3.92 <sup>was</sup> and dismissed. According to us this Review Application is also to be dismissed.

4. In the judgment we have only considered the claim of the applicant, who was initially engaged as Night Patrol substitute in Gang on 29.5.75 and allowed to continue upto 29.4.89 with intermittant breaks but terminated after medical examination when he was found medically unfit only in B1 category. He contended that his services was terminated after finding that he is medically unfit in B1 category at the same time others are allowed to continue in another category for which they are medically unfit. So the applicant contended that even though he is found medically unfit in B1 category, he <sup>can</sup> be further tested medically for engaging in any other category of post for which he is fit and he can be allowed to continue in the present post or any other post in which he is fit enough medically <sup>to</sup> for discharging duties. He has also cited identical cses of one Shri KK Kunjan, who was found medically unfit in B1 category but was engaged when the respondents found him medically fit in C2 category consequent upon his empanelment for appointment in Group D post. We observed that the original applicant in this case was entitled to same treatment. Accordingly, we disposed of the Original Application. If the respondents are not satisfied with the judgment and they feel that it is wrong they could have taken up the matter <sup>in appeal</sup> before appropriate forum, for, Review is not maintainable on these grounds urged before us.

5. After having heard the parties, we do not find any error apparent on the face of the record warranting review as submitted by the learned counsel for the Review applicants. We see no merit in the Review Application and it is, therefore, dismissed.

  
(N. Dharmadan) 25.3.92  
Member(Judicial)

  
(N.V. Krishnan)  
Member(Administrative)