

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 431/98

Friday, this the 13th day of November, 1998

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

R. Sarojini, D/o Kesavan,
Substitute,
Trivandrum Division,
Residing at: 'Justin Bhavan',
Vellayani Post, Trivandrum.

... Applicant

By Advocate Mr T.C. Govindaswamy.

Vs

1. Union of India through the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Madras -3.
2. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Madras -3.
3. The Deputy Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Madras -3.
4. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum -14.
5. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum -14.

... Respondents

By Advocate Mrs. Sumathi Dandapani.

The application having been heard on 21.10.98, the
Tribunal delivered the following on 13.11.98.

O R D E R

The applicant seeks to quash A-11, to declare that she continued to be in service of Railways in so far as she has not been validly terminated with effect from 1.6.91, to direct the respondents to treat her as if continued in service from that date with consequential benefits thereof, and also to direct the respondents to consider her for absorption in any post requiring medical classification of C2 forthwith and to grant consequential benefits thereof.

2. The applicant says that while she was working as a Substitute Water Carrier, was dis-engaged from service with effect from 1.6.91 without assigning any reason whatsoever. Subsequently as per A-1 dated 27.10.92 she was conferred with temporary status with effect from 15.5.91. Meanwhile, she was subjected to a medical examination on 16.10.91 for regular absorption against Group D post. She was found fit in medical classification C2. Respondents ought to have considered her treating as a substitute temporary for an alternative employment for which medical classification C2 is sufficient. She was not so considered. She submitted five representations. There was no response to any of those representations. As per A-8, certain persons who were medically de-categorised were absorbed as Peons. She preferred A-9 appeal before the second respondent inter alia praying that her case may be considered for absorption against one of the posts where medical classification C2 is sufficient. Since there was no response to A-9, she approached the Bench of this Tribunal by filing O.A. 181/97 inter alia praying for a declaration that in the absence of any specific order of termination, she continued to be in service and for a further declaration that she is entitled to be absorbed against a Group D vacancy in Trivandrum Division of Southern Railway where medical classification C2 is applicable. The said O.A. was disposed of on 3.2.97. In compliance of the directions contained in the order in the said O.A., A-11 was issued by the second respondent. Reasons stated in A-11 to reject her case is devoid of merits and without substance.

3. Respondents resist the O.A. According to respondents, it is totally incorrect to say that the applicant was a substitute. She has been identified as a casual labourer only as per the order in O.A. 181/97. As her prayer for continuity of service came before this Tribunal in O.A. 181/97 filed by her, the same question cannot be raised afresh in this O.A. Persons figuring in A-8 were regular employees having been empanelled and absorbed in regular posts



and accordingly as per the extant instruction on this subject they were considered for alternate employment. A-11 has been issued after examining all aspects in detail. In A-11, it is stated that she would be considered for re-engagement/absorption, but however, on completion of the cases of the persons mentioned therein.

4. The third relief sought by the applicant is to direct the respondents to consider her for absorption in any post requiring medical classification of C2 forthwith and to grant consequential benefits thereof. In O.A. 181/97 filed by the applicant herein, the second relief sought as seen from the copy of the O.A. made available by the learned counsel for the applicant, is to declare "that the applicant is entitled to be absorbed against a Group D vacancy in Trivandrum Division of Southern Railway where medical classification C2 is applicable". A-10 is the copy of order in O.A. 181/97. There this Bench of the Tribunal has ordered thus:

"We also direct that if on such consideration, it is decided that the applicant is entitled to be absorbed as a Group D Peon, the benefits arising from such a decision shall be made available to her within a period of two months from the date of communication of this order. In the meanwhile, as the applicant is a temporary status casual labour and no order of termination of the same has been issued, the respondent shall consider taking her on duty as casual labour and continuing as such till she can be absorbed as a Peon".

5. In the light of the direction contained in A-10 to consider the applicant for the post of Peon only, the applicant cannot seek a direction to the respondents to consider her for absorption in any post requiring medical classification C2.

6. The second relief sought is to declare that the applicant continued to be in service in the Railways in so far as the applicant has not been validly terminated with effect from 1.6.91 and direct

the respondents to treat her as if continued in service from that date with consequential benefits thereof. In O.A. 181/97 filed by the applicant herein, the first relief is to "declare that in the absence of any specific order of termination the applicant continued to be in service". In A-10 it is stated that as the applicant is a temporary status casual labourer and no order of termination of the same has been issued, the respondents shall consider taking her on duty as a casual labourer and continuing as such till she can be absorbed as a Peon. So, this aspect is also covered by the finding in A-10.

7. What remains is the question whether A-11 is liable to be quashed.

8. The applicant has proceeded on the basis that she was working as a Substitute Water Carrier. The finding in A-10 is that the applicant is a temporary status casual labourer. In the light of the finding in A-10, the plea of the applicant that she was a substitute cannot be accepted.

9. According to applicant, as per A-8, a number of persons who were medically de-categorised employees have been absorbed as Peons against existing vacancies. Respondents in their reply statement have specifically stated that the persons figuring in A-8 were regular employees having been empanelled and absorbed in regular posts and as per the extant instruction on the subject they were considered for alternate appointments. From A-8 it is seen that the persons mentioned therein were regular employees. So, it is clear that the applicant and those persons figuring in A-8 do not stand on the same footing.

10. Learned counsel appearing for the applicant relying on the version in the reply statement that "the respondents in the Annexure A-11 reply also stress that the applicant would be considered for re-engagement/absorption, but however, on completion of the cases

of persons mentioned therein" submitted that since the nine persons referred to in A-11 having been given placement, the applicant is to be given placement immediately. Respondents have admitted that all those nine persons mentioned in A-11 have been absorbed. According to them, as per A-11 when there are no regular employees waiting for placement after medical de-categorisation only the case of the applicant for posting as Peon can be considered in preference to candidates from open market. Learned counsel appearing for the applicant argued that what is stated in the reply statement is to the effect that on absorption of the nine persons mentioned in A-11, the respondents have undertaken to consider the case of the applicant. But what is stated in the reply statement is that the case of the applicant would be considered for re-engagement/absorption on completion of the cases of persons mentioned in A-11. In A-11, it is made quite clear that placement in the category of Peons is normally limited to regular employees occupying posts in various cadres who after initially having been found fit in medical examination to be appointed to the post and after having worked in such post for several years, are found unfit during periodical medical examination to hold the post to which he/she was appointed and there are nine such regular employees waiting for such placement in Trivandrum Division at present, with medical fitness C2. It is also made clear in A-11 that at a later date, in due course of time, if there is no such employees waiting for placement after medical de-categorisation, the case of the applicant should be considered in preference to candidates from open market as and when vacancy of Peon is to be filled. So, it cannot be understood as an unconditional undertaking given by the respondents that the moment the nine persons awaiting placement after medical de-categorisation, the case of the applicant could be considered. The case of the applicant can be considered as per A-11 only on absorption of the nine regular employees awaiting placement after medical de-categorisation and in the absence of any

such regular employees waiting for placement. As a result of periodical examination there will be medical de-categorisation of regular employees. The applicant gets preference when the post of Peon is being filled up with candidates from the open market. So, as long as regular employees medically de-categorised are awaiting placement, the applicant cannot be considered for re-engagement.

11. Learned counsel appearing for the applicant drew my attention to para 2007(4)(b) of Indian Railway Establishment Manual (Vol.II), (IREM Vol.II, for short), and submitted that on the basis of the same the applicant is to be considered for placement. Learned counsel appearing for the respondents submitted that para 2007(4)(b) of the IREM (Vol.II) will apply only in the case of employment of casual labourers in skilled category. Even assuming that para 2007(4)(b) of the IREM (Vol.II) is not limited to the employment in skilled categories, I shall examine what is the position. Para 2007(4)(b) of the IREM (Vol.II) says that:

"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 requiring a lower medical classification subject to their suitability for the 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".

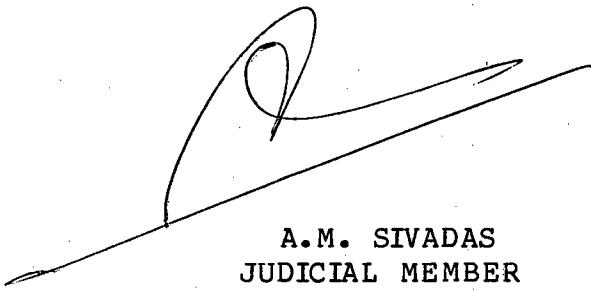
12. Chapter XIII of the IREM (Vol.I) deals with absorption of medically incapacitated staff in alternative employment. It deals with railway servants both permanent and temporary who have become medically incapacitated. Even the term 'temporary railway servants' does not include 'casual labour' including 'casual labour with temporary status'. So, the case of the applicant is not

covered by Chapter XIII of the IREM (Vol.I). The applicant, if at all, can rely only on para 2007(4)(b) of the IREM (Vol.II). As per para 2007(4)(b) of the IREM (Vol.II), casual labour found on medical examination unfit for the particular category may be considered for alternative category requiring lower medical classification to the extent it is found possible to arrange absorption against posts requiring lower medical classification. The wording used therein is not 'shall' but only 'may' and it is only to the extent it is found possible. As per Chapter XIII of the IREM (Vol.I) except in the case of railway servants who are completely incapacitated for further service in any post of the railway, it should be possible within the period of leave to find out a permanent or temporary post for absorption and if absorbed against a temporary post in a permanent cadre, a supernumerary post may also be created and the lien counted against that post. A comparative reading of the provisions contained in Chapter XIII of the IREM (Vol.I) and para 2007(4)(b) of the IREM (Vol.II), it is clear that a railway servant, including a temporary railway servant stands on a better footing than a casual labourer who is medically de-categorised. That being so, a casual labourer can seek placement only when there is no railway servant including a temporary railway servant awaiting placement on medical de-categorisation. According to respondents, as on date, 8 medically de-categorised Group D staff who are found fit in C1 and C2 classification are waiting for alternative appointment. In the light of the provision contained in Chapter XIII of IREM (Vol.I), the case of the applicant could be considered only in the absence of any railway servant including temporary railway servant waiting for placement after medical de-categorisation. The stand taken by the respondents in A-11, the impugned order, is perfectly in tune with the provisions contained in Chapter XIII of the IREM (Vol.I). That being so, there

is no reason to quash the same.

13. Accordingly, the Original Application is dismissed. No costs.

Dated the 13th of November, 1998.



A.M. SIVADAS
JUDICIAL MEMBER

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LIST OF ANNEXURES

1. Annexure A 1: A true copy of Office Order No.T 82/92/Gr.O dated 27.10.1992 issued on behalf of the fourth respondent.
2. Annexure A 8: A true copy of Office Order No.29/96/PG dated 6.8.1996 issued by the fifth respondent.
3. Annexure A10: A true copy of judgement in O.A.181/97 dated 3.2.1997 delivered by the Central Administrative Tribunal, Ernakulam Bench.
44. Annexure A11: A true copy of letter No.P(S)135/III/ Water Carriers dated 11.4.1997 issued by the second respondent.

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