

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.446/2001

Wednesday, this the 27th day of March, 2002.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

V.Kunhikannan,
Ex-Casual Labourer,
Southern Railway, Palghat Division,
Residing at: Vayalacherry House,
Cheruvathur.P.O.
Kasargod District.

- Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India represented by the
General Manager,
Southern Railway,
Head Quarters Office,
Park Town.P.O.
Chennai-3.
2. The Divisional Railway Manager,
Southern Railway,
Palghat Division,
Palghat.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat.

- Respondents

By Advocate Mr P Maridas

The application having been heard on 27.3.2002 the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant is a retrenched Casual Labourer of Palghat Division, Southern Railway. He seeks this Tribunal's orders quashing the impugned A-3 order dated 13.11.2000

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whereby the 3rd respondent, while communicating the inclusion of the applicant's name as Sl.No.6-A in the revised live register on the basis of his having put in 1964.5 days of casual service, has stated that action was being taken to consult the Headquarters office for the applicant's reengagement subject to availability of post under Man Power Planning Scheme (MPP scheme for short). Specifically the applicant objects to this condition that his re-engagement would be subject to availability of post under the MPP scheme, since many of his juniors who are much lower down in the live register and who have much lesser number of days of service to their credit have been reengaged and have been given the benefit of absorption during the period 1996-99. It would appear that the applicant had continued as a casual labourer with intermittent breaks from 25.8.76 to 28.6.82. As per the 1996 list of retrenched casual labourers whereby the earlier list of 1995 was replaced, though the applicant's name was included, he was given credit for only 13 1/2 days of casual service. Unsuccessful representation in that regard led to filing of O.A.1765/98 which was disposed of by this Tribunal directing the 3rd respondent to consider the representation of the applicant and take appropriate action within the specified time frame. The representation made in that regard was, however, rejected by the 3rd respondent and the applicant had to approach this Tribunal again by filing O.A.579/99. By A-1 order dated 14.3.2000, this Tribunal again permitted the applicant to file a fresh representation, this time to the General Manager who was directed to issue appropriate orders thereon within the specified time frame. The result is

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impugned A-3 order dated 13.11.2000 referred to above. While A-4 dated 13.11.2000 communicates the fact of the applicant's inclusion in the live register of retrenched casual labourers and A-3 order recognizes the fact that the applicant is included at Sl.No.6-A with credit for 1964.5 days of casual service, the actual benefit is denied because of the condition that his reengagement would be subject to availability of post under MPP Scheme. The applicant points out the admitted position that persons who are lower down and persons who have lesser number of days of service to their credit have been accommodated while the applicant is still left in the sideline waiting for sanction under the MPP scheme for reengagement and absorption.

2. The respondents have filed a reply statement pointing out that the lists of retrenched casual labourers prepared earlier did not include the applicant's name, as the list was based on the particulars furnished by the concerned depots. However, it is admitted that there were certain mistakes with regard to the number of days actually put in by the applicant. It is submitted that this issue also could be resolved only after the matter came up for detailed consideration before this Tribunal in the earlier OAs. By the time the record was set right, there were no sanction for further engagement. There is no unwillingness on the part of the respondents to allow the applicant the benefit of reengagement but in the absence of proper sanction from the appropriate authority including the Finance Wing, such reengagement could not be done. The applicant would be considered for absorption

according to his turn on receipt of sanction, the respondents have stated.

3. I have heard Shri TC Govindaswamy, learned counsel for the applicant and Shri Renjith, appearing on behalf of the respondents. The impugned A-3 communication makes it abundantly clear that in the live register the applicant's name appears at Sl.No.6-A. It is also not in dispute that the applicant has to his credit 1964.5 days of casual service. It is not effectively denied that many of the applicant's juniors who were far below him in the live register of retrenched employees and who have much less number of days of casual service to their credit have already been conferred with the benefit of reengagement and the more substantive benefit like regularisation. Restoration of the applicant's name in the list was achieved only through a chequered course of litigation which fact is admitted beyond doubt in the reply statement. In other words, it is only with the intervention of this Tribunal that the number of days for which the applicant was engaged and his seniority position in the live register for retrenched employees were settled eventually. Thus, initiative for doing justice was not there with the respondents. It was not owing to any lapse or failure on the part of the applicant that the number of days of casual service which he had put in and the consequential benefit available to him were not considered when same benefit was bestowed on persons who were junior to him. I, therefore, hold that the applicant is entitled to get the benefit of reengagement without waiting for any sanction as contended by

the respondents. There is no question of sanction in these matters. There was sanction when the applicant's right arose. The matter could have been smoothly carried out had the respondents managed their records with necessary verifiability and correctness. A-3 the impugned order to the extent it contains an impediment by way of conditionality regarding his reengagement cannot be sustained. The fact that the applicant's name is at Sl.No.6-A shows that he is quite senior in the list of live register and his right ought to have been restored with reference to the number of days of casual service put in by him.

4. In the circumstances I consider it necessary to direct the 2nd respondent to reengage and absorb the applicant immediately irrespective of the fact that there is any sanction or not from the authorities concerned.

5. In the result, I dispose of the O.A. with the following directions/orders:

The impugned order A-3 dated 13.11.2000 in so far as it contains the observation that the applicant's reengagement would be subject to availability of post under MPP Scheme is set aside. The applicant is entitled to reengagement and absorption against a Group'D' post in accordance with the extant rules, regulations and orders in that regard. The second respondent is directed to re-engage and absorb the applicant as mentioned above on a

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par with his juniors in the live register of retrenched casual labourers. It is made clear that the applicant would not be entitled to any back wages but his services from the date of engagement of his junior would be counted for all other purposes. The above directions shall be complied with within a period of three months from the date of receipt of copy of this order.

6. There is no order as to costs.

Dated, the 27th March, 2002.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures:

1. A-1 : True copy of the Order in OA 579/99, dated 14.3.2000 of this Hon'ble Tribunal.
2. A-2 : True copy of the representation dated 27.3.2000 submitted by the applicant to the 1st respondent.
3. A-3 : True copy of the letter No.J/P OA 579/99 of 13.11.2000 issued by the 3rd respondent.
4. A-4 : True copy of Memorandum No.J/P OA 579/99 dated 13.11.2000 issued by the 3rd respondent.

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