

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED WEDNESDAY THE SECOND DAY OF AUGUST
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. No. 465/86

P. Jayaprakash

Applicant

Vs.

1. Deputy Chief Engineer (Construction)
Southern Railway, Madras,
2. Chief Medical Officer,
Southern Railway, Madras and
3. Electrical Foreman (Construction)
Southern Railway,
Ernakulam South

Respondents

M/s. K. Ramakumar,
C. P. Ravindranath &
E. M. Joseph

Counsel for
applicant

Smt. Sumathi Dandapani

Counsel for
Respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant in this case has been working as Store Mate in the office of the Electrical Foreman (Construction), Southern Railway, Ernakulam. Though he joined the Railways as ELR Khalasi, he was absorbed in the Electrical Unit. Subsequent to the absorption in the Electrical Branch, he had to undergo a surgical operation in the Shri Chitra Tirunal Institute for Medical Science and Technology, Trivandrum on 14.4.1983. After the

discharge from the hospital on 28.4.83, he was found fit and according to the applicant, he has been continuously working without any complaint regarding his health.

2. On 25.2.1986, the applicant was sent for medical check up to the Divisional Office before the Divisional Medical Officer, Southern Railway, Trivandrum, who after examining him issued the certificate at Annexure A. In the certificate, it has been stated that the applicant is fit for appointment as Lascar Class II in the Electrical Branch but unfit for all other classes. Against the certificate, applicant filed representation at Annexure-'B'. Annexure 'C' letter was given in reply to Annexure-B stating that the applicant cannot be made fit as a fresh candidate. The further case of the applicant is that ever since he was medically checked up on 25.2.1986, he has not been paid salary and he has not been issued with any orders terminating the service. According to him, he is reporting every day to work but he is not paid any salary.

3. Under these circumstances, the applicant filed this original application mainly for a direction to the respondents to disburse¹⁶⁴ him the salary due from 25.2.86 and permit him to enjoy the corresponding benefits.

4. In the counter filed on behalf of the first respondent it is admitted that the applicant was engaged in the Electrical Branch of the Construction Unit with effect from 7.3.1983 and he had been given another spell of service

between 1978 and 79 but on 5.4.1979, his service had been retrenched, according to the respondents, along with others after duly paying all the arrears under law strictly following the mandates of Chapter V(A) of Industrial Disputes Act.

5. The applicant has filed rejoinder in which it is admitted that the applicant was declared medically unfit, but denied the further statements that his service had been terminated after following the procedural formalities under the Industrial Disputes Act. His case is that no such order had been served on the applicant.

6. A number of similar cases have been considered by this Tribunal and the Tribunal is consistently taking the view following the Supreme Court decisions, that the services of the casual labourers employed in the Railway like the petitioner ^{by} can only be terminated following the procedure prescribed in the Manual or satisfying the requirement of the Industrial Disputes Act for the retrenchment of an employee. The notable case is Jai Shanker Vs. State of Rajasthan, AIR 1966 SC 492. It was observed by the Supreme Court in that case that "A removal is a removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no opportunity is to go against Article 311 and this is what has happened here." It has been held by the Madras Bench of the Tribunal in T. S. .


TAK 639/87 that " according to clause (a) of Paragraph 2511 of the Manual, casual labour^u treated as temporary, after completion of six months of continuous service are entitled to all the rights and privileges admissible to temporary railway servant as laid down in Chapter 23 of the Manual. The provision regarding issue of notice under Paragraph 2302 of the Manual is contained in Chapter 23." In this case, there is no evidence to show service of any such notice on the applicant as provided in the Railway Establishment Manual or under Chapter V(A) of the Industrial Disputes Act.


7. It follows that the applicant is entitled to the relief prayed for in this application. Accordingly, we issue the direction to the respondents to disburse to him the salary due to him from 25.2.1986 till the date he worked in the establishment with immediate effect and

also corresponding benefits treating him as if in service. *He respth. may also consider him for promo in the vacancy of dunscur with immediate effect.*

8. The application is allowed as above.

9. There is no order as to costs.


(N. Dharmadan)
Judicial Member
2.8.89


(S. P. Mukerji)
Vice Chairman
2.8.89

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