8×5=40

CENTRAL ADMINISTRTIVE TRIBUNAL
ERNAKULAM BENCH

Original application No. 469 of 2005

Thursday, this the 31st day of August, 2006

C O R A M :

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

P.D. Raju, S/o. Damodharan,
Retrenched Casual Labourer,
Southern Railway, Palghat Division,
Residing at : Chungathu House, Chemmukha,
Mankara Post, Palghat District. ... Applicant.

(By Advocate Mr.T.C. Govindaswamy)

v e r s u s

1. Union of India represented by the General Manager, Southern Railway, Headquarters Office, Park Town P.O., Chennai : 3

2. The Divisional Railway Manager, Southern Railway, Palghat Division, Palghat.

3. The Divisional Personnel Manager, Southern Railway, Palghat Division, Palghat. ... Respondents.

(By Advocate Mr. Sunil Jose)

O R D E R
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

When the name of the applicant has been found entered in the Live Casual Labour Register, when the said Register contains all the requisite

particulars including the date of birth and details of engagement as casual labourer and when the turn of the ex casual labourer for screening and absorption has ripened, whether the respondents are right in refusing to screen the ex casual labourer on the ground that the ex casual labourer has failed to make available the casual labour card and/or date of birth certificate? If answer to this question is in negative, the O.A succeeds and if not fails.

2. The facts of the case, as lucidly brought out in the counter would be appropriate at this juncture. The same are as under:-

(a) In terms of the directions of the Hon'ble Supreme Court in Inderpal Yadav Case and consequential orders issued by the Railway Board, a live Register of retrenched casual labourers was prepared and published for the purpose of further reengagement of retrenched casual labourers. Separately lists were originally published for casual labourers retrenched prior to 1.1.81 and after 1.1.81. The list of retrenched casual labourers retrenched after 1.1.81 was prepared based on the data furnished by the Unit offices whereas in the case of pre 1.1.81 retrenched casual labourers, the casual labourers have to submit their application alongwith the supporting documents on or before 31.3.1981. Subsequently, based on the directions of this Tribunal contained in O.A. 1706/94, the lists were merged and a single list was published on 17.9.96.

(b) During 1998, based on the sanction communicated by the Chief Personnel Officer, Madras, Sl.Nos. 1 to 635 in the

Live Register were considered for empanelment, out of which 245 persons were empanelled. The details entered in the Register are based on data furnished by the Unit Offices.

(c) Further sanction was communicated by the Chief Personnel officer, Madras, on 27.1.2003 for filling up of 270 posts of Trackmen from Live Register. Accordingly, notification dated 12.3.03 was issued calling on the retrenched casual labourers from serial Nos. 636 to 1395 to report Divisional Office , Palghat between 17.3.03 to 19.3.03 with all documents such as casual labour card, date of birth certificate etc.

(d) The applicant reported office stating that he is a retrenched casual labour and his name is available at serial No. 950 of the Live Register. She had not produced the casual labour card.

(e) Casual labour card is a basic document for ascertaining the identity of the person. It contains details such as date of engagement, age at the time of engagement, particulars of working, number of days worked, personal marks of identification, left thumb impression (LTI). Para 2513 of I.R.E.M. (1968) refers.

(f) Due to non-production of casual labour card, the above aspects could not be verified. Since the applicant failed to produce the document, the screening committee did not recommend his name for absorption. This fact was intimated to the applicant vide Annexure A/3 and A-6 impugned orders.

3. The respondents have rejected the case of the applicant by Annexure A3 order dated 20-03-2004 and Annexure A6 Order dated 26.04.2005.

4. The above facts of non production of casual labour card has not been refuted by the applicant. The contention of the applicant is that original casual labour card was not issued to the applicant (para 4 B of the OA) and that the applicant was issued only with a Muster Extract by the Permanent Way Inspector/Construction/Southern Railway, Palghat, confirming that the applicant had worked for 202 days. (As per the respondents, it is 194 days).

5. Arguments have been heard and documents perused. It has not been specifically denied that the applicant was not given any casual labour card and that he had produced the certificate issued by the unit office. It is the admitted fact that the name of the applicant finds place at serial No. 950 of the Live Casual Labour Register and that the details contained therein are the ones furnished by the Unit Office. In addition, the Respondents do maintain a Left Hand Thumb Impression Register, which contains the left hand thumb impression of the casual labourers concerned. Production of casual labour card is not a statutory requirement. ✓

6. The apprehension of the respondents is that in the absence of original casual labour card impersonation would be very much possible and the anxiety of the respondents is that such impersonation should not be allowed. As the casual labour card contains the thumb impression the same could be

compared with that of the holder of the card, if need be. While it is appreciated that care should be taken to ensure that there is no impersonation, at the same time, an aspect which cannot be lost sight of is that the casual labour card is required only for comparison of the details as furnished in the Register and for identification. Assuming that the details contained in the Register vary from the ones given in the Casual Labour Card, the same could well be by way of manipulation by the holder of the card and in that event, it is only the details as contained in the register that would be considered and acted upon. Again, in the instant case, the applicant has averred that he was not given any such casual labour card at all and instead only a certificate was given to her by the Unit where she served. Though invariably casual labour card are issued to casual labourers, which alone would be the proof of they being engaged as casual labourers and in the absence of production of such card they would not be permitted to work as such, possibility is not ruled out that such card for any reason whatsoever (for eg as per the applicant's counsel, shortage of printed card) might not have been issued and in its place certificate could have been issued. For, issue of such certificate when casual labour card is issued is also not a normal practice. In any event, as the details of engagement of the applicant as casual labourer are available in the Register and as the same are as per the data furnished by the Unit office, the absence of casual labour card cannot be the reason to totally reject the claim of the applicant. As regards fear of impersonation, the respondents already having the Left Hand Thumb

Impression in the register maintained by them, the same can easily be used for ascertaining the identity.

7. The applicant has also relied upon the following orders of this Tribunal, which squarely apply to the facts of this case:-

(a) Order dated 8th July, 2006 in OA 377/04 - R. Ponnusamy vs UOI and Ors.
(b) Order dated 26th Sep 2006 in OA 77/03 - T. Muraleedharan Pillai vs UOI and others
(c) Order dated 3rd Feb 05 in OA 379/04 - K. Raju vs UOI and Others.

8. Respondents have, in their additional reply stated that particulars of date of birth are not available in the register. As the impugned order has mentioned only non production of casual labour card it is presumed that the applicant had produced necessary proof for his date of birth. If not, it is always possible for the respondents to direct the applicant to file a sworn affidavit containing the date of birth of the applicant for which provision exists as per Rule 225 of the IREM which reads as under:-

(a) When a candidate declares his date of birth he should produce documentary evidence such as a Matriculation certificate or a Municipal birth certificate, if he is not able to produce such an evidence he should be asked to produce any other authenticated documentary evidence to the satisfaction of the appointing g authority. Such authenticated documentary evidence could be the school leaving certificate,

a baptismal certificate in original or some other reliable document. Horoscope should not be accepted as an evidence in support of the declaration of age.

(b) If he could not produce any authority in accordance with (a) above, he should be asked to produce an affidavit in support of the declaration of age."

9. In view of the above, the OA is allowed. Impugned orders dated 20-03-2004 and 26-04-2005 are quashed and set aside. It is declared that the applicant is entitled to be screened subject to his fulfilling the requirements on the basis of the details contained in the Live Casual Labour Register and in the event of his clearing the screening, he should be considered for absorption in accordance with the relevant rules and regulations of the subject.

10. The respondents are, therefore, directed to call the applicant for screening and take further action. If found fit, the applicant shall be entitled to the seniority in consonance with the seniority of his registration in the live casual register and her pay etc., will be notionally fixed from the date his junior has been appointed while actual pay would be admissible to the applicant from the date of regular absorption. This drill has to be performed within a period of four months from the date of communication of this order.

11. Costs easy.

(Dated, the 31t August, 2006)

K B S RAJAN
JUDICIAL MEMBER

cvr.