

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. NO.489/93

Wednesday, this the 22nd day of June, 1994

HON'BLE SHRI N. DHARMADAN (J)  
HON'BLE SHRI S.KASIPANDIAN (A)

P.J. Varghese,  
Parakkal House,  
Avanacode, Chowara. .. Applicant

By Advocate Shri P. Ramakrishnan.

V/s

1. Union of India, rep. by  
Secretary, Railway Board,  
New Delhi.
2. The General Manager,  
SR, Madras.
3. Divisional Personnel Officer,  
SR, Trivandrum. .. Respondents

By Advocate Shri P.A. Mohamed.

ORDER

N. DHARMADAN (J)

Applicant is a casual mazdoor. He has approached High Court and this Tribunal on earlier occasions challenging his termination. In the present application, his grievance is against Annexure-IV memorandum issued by the DPO, rejecting his request for re-engagement, on the ground that he is medically unfit.

2. Facts are as follows. Applicant was engaged as casual mazdoor on 13.2.78 in the Trivandrum Division of the Southern Railway. His services were terminated by the PWI, Aluva, on 5.6.81. He challenged the termination before the

High Court in OP 4582/91, which was allowed on the ground that provisions of Rule 2511 of Chapter XXV of the Railway Establishment Manual applies to the case of the applicant. Though applicant was reinstated in service, after the judgment, as per subsequent order, once again his services were terminated w.e.f. 29.4.82. He filed OP 7349/92 before the High Court which was transferred to this Tribunal and disposed of as per Annexure-I judgment, after renumbering the case as T.a. 36/87. The operative portion of the judgment is as follows:-

"7. For the reasons stated above, the application is allowed and the order of termination is set aside. It is, however, open to the respondents to take such action as is warranted on the basis of the medical report after giving due notice to the applicant and after hearing his objections in this regard."

Thereafter, the impugned order, Annexure-IV, was issued which reads as follows:-

"In terms of the directions contained in the judgment of Hon'ble Central Administrative Tribunal, Madras, in OP No.7349/82 (TA 36/87), Shri P.J.Varghese, LTI 484, Mazdoor, under PWI/AWY has been given notice as required by the law on being found medically unfit and give notice to show why the medical report should not be acted upon and his services terminated. The representation submitted by Shri P.J.Varghese to the show cause notice issued has been considered by the undersigned. As he has been found medically unfit to the category in which he was initially engaged, his service stand terminated with immediate effect."

According to the applicant, he is fit in B-2, C-1 & C-2 medical classification and entitled to re-engagement. He filed Annexure-V representation on 24.6.89. He also requested that he may be medically examined for re-engagement. Without considering the grievances of the applicant, several casual labourers in the Open and Project lines were appointed. He has given the details of those persons in the original application. He filed Annexure-VI representation, in which also he has claimed that he is fit for re-engagement along with similar other casual mazdoors who have been absorbed as casual mazdoors on permanent

basis. He also produced Annexure-VII memorandum by which medically decategorised casual employees were also appointed. One Shri C.K.Purushan, who is at serial No.6 in Annexure-VII, is admittedly junior to the applicant. A further representation was also filed by the applicant, which is produced as Annexure-VIII. Applicant submitted that he moved the Labour Court for getting wages upto 31.3.88 under Section 33 (c)(1) of the Industrial Disputes Act, 1947, and the Labour Court passed an Award in his favour which was confirmed by this Tribunal.

3. Since respondents did not file reply within the time granted, their defence was "struck off by this Tribunal". The respondents have no grievance against the said order. They did not file their reply with an M.A. for accepting the same reviving the order or granting special permission for the same. However, the respondents are handicapped from raising their contentions on account of the above order. The counsel, Mr. P.A. Mohammed, submitted that the applicant is not a temporary status casual employee entitled to any relief as claimed in this original application.

4. The question as to whether the applicant is a temporary status casual mazdoor or not, has been decided and it is clear from the judgments of this Tribunal and High Court. After going through the judgments, we are of the opinion that the applicant is a temporary casual mazdoor entitled to benefits flowing therefrom.

5. Since the applicant has not produced any document to substantiate that he is medically fit in B-1, we have to accept the stand of the respondents that he is unfit in B-1. But his claim for getting re-engagement as casual mazdoor to do any other suitable job for which he is

medically fit and can be considered for re-engagement, was not examined by the respondents, particularly when he is fit in B-2, C-1 & C-2 categories. This Tribunal in V.V. Sidhardhan vs. Union of India and others, OA 43/91, considered the same issue of re-employment of medically unfit employees of B-1 category in the light of the provisions of Clause 2007 of Chapter XXV of Indian Railway Establishment Manual and the relevant orders issued by the Railway in this behalf and allowed the O.A. with the following observations:-

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

This decision applies to the facts of this case.

6. In the instant case, since the junior who is also similarly medically decategorised in B-1 category, has been re-engaged as casual mazdoor, as seen from Annexure-VII, the applicant has a strong case for re-engagement and for getting reliefs as prayed for in the O.A.

7. Accordingly, we are inclined to accept his case and grant relief. We direct the respondents to re-engage the applicant with effect from the date of Purushan's engagement, if the applicant is otherwise suitable and fit for re-engagement in any medical category of B-2, C-1 and C-2. This direction shall be complied with within a period of four months from the date of receipt of a copy of this order.

8. In the result, the application is allowed as above. There will be no order as to costs.

  
S. Kaspandian

( S. KASIPANDIAN )  
MEMBER (A)

  
N. Dharmadan  
27.6.94

( N. DHARMADAN )  
MEMBER (J)