

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 510 OF 2008

Thursday....., this the 20th day of August, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

K.J. Janamma,
Casual Labour (Track Women),
Southern Railway, Office of the
Section Engineer/Permanent Way/
Nagercoil Junction, residing at
Puthankulathil, Vadakkekara,
Veroor P.O., Changanassery.

... **Applicant**

(By Advocate Mr.T.C.G. Swamy)

versus

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, Trivandrum Division,
Trivandrum – 14.
3. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
4. The Assistant Divisional Engineer,
Southern Railway/Nagercoil Junction,
Nagercoil.

... **Respondents**

(By Advocate Mr. P. Haridas)

The application having been heard on 30.07.2009, the Tribunal
on20-08-09..... delivered the following:

ORDER

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

*The applicant engaged as casual labourer at different spells spread
over a period of 15 years, had earlier approached this Tribunal in OA No. 930*

of 1991 and the Tribunal, vide Annexure A-1 order dated 17th August 1992 passed the following order:-

"7. Under the circumstances we feel that interest of justice would be met in this case if we dispose of the application by issuing appropriate directions. Accordingly, we direct the applicants to submit detailed representations with their service cards and other supporting documents to establish their prior service before Respondent-2. This shall be done within 2 weeks from the date of receipt of a copy of this judgment. If such representations are received from the applicants, the respondent-2 shall dispose of the same in accordance with law within a period of 3 months from the date of receipt of the representations. But the inclusions of the applicants name in the Annexure A3 list of casual labourers as undertaken in the reply shall be done without waiting for the filing and disposal of the representations of the applicants as indicated above which are intended for the grant of regularization to the applicants in future taking into account their past services."

2. The above order of the Tribunal enabled the applicant to have one more spell of casual labour service in Feb 1993, vide Annexure A-2. As regards regularization, the respondents, through communication dated 07-07-1993 vide Annexure A-3 informed the applicant that the same would be considered provided the applicant was senior enough for such regularization to the extent vacancies assessed for the period ending 30th June 1993. Vide Annexure A-4 communication dated 17th January 1995, the respondents have stated that as per the Vigilance department, the applicant secured re-



engagement in Railway on impersonation, that the LTI recorded in the LTI Register as well as in the casual labour card does not tally with the LTI produced at the time of re-engagement. Thus, the applicant stood retrenched w.e.f. 21st January 1995. However, on her filing OA No. 624/1995 before the Tribunal, stay of order of retrenchment was clamped and the applicant continued to function as casual labourer. The said OA along with two other O.As was disposed of with permission to the applicant to make suitable representations/appeals before respondent Chief Personnel Officer and the said Chief Personnel Officer was directed to pass speaking orders on the representations, as early as he finds it convenient. Till a decision is taken by the Chief Personnel Officer, applicants were to be allowed to remain in service. Annexure A-6 order dated 7th March 1996 refers. The Chief Personnel Officer accordingly considered the representation filed by the applicant and held as under:-

- (a) The LTI as available in the Service Card and as available in the LTI register in respect of the applicant do not match with each other.
- (b) The casual labour card produced by the applicant is fabricated one and not a genuine one. In other words, the person holding the card is not the same person who was on employment earlier and was not thus an ex casual labourer to have any claim whatsoever and is altogether a different person.
- (c) However, it is required to be verified to ascertain whether the LTI of the applicant itself corroborates with what is exhibited in both LTI register and also the casual labour card produced by the applicant. In case the thumb impression borne in the LTI register tallies with the LTI of the applicant, it can go to establish that the applicant was the casual labourer initially engaged and the casual labour card produced by herself was not a genuine one but a fabricated one for the reason that the thumb impression of the casual labour card does not

tally with the LTI Register. On the other hand, if the thumb impression of the applicant does not corroborate with what is maintained in the LTI then, her claim of her previous engagement cannot be sustained.

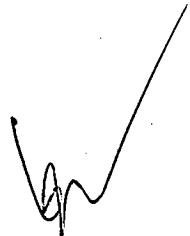
(d) Investigation thus, having not been made, in a complete manner to arrive at the conclusion to what extent the applicant has committed an action of unbecoming of a Railway Servant, it will not be proper to terminate her services simply on the information available on record.

3. With the above observation, the Chief Personnel Officer directed for further investigation and the earlier order of termination was quashed and set aside. Annexure A-7 refers.
4. The above resulted in the respondents' issuing Standard Form of Charge Sheet, vide Annexure A-8, dated 29th August 1987. The charges are as under:-

"Annexure I : Statement of article of charges framed against Smt. K.J. JANAMMA, Casual Labour under SE/P.Way/NCJ.

Smt. K.J. Janamma, while working as Casual Labour under SE/P.Way/NCJ section committed serious misconduct in that while she was re-engaged as Casual Labour at SE/P.Way/NCJ on 10.3.93, as per the direction of Hon'ble Central Administrative Tribunal, Ernakulam Bench (and as per the Representation of the employee) has cheated the Railway Administration by way of producing bogus Service Cards.

As per the report of the Finger Print Examiner No.P.30/FP/TVC/KTYM/684 forwarded by FA & CA O/MAS vide letter No.P.300/FP/HQ/TVC/KTYM/684 dt. 11.11.94, the Thumb Impression available in the CL Service Card of Smt. K.J. Janamma, LTI No.437/488 of



PWI/KTYM is not identical with the left Thumb Impression available in the LTI Register against LTI No.497 and 488. The two LTIs of the same person available in the LTI Register are identical, but they are not identical with that in the CL Service Card produced by Smt. Janamma.

To sum up, the LTIs, in the Service Cards of the Six Casual Labours are identical with the initial LTI Register of PWI/KTYM. The Tumb Impression in the CL Service Card of the Seventh person is not identical with the LTI available in the LTI Register which mans that the said CL Service Card is a bogus one.

Accordingly, it has been proved that the CL Card produced by Smt. Janamma is a bogus one.

Annexure II :

Statement of imputation of misconduct or misbehaviour in support of the articles of charges framed against Smt. K.J. Janamma.

Smt. K.J. Janamma while re-engaged as CL has produced a bogus Service Card with the intention of getting a job in Railways duly cheating the Railway Administration. Thereby Smt.Janamma has violated Railway Servants Conduct Rule No.3(1) (i), (ii) & (iii) of 1966.

Annexure III :

List of documents which the articles of charges framed against Smt. K.J. Janamma, Casual Labour are proposed to be sustained.

1. Report of the Finger Print No.6/30/FP/HQ/TVC/KTYM/684.
2. LTI Register.
3. CL Card.

Annexure IV :

List of witness by whom the articles of charges framed against Smt. K.J. Janamma, Casual Labour are proposed to be sustained."

5.

According to the applicant, she had denied the allegations and that

some sort of an inquiry was conducted, the details of which, the applicant is unable to explain (being illiterate and a member of the SC community). Till today, however, the case had not been finalized. With the stage of a casual labourer, without any leave or other facility and with the least amount of daily wage, the applicant is living an animal life. Several representations were made and one so submitted in 2001 and another in October 2007 had been produced as Annexure A-9 and A-10. In view of the inordinate delay, the applicant has prayed for quashing of all further proceedings relating to the charge sheet at Annexure A-8; to direct the respondents to grant the applicant the benefit of temporary status as also the benefit of regular absorption in accordance with law on par with her juniors with all consequential benefits including arrears thereof within a time schedule.

6. Respondents have contested the O.A. According to them, the service card produced by the applicant, as per which she was provisionally re-engaged as per Annexure A-2 were suspected to be bogus and accordingly they were sent to the Vigilance Branch, Madras for a proper verification and report. The investigation resorted to by the Vigilance Branch *revealed* "The Thumb impression available in the CL Service Card of K.J. Janamma, LTI Nos. 437/438 of PWI/KTYM is not identical with the left thumb impression available in the LTI Register against LTI Nos 437 & 438 of PWI/KTYM. The two LTIs of the same person available in the LTI Register are identical but they are not identical with the CL Service Card" It has been averred in the counter that the DAR is incomplete even on date.

7. Applicant has filed her rejoinder in which she has stated that though Annexure A-2 provides for only a provisional engagement, as the

representation was to be disposed of within three months, which had not been so done as per Annexure A-1 order, the same 'entails in annexure A2 order final'.

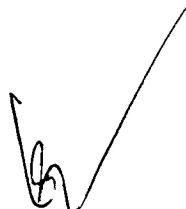
8. In the additional reply, the respondents have contended that the applicant has not even made a statement that she had submitted her explanation to Annexure A-8.

9. Counsel for the applicant has submitted that action of the respondents suffers from the following legal defects:-

(a) The issue of charge sheet under Rule 9 of the Railway Servants Disciplinary and Appeal Rules cannot be applied to casual labourers, or conversely, if applied, the same means that the applicant has been considered as at least a temporary status employee to be bound by DAR Rules.

(b) There has been inordinate delay in finalization of the proceedings, which has thoroughly vitiated proceedings. The prejudice caused to the applicant is unimaginable. She is paid daily wages, without any other facilities and she is virtually running an animal life. Her entitlement to arrears of pay and allowances would run in lakhs.

(c) The situation at the material point of time when tens of casual labourers were engaged for work, was such that the casual labour card is prepared by one, thumb impression taken by another and particulars written by third so on and so forth. There could be possibilities of certain mistakes occurring in the preparation of such cards. In fact, for regularization, retention of the card is not a sine qua non as held by the Tribunal, as also as upheld by the High Court. When particulars are available in the registers and records maintained by the respondents, on the basis of the same, if the LTIs of the individuals and those in the LTI register tally, there should be no difficulties in progressing the case of the applicant for regularization etc.,

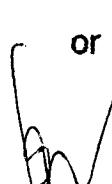


(d) The following decisions are relied upon by the counsel to hammer home his point that delay in conclusion of the proceedings vitiates the proceedings:-

1. 1998 SCC (L&S) 1044 Para 19 and 20
2. 2006 (2) SLJ (CAT) 105 Para 21 to 23
3. 2003 (3) ATJ (CAT) 287 Para 6
4. 2006 (3) ATJ (CAT) 77 Para 13 and 14
5. 1982 SCC (L&S) 124
6. 2009 (1) SCC (L&S) 440
7. 2006 SCC (L&S) 919
8. 1996 SCC (L&S) 686
9. 2007 (1) SCC (L&S) 43
10. 1995 SCC (L&S) 648
11. 1997 SCC (L&S) 1832
12. Indian Railway Establishment Manual Vol.II P-13

10. Counsel for the respondents submitted that the case has not been finalized. There has been no statement from the applicant. To a pointed question from the Bench, the counsel replied that the records relating to the proceedings appear to have been not traceable.

11. Arguments were heard and documents perused. The C.P.O. has stated that while the card and the LTI register do not tally with regard to the thumb impression, what is to be seen is whether the individual's thumb impression and that available in Sl. No. 437/438 of the LTI registers tally. If these tally, the question of impersonation would not arise and it is purely as to submission of bogus casual card that the applicant has to be proceeded against. Perhaps, it was on that premises that the charge sheet was issued in 1997. That the same was issued on a format meant for temporary employees or regular employees and the same does not apply to casual labourers may



not make the proceedings illegal as, the purpose of issue of charge sheet is to afford proper hearing to the applicant to vindicate her stand. There is no other conditions attached to the proceedings which would be applicable only to the regular or temporary railway servants and not to casual labourers.

12. The fact remains that the proceedings did not take off further. The records are not available. The applicant's counsel submitted that initially some progress took place but those may not be sufficient to state that there was proper enquiry. There has been no explanation till now as to the reason for delay, save, perhaps, non availability of the records. It appears that either by design or otherwise, the respondents have not proceeded further. Perhaps, they may be under the impression that if proceeded, the proceedings may entail termination of the services of the applicant, which would cost her life, who is a widow, but who perhaps may be one of the sincere and hardworking casual labourer. Or the fear may be that in case if the proceedings result in exoneration, the applicant may have to be paid stupendous amount as arrears as stated by the counsel for the applicant. Whatever may be the reason on the part of the respondents, the fact remains that substantial prejudice has been caused to the applicant who remained only as casual labourer without any other facilities attached to her engagement, save the daily wage for the days she worked.

13. Counsel for the applicant is to some extent right that there could be some confusion in the preparation of the casual labour card. If the LTI on labour card was taken at one time and details of the applicant were incorporated at another time, perhaps, the same would have, due to preparation of many such cards but in that event, there should be two cases

instead of one. But that is not the issue now. At least the applicant could have been asked to append her LTI to tally the same with the LTI as available in the Register. If the same tally, then the only question is as to the casual labour card and the LTI on it being different from the one of the applicant. The same, at this distance of time has to be ignored as the genuineness of the person is verified. And, with the details available in the records such as Registration in the Live Casual Labour Register, her case for regularization could be worked out. This reason one has to come to the conclusion because inordinate delay defeats justice as held by the Apex Court. Though many cases referred to by the counsel for the applicant may not be necessarily referred with a view to knowing the law laid down by the Apex Court, the following decisions would suffice:

(a) Inordinate and unexplained delay in initiation of disciplinary proceedings: In the *State of M.P. Vs Bani Singh (1990) Supp. SCC 738*, wherein, there had been a delay of 12 years in initiating the proceedings, the Apex Court has held, "*There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage.*"

(b) Inordinate delay in finalization of disciplinary proceedings: The Apex Court has, in the case of *State of A.P. v. N. Radhakishan, (1998) 4 SCC 154*, held as under:-

"19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where



there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per

relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations"

14. The precise reason for not permitting the disciplinary proceedings to commence after a long period, presumably, is that the delinquent individual may not be in a position to remember the alleged episodes causing great prejudice to him and thus, compelling him after a substantial period to vindicate his stand would entail clear violation of principles of natural justice. Instead, if the proceedings were initiated on time, and the delinquent is in a position to present his case, delay in conclusion may or may not prejudice the delinquent. Prejudice may be by way of promotions not being afforded or the delinquent not being spared for other posts on deputation etc. In such cases, the courts normally permits the proceedings to be completed by the department within a time schedule calendared by the court.

15. In the instant case also, the proceedings having been initiated, the same has to be taken to a logical end. For, here the case is one of LTIs not tallying. The case could prove as of impersonation, in which event the applicant cannot be allowed to continue. As such, it is essential to ensure that the applicant is the very same person who had earlier appended the LTI in the Register. If it is so proved, further action to be taken would be only regularization on the basis of the facts available in the Records of the respondent in the live casual labour register, disregarding the casual labour

card, as the same does not tally with the LTI register. If no such particulars are available, then as the applicant had already approached the Tribunal and certain particulars are available in the orders of this Tribunal, the same be taken into account. If the LTI of the applicant does not tally with the LTI as appended in the LTI register, the only course left is to shunt out the applicant. It is for the respondents to take action if they so desire over impersonation.

16. Taking into account the peculiar facts and circumstances of the case, the OA is disposed of with a direction to the respondents to take the LTI of the applicant and contrast the same with the ones available in the LTI Register and if the LTIs tally, then to retain the applicant in the employment and also consider the case of the applicant for regularization in accordance with law. For this purpose, the details of services rendered could be culled out from the records available, in case the authorities do not want to rely upon the casual labour card held by the applicant (as the LTI therein does not tally with that in the LTI register). This drill be performed within six months from the date of communication of this order.

17. No order as to cost.

(Dated, the 20th August, 2009)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO.510/2008

Dated this the 10th day of November, 2010

CORAM

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER
HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER

K.J. Janamma
Casual Labour (Track Women)
Southern Railway, Office of the
Section Engineer/Permanent Way/
Nagercoil Junction
residing at Puthankulathil, Vadakkekkara,
Veroor PO, Changanassery

.. Applicant

By Advocate Mr. TCG Swamy

Vs

- 1 Union of India represented by the
General Manager, Southern Railway
Headquarters Office, Park Town PO
Chennai-3
- 2 The Divisional Railway Manager,
Southern Railway, Trivandrum Division
Trivandrum-14
- 3 The Divisional Personnel Officer
Southern Railway, Trivandrum division
Trivandrum-14
- 4 The Assistant Divisional Engineer
Southern Railway, Nagercoil Junction
Nagercoil ..Respondents

By Advocate Mr. P. Haridas

The Application having been heard on 29.10.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a casual labourer challenges the delay in keeping the Major Penalty Charge Memorandum at A-8 which prejudicely affects her service benefits.

2 The brief facts of the case are that the applicant belonging to S.C. Community, was initially engaged as a casual labourer during 1975 under the PWI, Kottayam, was retrenched in 1977, again re-engaged from 18.5.1980 upto 20.9.1981, as a Water Carrier from 25.5.19890 and retrenched on 26.9.90. She filed OA before the Tribunal for further engagement. She was further engaged w.e.f. 10.3.1993. According to the applicant, she was entitled to be granted temporary status on completion of 120 days of initial engagement. However, her service was terminated by order dated 17.1.95 (A-4) which was challenged in O.A. 624/1995. That O.A was disposed of by A-6 order dated 7.3.96. Though she is continuing in service without any break, she is being paid only daily wages. While so, she was issued with a major penalty charge memorandum A-8 dated 29.8.97 which is not finalised till now. Aggrieved by the delay in finalisation of the proceedings she has filed this O.A contending that the long delay in keeping the proceedings pending is affecting her substantially in the matter of granting the benefit of temporry status, regularisation, casual leave, medical attendance, annual increments, etc. and the directions in A-7 has not been complied with. The applicant seeks to quash A-8 and direct the respondents to grant her the benefit of temporary status with all attendant benefits on par with her juniors.

3 The respondents filed reply statement opposing the O.A on delay and on merits. They submitted that the impugned order is dated 29.8.97 whereas the O.A was filed only on 11.8.2008 without explaining the reasons for the

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delay.

On merits, they stated that the charge against her is that the Casual Labour Service Cards etc. produced by her are bogus documents. The contention of the respondents is that in the absence of genuine documents she cannot be treated as a retrenched casual labourer. However, she was provisionally engaged as per A-2 and that on verification of the documents submitted by her it is found that the thumb impression of her is not genuine. They further submitted that it is the burden of the the applicant to prove her innocence in the Departmental proceedings.

4 The applicant filed rejoinder stating that the delay in finalisation of the enquiry proceedings is affecting her service benefits. She submitted that the original documents are with the respondents.

5 This O.A was finally heard and order pronounced on 20.8.2009. The operative portion of the order is extracted below:

"16 Taking into account the peculiar facts and circumstances of the case, the OA is disposed of with a direction to the respondents to take LTI of the applicant and contrast the same with the ones available in the LTI Register and if the LTIs tally, then to retain the applicant in the employment and also consider the case of the applicant for regularisation in accordance with law. For this purposes, the details of services rendered could be culled out from the records available, in case the authorities do not want to rely upon the casual labour card held by the applicant (as the LTI therein does not tally with that in the LTI register). This drill be performed within six months from the date of communication of this order."

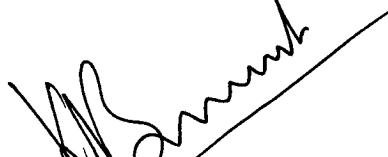
6 The applicant filed CP(C)51/10 for the inaction on the part of the respondents to obey and implement the directions of the Tribunal. However, the respondents filed R.A 35/2010 to review the order of the Tribunal dated 20.8.2009.

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7 We have heard the R.A. and the CP(C). In the R. A filed by the respondents submitted that in spite of strenuous efforts on their part, the LTI register could not be traced out. Consequently, the respondents expressed their difficulty in checking the LTI of the applicant with the one available in the LTI Register. They pleaded that the Hon'ble Tribunal may be pleased to issue necessary orders as deemed fit and proper. It was also submitted that if the applicant is directed to produce the Casual Labour Service Card, the LTI therein can be contrasted with the LTI of the applicant to proceed further in the matter. The R.A. was allowed and the order dated 20th August, 2009 is recalled and O.A heard again. The CP(C) was therefore closed.

8 Having heard the learned counsel for the parties and in view of the submission made by the respondents in the R.A. expressing their inability to trace out the old records to tally the LTI of the applicant with the one available in the LTI Register, we dispose of the O.A with the direction to the respondents to verify the thumb impression of the applicant with the LTI in the Casual Lablour Service Card and pass orders on the regularisation of the applicant accordingly. This shall be done within two months from the date of receipt of a copy of this order. No costs.

Dated 10th November, 2010


DR. K. B. SURESH
JUDICIAL MEMBER


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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