

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 547/2000

MONDAY, THIS THE 26th DAY OF FEBRUARY, 2001.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

B.Anilkumar S/o P.R. Balakrishnan
Ex-Casual Labourer
Southern Railway,
Trivandrum Division
residing at Quarters No. 379/B
Hemambika Nagar
Palghat.

Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

1. Union of India represented by
the General Manager,
Southern Railway,
Head Quarters Office
Park Town P.O.
Madras-3

2. The Divisional Railway Manager,
Southern Railway
Trivandrum Division
Trivandrum-14

3. The Senior Divisional Personnel Officer
Trivandrum Division
Trivandrum-14.

Respondents

By Sri K. V. Sachidanandan

The application having been heard on 14.2.2001, the Tribunal delivered the following on 26.2.2001.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This Original Application has been filed by the applicant aggrieved by A-5 letter dated 8.7.99 issued by the 3rd respondent seeking the following reliefs:

(a) Call for the records leading to the issue of Annexure A5 and quash the same.

(b) Declare that the applicant is entitled to be re-engaged and absorbed in the Transportation(Traffic/Commercial) Department of Southern Railway, Trivandrum Division, in preference to casual labourers with lesser number of days of service and casual labourers who are otherwise ineligible and direct the respondents accordingly.


(c) Direct the respondents to re-engage and absorb the applicant forthwith in the transportation (Traffic/Commercial) Department of Southern Railway, Trivandrum Division and to grant him the consequential benefits.

(d) Pass such other orders or direction as deemed just, fit and necessary in the facts and circumstances of the case.

2. Applicant claimed that he was an Open Line retrenched Casual Labourer belonging to the Transportation (Traffic/Commercial) Department of the Southern Railway, Trivandrum Division and that he was initially engaged as a Casual Labourer after due process of selection and interview. He was engaged initially for the period from 11.6.83 to 26.6.83 and thereafter from 1.9.83 to 9.9.83 and again from 12.12.83 to 22.1.84. Thereafter, he was re-engaged as a Seasonal Water carrier at Trichur during the period from 9.5.84 to 15.6.84 and from 12.4.91 to 31.5.91. Applicant submitted Annexure A-1 stated to be his Service Card indicating his service and claimed that according to the said Service Card he had a total of 153 days of service and claimed that he was a retrenched Casual Labourer borne in the seniority list of Casual Labourers of the Transportation (Commercial/Traffic) Department of the Southern Railway, Trivandrum Division. According to the applicant he visited the office of the third respondent on many occasion praying for re-engagement and absorption. He claimed that there were a number of vacancies in the Traffic department remaining unfilled despite the existence of casual labourers like him in the list. He submitted that he was given to understand that several persons who were juniors to the applicant and otherwise ineligible to be considered for re-engagement or absorption in preference to him were re-engaged and absorbed. He gave the names of S/Shri N.Sasidharan Pillai, M. John, L. Vasanthakumar, B. Krishnankutty and D. Dinesan. He



submitted A-2 representation to the third respondent. He did not get any response to A-2. In the meanwhile he understood that respondents were re-engaging persons with lesser number of days of service than him. Hence, he approached this Tribunal by filing O.A. No.531/99. This O.A. was disposed of by A-3 order dated 29.4.99 directing the applicant to submit a detailed representation to the third respondent within a week from the date of the order and directing the third respondent to consider the representation if received within the stipulated time and then give him an appropriate reply. Applicant submitted A-4 representation dated 5.5.99 to which he received A-5 reply dated 8.7.99. According to the applicant A-5 on the very face of it was arbitrary, contrary to law and unconstitutional. According to him he was entitled to be re-engaged and absorbed in the Traffic Department of the Southern Railway, Trivandrum Division and his non-consideration for such re-engagement and absorption in preference to casual labourers with lesser number of days of service and casual labourers who were otherwise ineligible were arbitrary, discriminatory and contrary to law and hence violative of constitutional guarantees enshrined under Article 14 and 16. According to the applicant the statement in A-5 that the re-engagement and absorption of the persons listed by the applicant were in terms of the orders of the High Court of Kerala was contrary to truth and incorrect and according to his information there were no orders of the High Court directing re-engagement of the said persons. According to him they were engaged in an illegal manner by certain authorities lacking in competence and having come to know of their illegal engagement the competent authority terminated their service which was challenged before the High Court of Kerala. The High Court sustained the termination as justified observing that they could be considered for



engagement after exhausting all those who were already available in the list of retrenched Casual Labourers. Hence, according to him the contention of the respondents was totally incorrect and untrue. He also referred to the engagement of one Smt. Kanakakumari and submitted that she had only 135 days of service and she was junior to him in the list of casual labourers and therefore, he was entitled to be considered for engagement at least on par with her. He sought the reliefs mentioned earlier on the above grounds.

3. Respondents filed reply statement resisting the claim of the applicant. According to them as the period of service shown in A-1 had not been entered chronologically, it could only be viewed that it was not a proper Casual Labour Service Card as such. However, the applicant's name had been included in the list of retrenched casual labourers of Traffic Department of Trivandrum Division for the purpose of possible re-engagement as casual labourer. The availability of the name of the applicant in the list alone would not make him entitled for the re-engagement since any re-engagement from the list was based on the requirement for such re-engagement and also on the basis of the seniority therein. According to them applicant's name was at Sl. No. 12 of the list and there were some more persons shown as senior in the list but yet to be considered for re-engagement. It was further submitted that the said seniority list was for the purpose of any possible engagement purely as casual labourers and the said list was made out years back and on account of changed pattern of man power planning in Railways there was no requirement of resorting to any re-engagement of casual labourers in the Traffic Department. Further the applicant had not impleaded the persons who allegedly had less number of days of service than him as respondents in this O.A.



Hence, the O.A. was bad on the point of non-jointer of proper and necessary parties. Applicant had not explained as to the reason for not agitating the matter of re-engagement of persons resorted to in the year 1991 all these years and the present O.A. was belated one barred by limitation.

Earlier O.A. No 531/99 filed by the applicant and and A-5 letter given in compliance with the directions therein would not make the applicant to get the delay condoned. A-2 representation did not contain any date to prove on which date it had been preferred. No representation like A-2 had been received by the third respondent. There was no proposal to resort to re-engagement and further there was no requirement of re-engagement of casual mazdoors in the Traffic Department of Trivandrum division. As regards re-engagement of Smt. Kanakakumari the same was in compliance with the directions of High Court in O.P.No. 8069/98. It was further submitted that the High Court had stayed the orders of this Tribunal directing the Railways to reengage Smt. M.G. Latha and Shri Thulasi Jeyasenan in O.A. Nos. 505/95 and 1718/98 as per their interim orders in O.P.No. 8145/99 and 13343/2000 respectively. As these two persons were ranking senior to the applicant as item No. 6 and 10 in the seniority list applicant was not to get any benefit on the re-engagement of Smt. T.N. Kanakakumari. Accordingly, the O.A. was devoid of any merit and deserved to be dismissed with costs to the respondents.

4. Heard learned counsel for the parties.

5. I have given careful consideration to the rival submissions and pleadings and have also perused the documents brought on record.



6. Learned counsel for the applicant submitted that when respondents had engaged persons junior to the applicant in the seniority list they were bound to re-engage the applicant. He submitted that the O.A. was not barred by limitation as Smt. Kanakakumari who was junior to the applicant had been engaged only in 1999 and therefore the O.A. was well within time.

7. I note that the applicant approached this Tribunal by filing O.A. No. 531/99 and as per A-3 order of this Tribunal the said O.A. was disposed of directing the applicant to make a detailed representation to the third respondent within a week thereof and with a direction to the third respondent to consider such a representation if received within the stipulated time and give an appropriate reply to the applicant within two months from the date of its receipt. A-4 representation was submitted by applicant in compliance of A-3 order of this Tribunal. In the said representation applicant is basically claiming re-engagement stating that during the month of September, 1991 S/Shri N.Sasidharan Pillai, M. John, L. Vasanthakumar, B. Krishnankutty and D. Dinesan were re-engaged who were ineligible. His case was also that his juniors Smt. T.N. Kanakakumari and Smt. M.G. Latha etc. were being considered for re-engagement overlooking his seniority. He went on to submit in the representation that he remained unemployed all these years vesting his trust in the third respondent and hoping that he would consider him for re-engagement in his turn. According to him he was entitled to be considered for re-engagement/absorption in preference to S/shri N. Sasidharan Pillai and others and hence he be considered for re-engagement /absorption with consequential benefits of such absorption from the date of absorption of



Sasidharan Pillai and others. The impugned order A-5 dated 8.7.99 had been given in reply to the representation. According to the applicant, this reply was arbitrary, discriminatory and contrary to law and hence ought to be quashed. He also sought a declaration that he was entitled to be re-engaged and absorbed in the Traffic department in preference to casual labourers with lesser number of casual service and ineligible ones and sought a direction to the respondents accordingly. Respondents have resisted his claim. They submitted that applicant had not established as to how the persons mentioned by the applicant were juniors to him and how they were ineligible to be considered for engagement and absorption in preference to the applicant. It was also submitted that these persons had not been impleaded. I find considerable force in this latter submission. When the applicant alleges that S/Shri Sasidharan Pillai, etc. were ineligible to be considered for re-engagement and absorption and claims preference over them in the matter of re-engagement then he should have impleaded them in the array of respondents especially when they had been re-engaged and absorbed as long back as in the year 1991. Learned counsel for the applicant would submit that even if those persons had not been impleaded the re-engagement of Smt. Kanakakumari had taken place only in 1999 and she being junior to the applicant he was entitled to preferential re-engagement / absorption, over Smt. Kanakakumari. I find that Smt. Kanakakumari had also not been impleaded as a party respondent. When applicant is seeking preferential absorption against certain other persons who are already in service, the same would mean that he is seeking seniority and service benefits above such regular employees. Such a relief could not be granted by this Tribunal without hearing those likely to be affected.



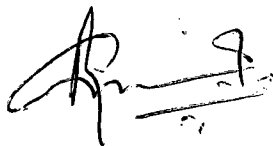
8. As regards Smt. Kanakakumari, according to the respondents she had been re-engaged in compliance with the orders of the High Court in O.P.No.8069/98. A copy of the judgment of the High Court in that OP was made available during the hearing. I find that this OP was filed against the order of this Tribunal in O.A.No. 205/95. In O.A. 205/95 on the agreement of the counsel on both sides that the matter may be placed before the sixth respondent therein, viz. the Regional Labour Commissioner (Central), Kochi for a fact adjudication on the applicant Smt. Kanakakumari's position in the Live Register with respect to other persons who were engaged along with her in A-2 and her position with reference to the petitioners who were before the High Court of Kerala in A-5, the sixth respondent therein was directed to consider the matter and make a fact adjudication. Railways were directed to place the matter before the sixth respondent and were directed to consider the claim of the applicant for re-engagement / absorption as expeditiously as possible in the light of the finding of the sixth respondent. The OP filed by the Railways were dismissed by the High Court for the reason that having acquiesced themselves as a party to the proceedings and having agreed to abide by the order passed by the Regional Labour Commissioner, it was not permissible for the Railways to come before the High Court to challenge the findings of facts rendered by the Regional Labour Commissioner after hearing both the parties and on appreciation of all the documents and other evidence produced before him. Thus, what I find is that Smt. Kanakakumari had approached this Tribunal in 1995, her initial appointment was after a process of interview and selection, she was lastly engaged in 1991 since when she had been representing for her re-engagement, in the O.A. filed by her Regional Labour Commissioner was the sixth respondent and he on the direction



of this Tribunal made finding on facts that she was senior to the petitioners in the OP filed before the High Court earlier. That is not the position in this case.

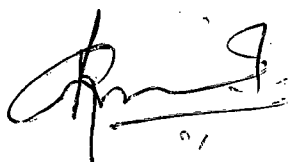
9. It has also been stated in the reply statement that Smt. M.G. Latha in O.A. 505/95 and Shri Thulasi Jeyasenan in O.A. No. 1718/98 were ordered to be re-engaged by this Tribunal but the said order had been stayed by the High Court in O.P No.8145/99 and 13343/2000. They were at Sl.No. 6 and 10 of the seniority list respectively. According to the reply statement the applicant's position is at Sl. No. 12. and this had not been disputed.

10. It is also not under dispute that the applicant was last engaged in 1991 and for the first time he approached this Tribunal in 1999 after a period of 8 years. His cause of action arose as soon as S/Shri Sasidharan Pillai and others were engaged and absorbed in 1991. By not challenging the same at that time he has accepted the same. Just because another person who was senior to them (Smt. Kanakakumari) challenged their engagement successfully in this Tribunal cannot in my view give a cause of action to the applicant. If such a proposition is accepted, a situation as given below could arise. According to the applicant S/Shri Sasidharan Pillai and others were ineligible. Once this is accepted, the action of the respondents in their re-engagement and absorption in 1991 was wrong and irregular. However, Smt. Kanakakumari approached this Tribunal and got an order in her favour and she got re-engaged. Now the applicant is before this Tribunal quoting Kanakakumari's case. If this Tribunal gives an order in his favour somebody else who is senior to him can approach quoting the applicant's case. Thus, the respondents when they do not need any casual labour at



present in the Traffic/Commercial Department will end up having a number of persons on their rolls because of this Tribunal's orders. Such a situation will develop in this case because the alleged juniors/ineligible persons had not been impleaded.

11. Now let me examine the ground of unconstitutionality advanced by the applicant. Hon'ble Apex Court in State of Bihar and Others Vs. Kameshwar Prasad Singh & Another (JT 2000 (5) SC 389) held "The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals others cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits." In this case the alleged irregular action had been committed by the respondents in 1991, which gave rise to the claim of Smt. Kanakakumari who got a judgment in her favour and got reengaged. This is the basis of applicant's claim in this O.A. On the basis of the law laid down by the Hon'ble Supreme Court, the above does not give rise to any legal or constitutional right to the applicant over the persons who are senior to him in the live register. Applicant is at Sl.No. 12 and unless those who are above him are re-engaged he does not have any right for re-engagement. This is what is stated in the impugned order. According to the respondents there is no requirement of casual labourers in the Traffic department of Southern Railway, Trivandrum Division and as and when requirement comes up, the applicant would be considered for engagement in his turn.



12 For the reasons stated above I do not find any infirmity in A-5 impugned order and I reject the relief seeking that it be quashed. I hold that the applicant is entitled only for consideration for engagement against any future requirement in his turn to the extent permitted under the Man power Planning, as stated in A-5. Respondents Railways shall consider the case of the applicant for re-engagement accordingly.

13. The Original Application stands disposed of as above with no order as to costs.

Dated the 26th February, 2001.


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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List of Annexures referred in this Order

- A1 A true copy of applicant's service card showing the casual labour service of the applicant in Southern Railway, Trivandrum Division.
- A2 A true copy of the representation dated nil submitted by the applicant to the third respondent.
- A3 A true copy of the order in O.A. No. 531/99 dated 29.4.99 passed by this Tribunal
- A4 A true copy of the representation dated 5.5.99 submitted by the applicant to the third respondent.
- A5 A true copy of the letter V/P 407/II/CH/Gr.D/Vol.IV dated 8.7.99 issued by the 3rd respondent.