# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 128/92 & 557/92

DATE OF DECISION 22.7.93

Shri C.S. Visvanatha Pillai
Shri R. Krishnankutty Pillai — Applicant (s) in OA 128/92, 557/92

Shri P. Sivan Pillai — Advocate for the Applicant (s)

Versus

1. Union of India, Genl Manager, Southern Railway, Madras.
2. Divl Personnel Officer, SR, Trivandrum.
3. Sr Supdt., RMS 'TV' DM, Trivandrum (in OA 557/92 only)
4. Chairman, Railway Board, N.Delhi — Respondent (s)

CORAM : Smt. Sumati Dandapani, Advocate for the respondents.

The Hon'ble Mr. N. Dharmadan - Judicial Member

&

The Hon'ble Mr. R. Rangarajan - Administrative Member

1. Reporters of local papers may be allowed to see the Judgement
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal

JUDGEMENT

R. Rangarajan, AM.

The facts of the case, the law involved and the relief prayed for are identical in OA 128/92 and 557/92 and hence, both the OAs are taken together and a common order passed with the consent of the concerned parties.

2. In OA 557/92, the applicant prays for re-engagement as a casual labourer. He was initially engaged as a casual labour on 8.4.1975 in the construction unit. He continued in that unit upto 20.4.76 and from 21.4.76 to 20.11.76. He was retrenched on 21.11.1976.

3. The applicant in OA 128/92 was engaged as a casual labour in the Open Line Permanent Way in the Civil Engineering

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Department on 28.5.1969. He continued as such upto 17.10.70. Thereafter, he was re-engaged on 17.12.72 under the construction organisation and was retrenched from 5.1.1975.

4. OA 557/92 is taken as a representative one for further examination of the issues involved in both the OAs. The applicant in this OA made a representation dated 12.12.90 for re-engagement as casual labour. He had earlier approached this Tribunal in OA 842/91 wherein the Tribunal had directed the respondents to dispose of the representation of the applicant dated 12.12.90 at Annexure A3. A reply was received by him stating that his application was received in the office of the Divisional Personnel Officer, Trivandrum, only on 4.9.90 after the prescribed target date and hence, his name was not registered in the supplementary live casual labour register(Annexure A5). It is also stated in the Annexure A5 reply that his representation dated 12.12.90 itself is dated after the prescribed time limit, it could not be considered for registering his name in supplementary live casual labour register. He contested this letter and produced documents from the Posts & Telegraph Department to prove that his earlier representation was received on 31.8.90 as per Annexure A2 series. The authorities accepted the fact that it was received in time. However, they have once again turned down his request because of Annexure A6 letter.

5. The respondents in their reply have stated that the Hon'ble Supreme Court had decided the cut off date as 31.3.1987 for the retrenched casual labourers prior to 1.1.81 to register their names to find a place in the live register. Those applications received after the cut off date were not to be considered and the Railway Board vide their letter dated 5.12.90 instructed the Railways not to entertain such applications at this distant time. This reply is Annexed as Exhibit R2 which is the same as Annexure A6.

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The respondents further contend that in view of Exhibit R2 letter which has been issued on the basis of the decision of the Hon'ble Supreme Court, they have no option except to reject his application.

6. Aggrieved by the refusal of the respondents to entertain his claim for re-engagement, the applicants in the above said OAs have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

7. The learned counsel for the applicant has contested the validity of the Annexure A6 letter of the Railway Board. He has stated that the Annexure A6 letter is based only on an executive decision and has no force of law. He has stated that the decisions of the Hon'ble Supreme Court in Inder Pal Yadav and Others vs. Union of India and Others, (1985) 2 SCC 648, and Dakshin Railway Employees Union, Trivandrum Division vs. General Manager, Southern Railway and Others, (1987) 1 SCC 677, relate to regular absorption of the casual labourers in Railways and not for re-engagement. He emphatically stated that re-engagement of casual labour is governed by the provisions in Chapter V-A of the Industrial Disputes Act, 1947 read with Rule 78 of the Industrial Disputes (Central) Rules, 1957. He also states that the respondents are bound to give employment to the retrenched workmen who offer themselves for re-employment without any time limit giving preference over other persons and juniors, if they have been already re-engaged. The respondents clarified that the Hon'ble Supreme Court's judgement is for re-engegement and the Chief Personnel Officer's letter dated 11.7.90 has been cancelled by Exhibit R2 letter of the Railway Board.

8. Having heard the learned counsel on both sides, we find that the solution to the contention of the parties revolves around the word 'absorption' used by the Hon'ble Supreme Court

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in the above quoted judgements. For this, we have to see the scheme prepared by the Railways, which was submitted to the Hon'ble Supreme Court and interpret the word absorption used by the Hon'ble Supreme Court in the above said decisions. In Inder Pal Yadav and Others vs. Union of India and Others, (1985) 2 SCC 648, in the preamble to the judgement, the Hon'ble Supreme Court observed as follows:-

> "No one is unaware of the fact that Railway Ministry has a perspective plan spreading over years nay decades and projects are waiting in queue for execution and yet these workmen were shunted out (to use a cliche from the railway vocabulary) without any chance of being re-employed."
>
> (Emphasis added)

In this, the Hon'ble Supreme Court has used the word 're-employed'. The relevant portion of the scheme submitted by the Railways on which some modification was made by the Hon'ble Supreme Court, reads as under:-

"5.1. As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as 'project casual labour') may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided further as under:

(a) These orders will cover:

(i) Casual labour on projects who are in service as on January 1, 1984; and

(ii) Casual labour on projects who, though not in service on January 1, 1984, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or will complete the said prescribed period of continuous employment on re-engagement in future. (A detailed letter regarding this group follows.)

(b) The decision should be implemented in phases according to the schedule given below:-

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| Length of service (i.e. continuous employment) | Date from which may be treated as temporary. | Date by which decision should be implemented. |
|---|---|---|
| i) Those who have completed five years of service as on January 1, 1984 | January 1, 1984 | December 31, 1984 |
| ii) Those who have completed three years but less than five years of service as on January 1, 1984 | January 1, 1985 | December 31, 1985 |
| iii) Those who have completed 360 days but less than three years of service on January 1, 1984 | January 1, 1986 | December 31, 1986 |
| iv) Those who complete 360 days after January 1, 1984 | January 1, 1987 or the date on which 360 days are completed whichever is later. | March 31, 1987 |

5.2. The Ministry would like to clarify here that casual labour on projects who have completed 180 days of continuous employment would continue to be entitled to the benefits now admissible to them (so long as they fulfil the conditions in this regard) till they become due for the benefits mentioned in the preceding sub-paragraph."

(Emphasis added)

In this protion 5.1(a) (ii) it clearly states that the scheme is for re-engagement in future only. The Hon'ble Supreme Court had modified the scheme in para 5.1(a)(i) in which the casual labour in project who are in service as on January 1, 1984 has been modified as January 1, 1981. The relevant portion indicating the modification is reproduced below:-

".....Burdened by all these relevant considerations and keeping in view all the aspects of the matter, we would modify part 5.1(a)(i) by modifying the date from January 1, 1984 to January 1, 1981. With this modification and consequent rescheduling in absorption from that date onward, the scheme framed by

> Railway Ministry is accepted and a direction is given that it must be implemented by repeating the stages consistent with the change in the date as herein directed."
>
> (Emphasis added)

Here, the word 'absorption' used in this judgement should be read in the context of the preamble to this judgement and the relevant portions of the scheme. Both in the preamble and the relevant portion of the scheme, it has been made amply clear that the whole issue is in regard to re-employment/re-engagement of retrenched casual labourers. Hence, the word absorption should not be read in isolation, but in the context of what is stated above. If we look at this angle, it will be clear that the Hon'ble Supreme Court meant only re-engagement, even though it used the word 'absorption'. In our opinion, the word absorption is loosely used to mean re-engagement and not absorption on regular basis.

9. In para 6 of the judgement, it has been stated that the Railway Administration should prepare a list of project casual labour with reference to each division of each railway and then start absorbing those with the longest service as enunciated in Section 25-G of the Industrial Disputes Act, 1947. Para 6 is reproduced below for convenience:-

> "To avoid violation of Article 14, the scientific and equitable way of implementing the scheme is for the Railway Administration to prepare, a list of project casual labour with reference to each division of each railway and then start absorbing those with the longest service. If in the process any adjustments are necessary, the same must be done. In giving this direction, we are considerably influenced by the statutory recognition of a principle well known in industrial jurisprudence that the men with longest service shall have priority over those who have joined later on. In other words, the principle of

last come first go or to reverse it first come last go as enunciated in Section 25-G of the Industrial Disputes Act, 1947 has been accepted. We direct accordingly."

(Emphasis added)

The very fact that this para says to prepare a list of project casual labour for re-engagement and then start absorbing them as per the length of service, shows that the whole judgement is for re-engagement of the casual labour and to prepare a live register to keep them for final absorption as and when vacancies arise in their turn. Nowhere it is said that the list is prepared only for the purpose of absorption and not for re-engagement.

10. The judgement in Dakshin Railway Employees Union, Trivandrum Division vs. General Manager, Southern Railway and others, (1987) 1 SCC 677, is an extension of the scheme already approved by the Hon'ble Supreme Court in terms of the judgement previously quoted wherein the Hon'ble Supreme Court has said that the orders"in paragraph 5.1.(a)(ii) that "These orders will cover casual labour on projects, who, <u>though not in service on January 1, 1981</u>, had been in service of Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or have since completed or will complete the said prescribed period of continuous employment on <u>re-engagement after January 1, 1981</u>". The Hon'ble Supreme Court directed the Railways to include the petitioners in this case also in the scheme for absorption as formulated pursuant to the direction of the Court. Here also, we have to see the prayer of the petitioners. The prayer of the petitioners, as included in the judgement, is meant only for taking them back into employment. The relevant portion is reproduced below:-

"The petitioners before us who are 149 in number claim that they are entitled to the benefits of the modified scheme and they pray that they should be forthwith taken back into employment."

(Emphasis added)

The applicants pray only for taking them back into employment forthwith. They have not prayed for absorption but only re-engagement as is evident from their prayer. Here also, the word 'absorption' should be viewed from the claim submitted by the applicants. The applicants claim only re-engagement and the word used absorption is also to that effect and cannot be construed as absorbing them regularly.

11. In the Dakshin Railway Employees Union case cited above, when the learned counsel brought to the notice of the Hon'ble Supreme Court the difficulties which would be experienced by the Railway Administration if without any limitation persons claiming to have been employed as casual labour prior to January 1, 1981 keep coming forward to claim the benefits of the scheme, the Hon'ble Supreme Court indicated the cut-off date for receipt of applications from the retrenched casual labourers prior to 1.1.1981, as 31st March, 1987. The relevant portion of the judgement is reproduced below:-

"Shri Krishnamurthy, learned counsel for the Railway Administration brings to our notice the difficulty which will be experienced by the Railway Administration if without any limitation persons claiming to have been employed as casual labour prior to January 1, 1981 keep coming forward to claim the benefits of the scheme. We understand the difficulty of the Administration and we, therefore, direct that all persons who desire to claim the benefits of the scheme on the ground that they had been retrenched before January 1, 1981 should submit their claims to the Administration before March 31, 1987. The Administration shall then consider the genuineness of the claims and process them accordingly....."

(Emphasis added)

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12. Thus, from the above, it is very clear that the word 'absorption' used in the above two judgements are for 're-engagement' of the casual labourers as per the scheme prepared by the Railways and the claim of the petitioners. The word 'absorption' in no way can be explained as regular absorption except meaning re-engagement in the light of the above detailed discussion. Hence, the contention of the learned counsel that the word 'absorption' means 'regular absorption' and not re-engagement, cannot be accepted and his argument in this connection has not impressed us.

13. We have also examined the mechanism of regular absorption of casual labour in Railways. Casual labourers are regularly absorbed on the basis of the total number of days of casual service put in by them. A Screening Committee enlist the casual labourers on the basis of their length of casual service observing due formalities and the regular absorption is done from the list recommended by the Screening Committee. A live register for those who were in service as on 1.1.1981 ~~and after is kept~~ and a supplementary live register for those who were retrenched earlier to 1.1.1981 was also maintained. On the basis of the total number of days of casual service, they are absorbed giving preference to those who are in the live register according to availability of vacancy and then regular absorption of those who are in the supplementary live register. Casual labourers are not regularly absorbed directly. All of them have to go through the regular drill of keeping their names in the live register and based on their total number of days of casual service they are regularly absorbed. In the light of the practice existing in the Railways, it cannot be said that the scheme prepared by the Railway Administration is for final absorption and not for re-engagement. We are convinced that the practice in vogue

has to be taken note of while interpreting the meaning of the word 'absorption' used in the above judgements of the Hon'ble Supreme Court.

14. In a recent case, some casual labourers in the South Eastern Railway, who were employed between 1964 to 1969 and retrenched between 1975 and 1979, had approached the Hon'ble Supreme Court in Ratan Chandra Samanta & others Vs. The Union of India & Others (JT 1993 (3) SC 418) and the Hon'ble Supreme Court had dismissed the petition because of the fact that the retrenchment took place 15 years ago and if the Hon'ble Supreme Court accepted the prayer of the petitioner, it would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed. Here also, the Hon'ble Supreme Court has used the phrase "re-employed in Railways both been recognised by the Railways and this Court". This Court means the decision of the Hon'ble Supreme Court in the earlier judgements quoted above. This also strenthens the view that the word absorption used in the judgements of the Hon'ble Supreme Court cited earlier, means re-engagement only and not regular absorption as argued by the counsel for the applicant. The observations of the Hon'ble Supreme Court in this regard are reproduced below:-

> "Two questions arise, one, if the petitioners are entitled as a matter of law for re-employment and other if they have lost their right, if any, due to delay. Right of casual labourer employed in projects, to be re-employed in Railways has been recognised both by the Railways and this Court. ....."
>
> (Emphasis added)

15. In the light of our above discussion, we have come to the conclusion that the casual labourers who were retrenched prior to 1.1.1981 should have registered their names for re-engagement on or before 31.3.1987. Anybody failed

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to do so has, no doubt, lost his chance to get enlisted in the appropriate Live Register for re-employment. In this view of the matter, the Railway Board's letter at Annexure A6 is valid. It has the legal backing of Hon'ble Supreme Court's decision and cannot be termed as illegal. Further, it is very unfortunate that the Railways had issued letter dated 11.7.90 extending the date for registration from 31.3.1987 to 31.8.1990. This letter of the Railways has no force in law and has to be rejected. The Railways themselves have stated that the Railway Board's letter at Annexure A6 has cancelled their letter of 11.7.90. It should be made very clear by the Railways so that there exists no ambiguity. The Railways should be more careful in issuing such letters in future when different instructions are given by the higher authorities, namely, the Railway Board and other Constitutional authorities. By this judgement also the applicants in the present case are not entitled to be re-engaged as they have left the service 15 years ago.

16. As we have concluded that retrenched casual labourers who had registered their names on or before 31.3.1987 alone are eligible to get enlisted for re-engagement and eventual regular absorption, we do not propose to go further into the argument in regard to the provisions as laid down in Chapter V-A of the Industrial Disputes Act read with Rule 78 of the Industrial Disputes (Central) Rules, 1957 as elaborately argued by the learned counsel for the applicant.

17. In the result, we have no other option except to reject the above two applications, namely, OA 128/92 & 557/92 as having no merit. Though we sympathise with the applicants we have no authority to give them any relief in view of the decisions of the Hon'ble Supreme Court discussed above. However, the Railways have freedom to consider the representation of the applicants for re-engagement, if any of their juniors

who have not applied for registration before 31.3.87, but have been re-engaged later as averred by the applicants. The applicants may also be given a personal hearing by the 2nd respondent, if they so desire to substantiate their contentions.

18. Hence, both the above applications are rejected. The parties will bear their costs.

19. After the above two OAs had been reserved for judgement, the learned counsel for the applicant filed M.P.1117/93 for re-hearing and 1118/93 in OA 557/92 to produce certain documents. Accordingly, the case posted before Bench for being "spoken to" giving opportunity to the learned counsel for the respondent. During the hearing, he had dealt with the various relevant points which were necessary to be brought out in his opinion in the documents produced along with MP 1118/93 which was also admitted. The submissions made by the learned counsel on the basis of the discussion, are analysed as follows:-

He has submitted the following documents:-

(i) (1985) 2 SCC 648 (Annexure A5)

(ii) Copy of the order in Civil Appeal Nos.2105-11 of 1985 (Annexure A6);

(iii) (1987) 1 SCC 677 (Annexure A7);

(iv) Judgement of this Tribunal in a batch of cases in OA 569/90 (Annexure A6); and

(v) Judgement of this Tribunal in OA No.1561/92 (Annexure A9).

We have already discussed Annexures A5 and A7 judgements of the Hon'ble Supreme Court elaborately. Hence, these two Annexures need not be gone into any further. Annexure A6 judgement of the Hon'ble Supreme Court is an extension of the Annexure A5 judgement of the Hon'ble Supreme Court in Inderpal Yadav's case. It is a very short judgement granting of Special Leave Petition without elaborate consideration of the issue involved. Here also, the appellants were

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reinstated, that means, re-engaged as per this order and it gi^ves no clue in regard to interpretation of the word 'absorption' as discussed in earlier paragraphs. This Annexure A6 document does not take us to any conclusion that the word 'absorption' means final absorption and not re-engagement as interpretted by the learned counsel for the applicant. As pointed out during hearing on the MP, Annexure A8 in no way interprets the word absorption used in the Hon'ble Supreme Court's earlier judgements. Hence, this Annexure is not material in this case and it does not support the applicants in accepting their arguments based on the

Vera absorption.

20. By Annexure A9, the learned counsel for the applicant wanted to bring out that the Railways themselv^es ha^ve accepted that casual labourers in the open line junior to these project casual labourers were re-engaged. Hence, the case of the applicants in these OAs should also be ^viewed from this angle. We do not propose to enter into any fact finding adjudication, as we ha^ve already reser^ved freedom to Railways in para 17 abo^ve to consider the representation of the applicants for re-engagement in accordance with law. We ha^ve also directed the Railways to gi^ve personal hearing to the applicants in the abo^ve mentioned OAs if they so desired. Hence, the right of the applicants in pursuing the matter is not prohibited. We would like to point out hear that the additional documents now produced along with the MP 1118/93 in no way help the Tribunal to interpret the word absorption in the Hon'ble Supreme Court's judgement in Inderpal Yadav's case. Hence we have to come to the conclusion that our earlier interpretation stands good and there is no need to change the interpretation given by us earlier. The MPs are disposed of as above.

Sd/-
( R. RANGARAJAN )
ADMINISTRATIVE MEMBER

Sd/-
( N. DHARMADAN )
JUDICIAL MEMBER

CERTIFIED TRUE COPY 93
Date 3.8.93
Deputy Registrar

CENTRAL ADMINISTRATIVE TRIBUNAL * ERNAKULAM BENCH *