

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 60/91 199

DATE OF DECISION 24.2.93

C.Ravikumaran Nair _____ Applicant (s)

P.Sivan Pillai _____ Advocate for the Applicant (s)
Versus
Union of India & 2 others _____ Respondent (s)

M/s M.C.Cherian & T.A.Rajan _____ Advocate for the Respondent (s)

CORAM :

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

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

1. Whether 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 applicant Shri C.Ravikumaran Nair (C.Ravi), son of Shri Chandrasekaran, having aggrieved by the refusal of the respondents to engage him as a casual labour considering his past casual labour service, has approached this court under section 19 of the Administrative Tribunals Act, 1985, for the following reliefs:

- "a) To direct the respondents to re-engage the applicant forthwith as a casual Moppila Khalasi or Khalasi with attendant benefits from the date of engagement of his juniors.
- b) To issue such other orders or directions as deemed fit and necessary by this Tribunal in the facts and circumstances of this case."

2. The applicant avers that he has casual labour service as below:

6.12.68 to 20.4.71
27.12.72 to 5.6.76
1979 to June 1981
20.6.85 to 11.3.86.

He further states that in the above mentioned period he had worked as Khalasi for the following periods:

6.12.68 to 26.4.71

1979 to June 1981 and as Mappla Khalasi for the following periods:

27.12.72 to 5.6.76

26.6.85 to 11.3.86.

He further states that the particulars of applicant's service from 1979 to 1981 is not included in the casual labour cards but available in the L.T.I. register of the Depot Store Keeper (Construction), Quilon which office later merged with the office of the 4th respondent.

3. He affirms that he was engaged at Tuticorin under Bridge Inspector from 26.6.85 to 11.3.86. The Bridge Inspector, Tuticorin was a supervisory official working under Dy. Chief Engineer, Palayamkottai. He states that the applicant was specially summoned for the work since Mappla Khalasis were not available locally. He avers that his juniors were engaged as casual labourers in the Alleppey-Ernakulam line in January & September 1990. Mappla Khalasis junior to him at the time of his retrenchment were also engaged. He has given a list of 137 casual labour Khalasis junior to him and 3 Mappla Khalasis who were also junior to him who were engaged without considering him. He states that as he was a retrenched casual labourer, he has a preferential right to be employed under Section 25H of the I.D. Act, 1947 read with Rule 77 and 78 of the Industrial Dispute Central Rules 1957.

4. To corroborate that the applicant Sri Ravikumaran Nair is same as C.Ravi entered in the casual labour card at Annexure A2, he has produced a certificate from the Thahsildar, Karthikappalli dated 3.10.90 at Annexure-5. Extract of the admission register of the Govt. High School for Boys, Haripad, is also produced by him at Annexure-A6 to show that his date of birth is same as what is entered in the casual labour card at Annexure-A2. To prove that

2

he has worked in the Trivandrum Division of S.Railway even after 1981, he has produced an Interim Order at Annexure-A4 pronounced in O.P.4648/80 wherein the Hon'ble Mr. Justice Shri T.Chandrasekhara Menon has given the orders to pay the arrears of the petitioners due to them upto 21.6.1981. C.Ravi is one of the petitioners in this O.P. However, this O.P. was dismissed with the direction to dispose of the representations as expeditiously as possible in accordance with the procedures of the Railway Establishment Manual. Further, he has stated that the Dy. Chief Engineer (Const.), Palayamkottai is coming under Construction Unit of TVM Division and that he has right to be considered for including him in the live register of TVM Division, in terms of Rly. Board's letter RBE.No.167/86 at Annexure-7. He has submitted representations addressed to the 2nd respondent at Annexures 8 & 9 for which no reply has been given to him.

5. The respondents have denied the averments made in the O.A. which in their opinion are not borne by facts. Even earlier, the respondents have disputed that the applicant Shri Ravikumaran Nair is not the same person as C.Ravi for whom the casual labour card at Annexure-2 is issued. They have also disputed that the said Shri Ravikumaran Nair has even worked as a casual labour in Quilon from 1979 to June 1981 in the absence of any record to prove the same. The respondents aver that they also do not possess any record to prove this claim as the claim is very balated. The respondents believe that even presuming that he has worked in Railways in TVM division, he served only upto 5.6.1976. As he has not worked in TVM division after 1.1.81, he has no claim to be taken on the live register of TVM division. The respondents have further stated that the casual labour service reported to have been rendered by him till 11.3.86 under BRI Tuticorin does not come under the jurisdiction of TVM Division. Hence on this score also his claim cannot be entertained. As the case in the OP 4648/80

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ended with dismissal, the interim order cannot be taken as a proof to his claim of having worked in Quilon during 1981.

6. This OA was filed as far back as 8.1.1991. The amended OA was filed on 18.11.92. In the intervening period ~~xxx~~⁴ a number of Miscellaneous Petitions, rejoinders and additional replies were filed to sustain or reject the claims by the applicants and the respondents. Already lot of water has flown in. A long period of 2 years has lapsed. If the Tribunal has to further examine the objections raised in the additional reply statement filed by the respondents dated 25.1.93, the case will be further prolonged and no tangible result will be achieved. Considering the facts and records available, the averments made in the affidavits and the arguments advanced during the course of hearing, we have decided to examine them and pronounce our judgement on the basis of the records available and the arguments of the learned counsel on both sides.

7. The main questions to be answered which will provide the key to decide this case are--

- i) whether the applicant Shri C.Ravikumaran Nair, son of Shri Chandrasekharan is the same person C.Ravi as entered in the casual labour card;
- ii) whether Sri C.Ravikumaran Nair (C.Ravi) has worked in TVM division after the crucial date of 1.1.81 as casual labour to give him the right to find a place in the live register of TVM division in terms of the Railway Board's letter at Annexure-7.

8. We have heard the learned counsels of both sides and also perused the records produced before us. The certificate dated 3.10.1990 given by the Thahsildar Karthikapalli clearly states that Sri C.Ravikumaran Nair of Haripad village is one and the same person as C.Ravi, which name is entered in the casual labour card. The date of birth entered as 10.3.1953 in the admission register of Govt. High School for Boys, Haripad tallies

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with the date of birth entered in the casual labour card issued to him at Annexure-A2. The name of the father, namely, Chandrasekharan is also same in both the documents. The respondents have not effectively brought out in their reply the reasons for not accepting these documents. There is no documentary evidence on record to disprove the materials in these documents. Hence, we are inclined to accept that the applicant Sri C.Ravikumaran Nair is the same person as C.Ravi entered in the casual labour card.

9. In regard to the second question the respondents have not accepted the interim order in OP 4648/80 of the High Court dated 29.6.81 to pay the wages to the petitioner due to them upto 21.6.81 as a clinching document to prove that the applicant has worked at Quilon Division after 1.1.81 in view of the fact that the above said OP was ultimately dismissed by the Hon'ble High Court of Kerala finding that the retrenchment as on 5.12.80 was not bad. The respondents opined that because of the dismissal of OP 4648/80, the petitioner cannot claim to include him in the live register though he has been paid wages in terms of the interim order in the above said OP. This in our opinion is not tenable. The very fact that he has been paid upto 21.6.81 for having been employed in the jurisdiction of TVM division gives him the right to be considered for including his name in the live register of the casual labour.

10. The respondents have said that his casual labour service under the BRI Tuticorin comes under Madurai Division as he has got himself engaged as Mapla Khalasi under this Inspector on his own. This also in our opinion is not feasible as the Mapla Khalasis would not have been entertained without proper reference from the competent authority. The reference must have emanated from the Dy. Chief Engineer (Construction) Palayamkottai whose jurisdiction extends to the TVM Division also. The very fact that the other Mapla Khalasis engaged

by the Dy.C.E. (Construction) Palayamkottai were repatriated to TVM Division in the project. indicates that C.Ravikumaran Nair, the present applicant is also eligible for consideration on the same lines. In our opinion, his exclusion is not justified.

11. Considering the facts and circumstances of this case, the ends of justice will be met if we direct the 2nd and 3rd respondents to consider his representation for inclusion of his name in the live register of TVM Division in the light of the observations made by us in the foregoing paras. The respondents will ascertain from their records and the records produced by the applicant after due verification, ~~and grant him the relief if he satisfies all~~ the no. of days of his service as casual labour while considering his representation for inclusion of his name at the appropriate position in the live register of TVM Division. Accordingly we allow this O.A. to the extent indicated above and direct the respondents to do so.

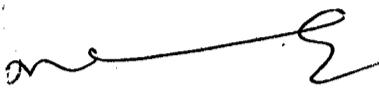
12. In the course of the arguments the learned counsel for the respondents projected the view that if this case is considered favourably, there will arise many such bogus claims which may lead to a situation where the genuine casual labourers will be deprived of their rightful position in the live register, thereby losing their chances for absorbing them in Railways either in casual or regular capacity. This view point was also considered by us carefully. We are of the opinion that a peculiar case like this may not arise. Even if it arises the competent authority has the full right to reject such bogus claims. It is settled proposition that the dictum of a case alone applies to other cases. We are not laying down any law in this case to be followed as

requirements.

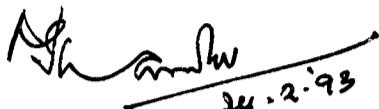
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Each case has to be examined on it's own facts and circumstances. This judgement cannot be quoted as a precedence to cases arising in future. We give the liberty to the respondents to decide similar cases, if any, coming in future, after examining the facts thereof.

There will be no order as to costs.



(R.Rangarajan)
Administrative Member



24.2.93
(N.Dharmadhan)
Judicial Member

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

C.P(C) No.190/94 in O.A.60/91

Tuesday this the 30th day of August, 1994.

CORAM

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR. S. KASIPANDIAN, ADMINISTRATIVE MEMBER

C.Ravikumaran Nair,
Biju Bhavan, Mannar Salai PO
West Gate, Haripadu.

.... Applicant/Petitioner

Vs.

1. Dr.Sampath Kumar,
Divisional Personnel Officer,
Southern Railway, Trivandrum Divn.
Trivandrum-14.

2. Sri Nathaniel, Deputy Chief Engineer
(Construction) Southern Railway,
Ernakulam South. Respondents

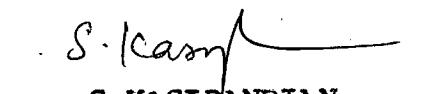
(By Advocate Mr.Mathew J Nedumpara)

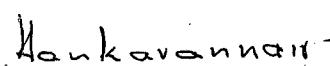
O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Learned Counsel for the petitioner Shri R.Santhoshkumar submits that he relinquished the vakalat and that the petitioner has taken back the files from him. The petitioner is not present. There is no representation either. We dismiss the petition but without costs.

Dated 30th August, 1994.


S.KASIPANDIAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN