

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~XXXX~~ No.

75/90

~~199~~
~~XX~~

DATE OF DECISION 24.4.1991

K.Sasidharan Applicant (s)

M/s.K.Ramakumar & V.R.Ramachandran Nair Advocate for the Applicant (s)
Versus

Union of India represented by the Respondent (s)
General Manager, Southern Railway, Madras and another

Mrs.Sumathi Dandapani — for R.1. Advocate for the Respondent (s)
Mr.P.A.Mohamed — for R.2.

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

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

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 21.1.1990 filed under Section 19 of the Administrative Tribunals Act, the applicant, who according to him, has been working as a Casual Labourer under the Permanent Way Inspector, Southern Railway between 1977 and 1982 has prayed that the respondents be directed to appoint him in service with all consequential benefits. According to the applicant he was working under the Permanent Way Inspector from 31st October, 1977 to 20th May, 1982 and his services were terminated along with those of 42 other labourers illegally on 20th July, 1982. They moved a petition before the High Court of Kerala which was transferred to the Tribunal and decided by the judgment dated 24th March, 1987 (Annexure-A) in TA 33/87. The order of termination was quashed by the Tribunal on the basis of the statement made by the learned counsel for the respondents therein that in implementation of the judgment of the Supreme Court in Inder Pal Yadav's case, (1985) 2 SCC 648, a Divisionwise seniority list of

Casual Labourers was under preparation for absorption of those with longest service. The grievance of the applicant before us is that while all others who were petitioners with him in the aforesaid case have been absorbed, the applicant who was sick at that time has not been given any appointment. He was undergoing intensive treatment of Paralysis and when he became fit he represented to the Railways on 21.10.1989(Annexure-B) but the respondents have not taken any steps to reengage him. He has also stated that he was found medically fit by the Authorised Medical Attendant. He has argued that his services could not have been terminated in violation of the prescribed manner and denial of re-appointment to him is violative of Articles 14 , 16 and 21 of the Constitution.

2. In the counter affidavit the respondents have denied that the applicant had been working as a Casual Labourer from 31.10.77 to 20.5.82. They have however conceded that he was engaged only with effect from 21.6.1980 under the Permanent Way Inspector, Punalur and when the Track Renewal work was over, the applicant and other 42 Casual Labourers were served with retrenchment notice on 20.6.82 . They obtained stay from the High Court of Kerala on 14.7.82 and were allowed to continue in service. The applicant did not turn up for duty and he approached the High Court of Kerala which passed orders on 13.10.82 (Annexure R.II) directing that "if the petitioner turns up, it goes without saying that he should be given work as was done in the case of others". The applicant, however, did not turn up for duty or informed the authorities ^{of} his difficulty in reporting for duty. They have denied to have received any representation like the one at Annexure-B duly supported by medical certificate. According to them, if he was sick he should have reported the matter to the Permanent Way Inspector, Punalur or the Divisional Personnel Officer. Since he was not keen to join duty their suspicion is that he must have been engaged elsewhere. His whereabouts were also not known. They have argued that there has been no retrenchment in his case and all the 43 Casual Labourers except the applicant who did not turn up for duty, were allowed to continue in duty. They have, further argued that according to the direction of the Supreme Court the benefit of temporary status to project Casual Labourers was to

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be extended to those who were retrenched prior to 1.1.1981 and those who had been retrenched and claimed the benefit under the scheme were to submit their claim before 31.3.87. The applicant's case is not covered by the scheme as there was no retrenchment. Along with the rejoinder the applicant has produced a copy of the service ticket to support his assertion of having been engaged as Casual Labourer between 31.10.77 and 20.5.82 in addition to the period between 21.6.80 and 20.5.82. He has reiterated that he had filed a representation as at Annexure-B and produced the Postal acknowledgment dated 25th October, 1989 at Annexure-D. According to him as the applicant had continued uninterruptedly from 21.6.1980 to 20.5.1982 he had attained temporary status being in the open line.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The respondents have conceded that the ~~the~~ retrenchment notice dated 20.6.82 given to the applicant had been stayed by the High Court of Kerala on 14.7.82 and later set aside by the Tribunal and others who were similarly placed were allowed to continue in service. Their contention is that the applicant did not report for duty and thus had abandoned the work. It is conceded by the learned counsel for the respondents that the name of the applicant had not been removed from the seniority list and no notice for such removal even had been issued to the applicant. They have also accepted that there has been no retrenchment and that in accordance with the directions of the Supreme Court if he had been retrenched, he had a claim to get the benefit of temporary status. If a retrenched employee could have been given temporary status and consequential benefits, there ^{is} ~~was~~ no reason why the applicant who according to the respondents themselves, had not been retrenched, should be denied re-engagement and temporary status, if admissible under the scheme. The applicant has produced sufficient proof to establish his casual engagement between 31.10.77 and 20.5.80 at Annexure-C for more than 360 days.

4. In the facts and circumstances we allow the application with the direction that the applicant like the other 42 Casual Labourers who were

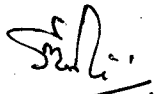
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served with retrenchment notice like him, should also be re-engaged as a Casual Labourer, if he is found physically and otherwise fit for such re-engagement. He should be also given the consequential benefits including that of temporary status depending upon his seniority and eligibility on the basis of the service rendered by him between 1977 and 1982. Action on the above lines should be completed within a period of one month for re-engagement and three months for consequential benefits, from the date of communication of this order. There will be no order as to costs.



(A.V. Haridasan)
Judicial Member

24/4/91



(S.P. Mukerji)
Vice Chairman

2.6.92

CCP 42/92 in
O.A.75/90

Mr. Ramachandran Nair - for the petitioner
Mr. P.A. Mohammed, for respondents

The learned counsel for the applicant states that even though the applicant has been reinstated as per directions of the Tribunal in the Judgment dated 24.4.92, the consequential benefits have not been given. The learned counsel for the respondents seeks some more time for full compliance.

Accordingly, list for further directions on the CCP on 7th July, 1992.

ND

2.6.92

SPM

7.7.92

Mr V R R Nair.
Mr. PA Mohammad for respondents

The learned counsel for the respondents is directed to file a statement about the compliance of the judgment within two weeks with a copy to the learned counsel for the applicant. list for further directions on 21.7.92

7/7

21.7.92.

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Mr. Ramachandran Nair
Mr. PA Mohammed

At the request of the learned counsel for the petitioner, list for final disposal of CCP on 28.7.92.

ND

21.7.92

SPM

SPM dvj

Mr V R R Nair
Mr P A Mohamed by Pm.

At the request of learned counsel for respondents, list for further direction on the CCP on 4.8.92

(ND)
28/7

CSPM
28/7

Reply by Respondent
Filed on 21/7/92
28/7

28/7

4.8.92

Mr. Ramakumar through proxy counsel
Mr. RA Mohammed for Railways

We have heard the learned counsel for both the parties on the CCP. From the statement filed by the original respondents it is clear that not only has the applicant been re-engaged but has been granted temporary status from 1.1.86. We see no further action remaining on our judgment. Accordingly the CCP is closed and notice discharged.

(N. Dharmadan)
Judicial Member

(SP Mukerji)
Vice Chairman

4.8.92

order commu-
cated.
C.L.
11/8/92