IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 76 1990

DATE OF DECISION 31.12.90

K.Surendran Nair — Applicant (s)

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

Versus

Union of India (General Manager, S.Rly., Madras) & 3 others. — Respondent (s)

Smt. Sumathi Dandapani — Advocate for the Respondent (s)

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? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 1.1.90 the applicant, Shri K.Surendran Nair, who had been working as a Gangman in the Southern Railway, has prayed that the respondents be directed to call the applicant for re-medical examination and re-engage him if he is found suitable and to declare that non-consideration of the applicant for re-medical examination is illegal. The material facts of the case are as follows:

2. The applicant was initially engaged on 10.5.78 on daily wages in the Project Work and was transferred to the Open Line on 30.6.84. On completion of 120 days of continuous service in the Open Line, the applicant along with other casual labourers, was sent for medical examination for

grant of temporary status. On 28.9.84 the Divisional Medical Officer, Trivandrum, vide his certificate dated 28.9.84, declared him due to colour blindness to be medically unfit for B.I category for which he was medically examined. On the basis of that certificate, the respondents stopped giving him work from 10.10.84 without any prior notice. The applicant subsequently underwent treatment by an Eye Specialist and represented for re-engagement on 9.11.84 (Annexure-B) along with the medical certificate of normal vision (Annexure-C). Since nothing was heard from the respondents, he sent another representation dated 1.4.85 (Annexure-D) but still there was no response. When the circular of the Southern Railway dated 3.8.88 (Annexure-E) came to his notice, he submitted another representation dated 8.8.89 at Annexure-F.praying that since he had put in 2234 days of service in the Railways between 10.5.78 and 19.10.84, the termination of his service without any notice or terminal benefits was illegal and that he should be absorbed as a regular measure in a suitable category. The contention of the applicant is that termination of his service without any notice is against the provisions of the Industrial Disputes Act and that the respondents should have got him medically examined again after he had submitted the fitness certificate of an Eye Specialist. Having put in 6½ years of continuous casual service he had acquired temporary status and on his being declared unfit for B.I category, the Respondents should have engaged him after examination to a suitable post. He has relied upon the Southern Railway's circular dated 3.8.88 (Annexure-E) by which, for a casual labourer who has rendered more than 6 years of service, relaxed standard of

medical examination is to be applied, for absorption in regular service and that if he is found unfit, he should be considered for alternative appointment carrying lower medical classification.

3. The respondents have stated that, since in the medical examination conducted for conferring temporary status to the applicant, he was found colour blind and therefore unfit for B.I. classification, his casual service was terminated. They have also indicated that the application is time-barred. They have further contended that he was not given temporary status, as claimed by him, and that he was not entitled to the benefits of section 25F of the Industrial Disputes Act. According to the respondents, no notice for declaring him medically unfit is necessary.and the benefits of the circular dated 3.8.88 at Annexure-E are not applicable to him as the circular pertains to empanelment for regular appointment of casual labour and not for grant of temporary status. They have referred to para 1020 of Indian Railway Establishment Manual in which the right of appeal against adverse report of medical examination is allowed in cases of error of judgement if an appeal is filed within one month of the date of communication of the report to the applicant. Since he did not file any appeal within one month, his request for another medical examination cannot be granted.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The first question to be considered in this case is whether it was necessary for the respondents to subject the applicant to medical examination merely for grant of

temporary status. In this connection, the following extracts from Rules 2501 and 2505 of the Indian Railway Establishment Manual would be relevant:

" 2501. Definition--

"(a) Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour.

"(b) The casual labour on railways should be employed only in the following types of cases, namely:-

(i) Staff paid from contingencies except those retained for more than six months continuously--Such of those persons who continue to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months or continuous employment.

(ii) Labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment.

(iii) Seasonal labour who are sanctioned for specific works of less than six months duration. If such labour is shifted from one work to another of the same type, e.g. relaying and the total continuous period of such work at any one time is more than six months' duration, they should be treated as temporary after the expiry of six months of continuous employment. For the purpose of determining eligibility of labour to be treated as temporary, the criterion should be the

"period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers.

xxx xxxx xxxx

"Note (1) xxx xxxxx xxxx

(2) Once any individual acquires temporary status, after fulfilling the conditions' indicated in (i) or (ii) above, he retains that status so long as he is in continuous employment on the Railways. In other words, even if he is transferred by the administration to work of a different nature he does not loss his temporary status.

(3) xxx xxx xxxx

(4) Casual labour should not be deliverately discharged with a view to causing an artificial break in their service and thus prevent their attaining the temporary status.

(5) xxxx xxx xxx

xxxx xxx xxxxx

"2505. Notice of termination of service--Except where notice is necessary under any statutory obligation, no notice is required for termination of service of the casual labour. Their services will be deemed to have terminated when they absent themselves or on the close of the day.

"Note:- In the case of a casual labourer who is to be treated as temporary after completion of six months' continuous service, the period of notice will be determined by the rules applicable to temporary Railway servants."

(emphasis supplied)

5. The wordings of Note (1) below Rule 2501 and of the Note below Rule 2505 indicate that temporary status is automatically acquired by casual labourers like the applicant in the Open Line on completion of 6 months of

of continuous casual service. This period of 6 months was reduced to 4 months in 1973. The respondents themselves have conceded that "Open Line casual labours on completion of 120 days of continuous service are eligible for grant of temporary status." The question of getting the applicant medically examined for grant of temporary status did not arise except if the applicant was going to be absorbed in regular cadre. Since the applicant was not to be absorbed in the regular cadre, subjecting him to medical examination for grant of temporary status was not called for. As a matter of fact, the applicant had already put in 2234 days of casual service from 10.5.78 till 10.10.84. From 10.5.78 to 30.6.84 he was in the construction organisation, whereafter, he was transferred to the Open Line.

6. In L.Robert D'Souza V. Executive Engineer, Southern Railway, 1982(1) SLR 864, the Supreme Court held as follows:

> " In order to satisfactorily establish that the applicant belonging to the category of casual labour whose service by deeming fiction enacted in Rule 2505 will stand terminated by the mere absence, it must be shown that the appellant was employed in any of the categories set out in clause (b) or rule 2501. What has been urged on behalf of the respondent is that the appellant was employed in construction work and, therefore, labour on projects irrespective or duration would belong to the category of casual labour. That, however, does not mean that every construction work by itself becomes a work-charged project. On the contrary sub-clause (i) of clause (b) of rule 2501 would clearly show that such of those persons belonging to the category of casual labour who continued to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment. Similarly, seasonal labour sanctioned for specific works for less than six months' duration would belong to the category of casual labour. However, sub-clause (iii) of clause (b) of rule 2501 provides that if such seasonal

labour is shifted from one work to another of the same type, as for example, 'relaying' and the total continuous period of such work at any one time is more than six months' duration, they should be treated as temporary after the expiry of six months' of continuous employment. The test provided is that for the purpose of determining the eligibility of casual labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers. It is thus abundantly clear that if a person belonging to the category of casual labour employed in construction work other than work charged projects renders six months' continuous service without a break, by the operation of statutory rule the person would be treated as temporary railway servant after the expiry of six months of continuous employment. It is equally true of even seasonal labour. Once the person acquired the status of temporary railway servant by operation of law, the conditions of his service would be governed as set out in Chapter XXIII"

(emphasis added)

7. The case of the applicant before us is also similar to the one discussed by the Hon'ble Supreme Court in the aforesaid case. The respondents have accepted in the counter affidavit that the "applicant was initially engaged on 10.5.78 as casual labour on daily wages in the project work by construction organisation" and thereafter he was transferred along with 70 other casual labours and regular employees to the Open Line on 30.6.84. If he had been a casual employee without temporary status, on 30.6.84 he would not have been transferred to the Open Line. In this light also, the applicant has to be considered to have already acquired temporary status before on 30.6.84 itself. In that respect also, his being sent for medical examination in 1984 for grant of temporary status does not arise.

8. That the applicant did not file any appeal against his being declared medically unfit within a period of one month is an argument which ill behoves the respondents to advance, when there is nothing to show that they had taken any step to communicate the adverse medical report to the applicant. Under rule 2505 of the Indian Railway Establishment Manual, quoted above, since the applicant had already acquired temporary status, it was incumbent on the part of the respondents to serve him notice before terminating his casual service. Even as a project casual labour, having completed 6 years of service by 1.1.84 and more than 360 days of service by 1.1.81, the applicant was entitled to the protection available to temporary Railway servants in accordance with the scheme of the Railway Ministry itself in granting temporary status to even project casual labour who was in service on 1.1.81.

9. It has been held by this Tribunal in V.J.Varghese Vs. Union of India, 1988 (2) SLJ 697, that casual workers with temporary status cannot be invalidated on medical grounds without show cause notice.

10. In the facts and circumstances, we allow this application and declare that the applicant had already acquired temporary status when his services were terminated illegally in October 1984. We direct the respondents to reinstate the applicant back to casual service by deeming him to have acquired temporary status without subjecting him to any further medical examination, unless the same is required for his regular absorption in accordance with law. The applicant will be entitled to

all benefits including that of seniority by virtue of his service rendered before October 1984, but he will not be entitled to any arrears of pay for the period he was out of service. There will be no order as to costs.

31/12/90

(A.V.Haridasan)
Judicial Member

31.XII.90

(S.P.Mukerji)
Vice Chairman

31.12.90