

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 90 of 2000

Monday, this the 13th day of November, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. K. Annamalai,
S/o. Kali alias Kuttaiyan,
Ex-casual labourer,
Southern Railway, Palghat Division,
Residing at: Maruthipatti,
Morappur (via), Harur Taluk,
Dharmapuri District. ...Applicant

[By Advocate M/s Santhosh & Rajan (rep.)]

Versus

1. Union of India, represented by
the General Manager, Southern Railway,
Headquarters Office, Chennai-3
2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat.
3. R. Radhakrishna Pillai,
Trackman, Southern Railway,
Palaiyam. ...Respondents

[By Advocate Mrs. Sumathi Dandapani (R 1&2) (rep.)]

The application having been heard on 13th of November, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to set aside A7 to the extent it denies absorption of him against Group-D post, to declare that he has got 1881 1\2 days casual labour service and is entitled to be considered for a Group-D post in the Civil Engineering Department in preference to persons having lesser number of days of service, that absorption of the 3rd respondent in the post of Trackman in preference to the applicant is illegal, and to direct the respondents to consider him for reengagement in the Civil Engineering Department duly taking into account his

..2.



casual labour service and also to absorb him from the date of absorption of his immediate junior in the Live Register of casual labourers with all consequential benefits.

2. The applicant was originally engaged under the Executive Engineer, West Coast Line, Southern Railway, Salem on 16-9-1970. He worked under the Executive Engineer till 15-12-1973. He has thus worked for 1118 days. Thereafter, he was engaged under the Permanent Way Inspector (Doubling), Southern Railway, Jolarpettai. There he worked from 30-11-1976 to 15-3-1977 and also from 16-2-1978 to 12-4-1978. Thus he worked there for 266 days. He further worked under the Inspector of Works, Patchur during the period from 18-3-1977 to 15-2-1978 for 335 days. Later he was engaged under the Permanent Way Inspector (Construction), Shoranur from 20-12-1983 to 2-7-1984 for 162 1/2 days. In the Live Register dated 13-12-1995 published by the 2nd respondent, applicant's name was not included. Knowing this, he submitted a representation to the 2nd respondent. He was directed to attend the office of the 2nd respondent with the casual labour service card. He attended. He was not reengaged. Subsequently, he approached along with certain others this Bench of the Tribunal by filing OA No. 179/99. In compliance with the direction contained in OA No. 179/99, A7, the impugned order, was issued. The 3rd respondent has got only 405 days of service and as such his absorption in preference to the claim of the applicant is arbitrary and illegal.

3. The official respondents resist the OA contending that the applicant has got 1307 days of CLR service. Accordingly, his position in the Live Register was changed from Serial No. 1143 to 153-A. In A7, the impugned order, it has been stated that the applicant will be considered for absorption subject to

sanction from the competent authority and availability of vacancies. Not a single person has been absorbed as Gangman from the Live Register after issuance of A7. Instructions have been received from the Headquarters that there is no need for any fresh recruitment. Persons mentioned in A5 were engaged during April, 1999, whereas the approval as far as the applicant is concerned was obtained later. Instructions were received thereafter that there cannot be any further recruitment of Gangman.

4. A7, the impugned order, says that the applicant has got 1307 days of casual labour service and thus his position has been changed from 1143 to 153(a) in the Live Register. The stand of the official respondents earlier was that the applicant has got less number of working days. Only after the direction in OA No. 179/99 the official respondents recognised the fact that the applicant has got 1307 days of casual labour service. Though, according to them, formerly it was only 160 days, the applicant has got a case that he has worked for 1881 1/2 days. The learned counsel appearing for the applicant submitted that even going by the admitted case of the official respondents that the applicant has got 1307 days of casual labour service, still the applicant is entitled to the reliefs claimed in the light of A5 for the reason that all those casual labourers who have been regularised as per A5 have got lesser number of days of casual service than the applicant.

5. In the OA, it is specifically stated that all the casual labourers in A5 order are persons having lesser number of days of service than the applicant, and that the 3rd respondent who is having only 405 days of casual service was also engaged and absorbed in service. The official respondents have not specifically denied the stand of the applicant that

those casual labourers regularised as per A5 have got less number of days of casual service than the applicant. The official respondents say that not a single person has been absorbed as Gangman from the Live Register after issuance of A7. This will not go to the extent of saying that those who are covered by A5 have got more number of days of casual service than the applicant. The official respondents further say that persons mentioned in A5 were engaged during April, 1999, whereas approval was obtained in the case of the applicant much after that. If that is so and the casual labourers regularised as per A5 have got lesser number of days of service as casual labourers, it is not known how the applicant can be denied the benefit of regularisation. If it is a case of no vacancy, A5 order may have to be reviewed. Just because the approval for the applicant was obtained later if the applicant has got to his credit more days of service as casual labourer, then A5 cannot save the situation.

6. It is also the case of the official respondents that instructions were received to the effect that there cannot be further recruitment of Gangman. Time was granted from 23rd of August, 2000 upto this date for production of that order. No copy of the order is so far produced. If there is such an order, there could be no difficulty in producing a copy of it. In the absence of nonproduction of a copy of the order stated in the reply statement inspite of having granted reasonable time, it is only to be taken that such an order remains only in the reply statement and not in reality.

7. The learned counsel appearing for the official respondents drew my attention to the Railway Board's order dated 3rd of September, 1996. There it is stated that the Railway Board has decided that the Railways should henceforth

not engage any casual labour so that with the regularisation of all the casual labour on roll by December '97 as per the assurance given by the Hon'ble Minister the position of no casual labour is reached by December '97. This will not in any way help the official respondents. There is no dispute as to the fact that the applicant was on the roll in December, 1997. What the order says is only not to engage any casual labourer. Here the question is one of regularisation. As per the said order, all the casual labourers on roll by December, 1997 are to be regularised. This goes rather in favour of the applicant than in favour of the official respondents.

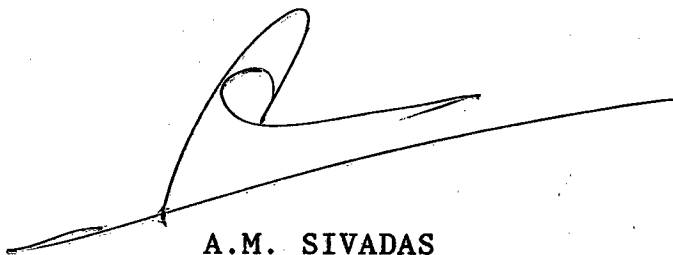
8. In the impugned order the official respondents say that the applicant will be considered for absorption against Group-D post subject to sanction from the competent authority and availability of vacancies. The question is not whether he is to be considered for future vacancies, but whether he is entitled to be considered for the existing vacancies considering the days of service he has got as casual labourer. That has not been done by the official respondents. That is all the more evident when the applicant says that as per A5 persons who have worked for lesser number of days have been regularised and especially the 3rd respondent who has got only 405 days of service and the applicant admittedly having 1307 days of casual labour service was not considered.

9. Accordingly, A7 is quashed to the extent it denies absorption of the applicant against Group-D post. It is declared that absorption of the 3rd respondent as per A5 in preference to the applicant is illegal and that the applicant is entitled to be considered for absorption in Group-D post. The official respondents are directed to consider the applicant

for absorption against a Group-D post in the Civil Engineering Department and pass appropriate orders within four months from the date of receipt of a copy of this order.

10. The Original Application is allowed as above. No costs.

Monday, this the 13th day of November, 2000



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexures referred to in this order:

1. A5 True extract of the Office Order No. J/W 11/22/99 dated 28-4-99 issued by the 2nd respondent.
2. A7 True copy of the Order No. J/P O.A. 179/99 dated 1-10-99 issued by the 2nd respondent.