

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED THURSDAY THE SEVENTH DAY OF SEPTEMBER ONE THOUSAND
NINE HUNDRED EIGHTY NINE.

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI A.V.HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.143/87

1. K.Thankaswamy
2. K.Kathiresan
3. A.Mahendran
4. K.Krishna Pillai
5. S.Jayaraj
6. K.Nadarajan
7. K.Viswanathan

.. Applicants

v.

1. The Chief Engineer(Construction), Southern Railway,
Madras.
2. Divisional Railway Manager,
Southern Railway,
Trivandrum.
3. Divisional Personnel Officer,
Southern Railway,
Trivandrum.

.. Respondents

M/s. K.Balachandran,
V.Ajit Narayanan

.. Counsel for the
applicants

Mrs. Sumathi Dandapani

.. Counsel for the
respondents

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 1st February, 1987
filed under Section 19 of the Administrative Tribunals Act,
the seven applicants who have been working as Casual Labourers
under the Chief Engineer(Construction), Southern Railway
and have been discharged on 5.12.1980 and 1.8.1981, have
prayed that the respondents be directed to reemploy them
as Project Casual Labourers and grant them temporary

status. They have also claimed back wages. The brief facts of the case are as follows.

2. While the applicants have indicated that all of them had been engaged as Khalasis in the Trivandrum Division of the Southern Railway on various dates between 1978 and 1981, the respondents have conceded that all, except the third applicant, had been engaged as Project Casual Labourers in connection with the construction of a new broad gauge line. On completion of the said work, they were retrenched as they were rendered surplus. The respondents have also indicated that wages, notice pay and retrenchment compensation admissible under the Industrial Disputes Act, had been paid to them. According to them, the third applicant's name does not appear in any of the records available with the Railways, but the same can be verified with the original service card which may be in the possession of the third applicant.

While the applicants have indicated that the services of the applicants 2, 3, 4, 5 and 7 were settled (terminated) on 1.8.81 and those of applicants 1 and 6 on 5.12.80, the respondents have stated that the services of only the first applicant were terminated on 5.12.80, whereas those of the others, except the third applicant, were settled on 1.8.81. The respondents, however, conceded that the services of all, except the fifth applicant, were settled first on 5.12.80 based on the unit of seniority of the Project Casual Labourers on the senior subordinate basis, ^{but} later applicants 2, 4, 6 and 7 were reengaged and finally settled on 1.8.81. The applicants' contention is that all of them

had completed 360 days and they are entitled to the compensation under Section 25(F) of the Industrial Disputes Act and notice pay and temporary status. They have referred to the Circular of the Railway Board dated 1st June, 1984 for grant of temporary status to Project Casual Labourers which was considered by the Supreme Court in the celebrated Inderpal Yadav's case((1985) 2 SCC 648), by which the eligibility date of 1st January, 1984 was modified to 1st January, 1981 and the Railways were directed to absorb them on the basis of length of service. They have claimed that the benefit of this judgment had not been given to them. Accordingly they moved the High Court of Kerala in O.P No. 7658 of 1985 and that Court by their judgment dated 9.8.85 directed the respondents to consider the applicants' cases in accordance with the directions of the Supreme Court in the aforesaid Inderpal Yadav's case. The applicants' claim that since they had completed 360 days of service as on 1.1.81, they are entitled to be treated as on temporary status with effect from 1.1.83. They have alleged that instead of giving temporary status to them and taking them back to service, the respondents are employing several persons junior to them in Trivandrum Division. The respondents have indicated that in accordance with the judgment of the Kerala High Court dated 9.8.85 and in conformity with the Railway Board's directions dated 11.9.86 and the directions of the Hon'ble Supreme Court, applicants 2, and 4 to 7, who were in service on 1.1.1981, were duly included in the integrated seniority list of Project Casual Labourer of Trivandrum Division

which was published in various offices. They have indicated that the applicants may not have contacted those offices , but the seniority list is still available and that they will be engaged as Casual Labourer in accordance with their position in the seniority list and given temporary status after reengagement. They have denied that any Casual Labourer junior to them in Trivandrum Division has been engaged or reengaged in that Division. The Casual Labourer named by them in the application are stated to belong to another Division. They have indicated further that those who had completed more than twelve months service, have been given retrenchment compensation and notice pay under the Industrial Disputes Act.

3. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. It is not clear whether the respondents have conferred temporary status to those applicants who had completed 360 days of continuous service on 1.1.81 or would have completed such period of service after 1.1.81 on further reengagement. It is also not without doubt whether the termination of their casual employment on 1.8.81 or 5.12.80 had been strictly in accordance with the Divisional seniority list prepared in accordance with the direction of the Supreme Court in Inderpal Yadav's case. The respondents have conceded that the applicants might not have been informed or in the know of the integrated seniority list which they had prepared as on 1.1.81. In the facts and circumstances we allow this

application to the extent of the directions, as indicated below:-

- (a) The applicants are directed to make a representation within a period of one month from the date of communication of this order, along with all necessary evidence regarding their period of casual employment, to seek conferment of temporary status in accordance with the directions given by the Supreme Court in Inderpal Yadav's case. The respondents thereafter should dispose of the representations after taking into account the evidence produced by the applicants as also the records available with the respondents and pass suitable orders about conferment of temporary status within a period of three months from the date of receipt of the representations.
- (b) The respondents are directed to bring to the notice of the applicants within a period of one month from the date of communication of this order the seniority list as on 1.1.81 prepared in accordance with the directions of the Supreme Court and invite representations from the applicants within a period of one month thereafter. The representations, if any, against the integrated seniority list should be disposed of within a period of two months from the date of receipt of the representations.
- (c) Based on the seniority of the applicants, as determined through the disposal of their representations as directed in (b) above, the respondents are directed to give to the applicants notional dates of reengagement reckoned by the dates of engagement of their immediate juniors. The applicants should be given all benefits of seniority, temporary status, absorption in the regular cadre and reengagement and other consequential benefits but without arrears of pay on the basis of the dates of notional reengagement.

Action on these lines should be completed within a period of three months from the date of disposal of the representations under (b) above.

4. There will be no order as to costs.



(A.V. HARIDASAN)
JUDICIAL MEMBER



(S.P. MUKERJI)
VICE CHAIRMAN

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