IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 153 1991
~~T. A No.~~

DATE OF DECISION 22.11.91

K. Ramaswamy Applicant (s)

Mr. P. Sivan Pillai Advocate for the Applicant (s)

Versus

Union of India through the ~~General Manager, Southern Railway~~ Madras-3 and others Respondent (s)

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

CORAM :

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, 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 ? No
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

MR. N. DHARMADAN, JUDICIAL MEMBER

This case was heard along with O.A. 43/91 which was considered and disposed of by us today.

2. The applicant was initially engaged as a casual labour in the construction unit of the Southern Railway on 9.5.78. From 21.7.1984 the applicant was engaged in the Open line unit. While working so, he was sent for medical examination for the purpose of empanelment. Since he was xxx found medically unfit for B-1 category his service was terminated w.e.f. 19.10.84. True copy of the service cards of the applicant is Annexure A-1. On 22.1.90, ~~the~~

the respondents re-engaged juniors of the applicant in the construction wing as per Annexure A-2. On 8.3.90 they have also engaged medically unfit casual mazdoors against alternative lower posts vide Annexure A-3. Aggrieved by the discrimination, the applicant represented to the Assistant Personnel Officer, Trivandrum. The Assistant Personnel Officer informed the applicant that he cannot be engaged since he is medically unfit. Hence, the applicant approached this Tribunal for getting relief on the ground of discrimination and violation of article 14 and 16 of the Constitution of India.

3. As indicated above, the question involved in this case was considered in detail by us in O.A. 43/91. Our judgment in that case will apply to the facts of this case also. Accordingly, we follow the judgment in O.A. 43/91 and dispose of this application with identical direction.

4. Accordingly, we allow the application to the extent of directing the respondents to reengage the applicant as casual mazdoor with consequential benefits, if any, legally due to the applicant under the rules. We make it clear that the respondents are free to subject the applicant for medical examination in the categories to which the applicant will be allowed to work in accordance with law.

5. We further direct that the applicant's case for regularisation in the category to which he is medically fit should also be considered by the respondents without any delay.

22.11.91.

(N. DHARMADAN)
JUDICIAL MEMBER

22/11/91

(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

R.A. 30/92 in O. A. No. 153/91 199

DATE OF DECISION 25-3-92

Union of India and others Applicant (s)

Smt. Sumathi Dandapani Advocate for the Applicant (s)

Versus

Mr. K. Ramaswamy Respondent (s)

Shri P. Sivan Pillai Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Member(Administrative)

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
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

N.Dharmadan, M(J)

The respondents in the O.A. have filed this Review Application. They have stated that there is a patent error in the judgment. The direction in the judgment that the casual labourers are entitled to be continued in service notwithstanding the fact that they are unfit in a particular medical classification for regularisation or grant of temporary status is against the Rules and cannot be implemented. Reliance is placed on paragraph 2001 and 2007 of Chapter XX of Indian Railway Establishment Manual, Vol. II, Revised Edition. The learned counsel made an attempt to establish that the judgment rendered by us in OA 43/91 is wrong and rehearing is required in the light of the provisions.

2. When this R.A. came up for hearing on 20.3.92, the learned counsel for the Railways submitted that a similar Review Application filed by the Madurai Division of the Railways in respect of OA 1023/90

which was decided by another Bench considering the same issue is also coming up for hearing and hence this application may be adjourned for consideration after the disposal of that Review Application.

3. Today when the matter came up for further hearing it was submitted the Review Application which is referred to above was heared by the other Bench on 3.3.92 and dismissed. According to us this Review Application is also to be dismissed.

4. In the judgment we have only considered the claim of the applicant, who was initially engaged as casual labourer in construction wing on 9.5.78 and allowed to continue upto 19.10.84 with intermittant breaks but terminated after medical examination when he was found medically unfit only in B1 category. He contended that his services was terminated after finding that he is medically unfit in B1 category at the same time others are allowed to continue in another category for which they are medically unfit. So the applicant contended that even though he is found medically unfit in B1 category, he can be further tested medically for engaging in any other category of post for which he is fit and he can be allowed to continue in the present post or any other post in which he is fit enough medically for discharging duties. He has also cited identical cses of one Shri KK Kunjan, who was found medically unfit in B1 category but was engaged when the respondents found him medically fit in C2 category consequent upon his empanelment for appointment in Group D post. We observed that the original applicant in this case was entitled to same treatment. Accordingly, we disposed of the Original Application. If the respondents are not satisfied with the judgment and they feel that it is wrong they could have taken up the matter in appeal before appropriate forum, for, Review is not maintainable on these grounds urged before us.

5. After having heard the parties, we do not find any error apparent on the face of the record warranting review as submitted by the learned counsel for the Review applicants. We see no merit in the Review Application and it is therefore, dismissed.

25.3.92 28/3/92

(N. Dharmadan) M(J)

(N.V. Krishnan) M(A)

25-3-92