

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.187/2007

Thursday, August 16, 2007

CORAM :

HON'BLE SHRI GEORGE PARACKEN, JUDICIAL MEMBER

Lakshmi
Trackman, Southern Railway,
Quilandi
Residing at Vallikode Kinawalloor P.O.,
Palakkad. ... Applicant

By Advocate Mr Gopakumar(not present)

V/s.

1 Union of India
represented by General Manager,
Southern Railway, Madras-3.

2 Senior Divisional Personnel Officer
Southern Railway, Palghat

By Advocate Mr.Thomas Mathew Nellimoottil

This Original Application having been heard on 16th August, 2007, the Tribunal on the same day delivered the following:-

ORDER

Hon'ble Mr.George Paracken, Judicial Member

1 The applicant's counsel has not been present for the last several occasions. When the case was listed on 2/7/2007, a request for adjournment was made on behalf of applicant's counsel for filing rejoinder. Again when the case was listed on 18/7/2007, the proxy counsel for applicant sought further time to file rejoinder. On 23/7/2007 the

applicant's counsel was not present, the rejoinder has already been filed. On 31/7/200, none was present on behalf of the parties. On 10/8/2007, again none was present on behalf of the applicant. Today also none is present on behalf of the applicant.

2 It appears that neither the applicant nor his counsel is interested in pursuing the case and therefore this OA is dismissed for want of prosecution.


(GEORGE PARACKEN)
JUDICIAL MEMBER

abp

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.187/2007

Dated Thursday the 26th day of October, 2007
25th

CORAM :

HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

Lakshmi

Vallikode, Kinawalloor P.O., Palakkad,

Working as Trackman,

Southern Railway, Quilandi

... Applicant

By Advocate Mr.B.Gopakumar

V/s.

1 Union of India represented by
General Manager,
Southern Railway, Madras-3.

2 Senior Divisional Personnel Officer,
Southern Railway, Palghat ... Respondents

By Advocate Mr.Thomas Mathew Nellimoottil

This application having been heard on 25.10.2007 the Tribunal on the same day delivered the following

(ORDER)

Hon'ble Mr.George Paracken, Judicial Member

The applicant in this case was a Daily Wage Casual Labourer engaged under the Permanent Way Inspector, Palghat w.e.f. 5/3/1975. She was dis-continued from work w.e.f. 21/6/1980. She had raised the Industrial Dispute No.1/97 before the Industrial Tribunal (IT for short), Palakkad which was awarded in her favour on 3.4.1998 (Annexure A-1). The Industrial Tribunal has directed the respondents to engage the worker on the same service conditions as she had been engaged during the period

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preceding 21.6.1980. It was also stated in the said award that since the applicant was a casual labourer, there was no guarantee for continuous employment and there would be no direction for backwages. The respondents carried the aforesaid award before the Hon'ble High court of Kerala in O.P. No.26548/98 which was dismissed on 2/6/2003. Against the said judgment, the respondents have filed a Writ Appeal No.1772/2003 and the same was also dismissed vide judgment dated 25/5/2005. Finally, the respondents have vide Annexure A-6 letter dated 3/10/2005 re-engaged the applicant as Casual Labourer and on the basis of the said letter, she joined on 4/10/2005. The applicant is aggrieved by Annexure A-7 Office Order No.JW1/8/2006 dated 6/3/2006 issued by Palghat Division of Southern Railway treating the date of her initial engagement as well as the date from which she was continuously working as 4/10/2005. Applicant has also disputed the date of temporary status granted to her as 1.2.2006 but the same was not pressed by the counsel for the applicant during the argument.

2 According to the applicant, the aforesaid Annexure A-7 order was issued in violation of the Annexure A-1 award of the Industrial Tribunal, according to which she was to be engaged on the same service conditions as was preceding 21/6/1980 and therefore she was entitled to get the temporary status on completion of 120 days after implementation of Annexure A-1 award. According to her, if the respondents had implemented the Annexure A-1 award dated 3.4.1998 in time, she would have been re-engaged within one month from the date of its publication in

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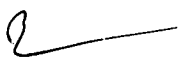
the Gazette dated 7/6/1998. Even though the respondents had challenged the award initially by way of O.P.26548/98 and later on by way of Writ Appeal No.1172/2003, both were dismissed and the original award had to be implemented in totality. But the Respondents have re-engaged only on 4/10/2005. She has submitted that she should be deemed to have been re-engaged w.e.f. 7/6/1998 i.e one month from the publication of the award on 6.6.1998 in terms of Section 17-A of Industrial Disputes Act, 1947 which reads as under:-

"17-A Commencement of the award -(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under Section 17."

3 The respondents counsel has submitted that though the applicant was initially engaged as Daily Wage Casual Labourer under the Permanent Way Inspector on 5/3/1975, she was dis-continued from work from 21.6.1980. They have further contented that the aforesaid award in I.D.No.1/97 attained its finality only on the dismissal of the Writ Appeal on 25/2/2005 and thereafter vide Annexure A-6, she was re-engaged as casual labour on 3/10/2005 and she has reported for duty on 4/10/2005. They have, therefore, submitted that it was in this background that her date of initial engagement and the date of continuous working have been reckoned from 4/10/2005. Thereafter, when she has completed 120 days of work without any break after 4/10/2005 she was also granted temporary status and fixed her pay in the scale of Rs.2610-3540 w.e.f from the same date.

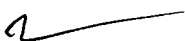


4 I have heard Advocate Mr.Prem for Advocate Mr.B.Gopakumar for the applicant and Advocate Mr.Varghese John for Advocate Mr.Thomas Mathew Nellimoottil for the respondents. The undisputed fact in this case is that the applicant was initially engaged as Casual Labour on 5/3/1975. The contention of the respondents was only that she had not worked continuously for six months at any time during her period of her initial engagement from 5/3/1975 till she was dis-continued on 21.6.1980. The other undisputed fact is that, the I.T vide its order dated 3.4.1998 had directed the respondents to re-engage her under the same service conditions as she had been engaged for the period preceding 21.6.1980. The respondents did not comply with those directions but challenged them before the Hon'ble High Court initially by OP No.26548/98 and later on by Writ Appeal No.1172/2003. Both the OP and the WVA were dismissed. Of course, the finality of the case as far as the Respondents are concerned was reached only by the judgment in the aforesaid Writ Appeal passed on 25/2/2005. But the consequence of the dismissal of the said Writ Appeal is the revival of the award passed by the I.T. dated 3.4.1998 from the same date. Since the said award was published on 6/6/1998, in terms of section 17-A of the IT Act, it had to be implemented within one month i.e. by 7/7/1998. Had the respondents not challenged the award of the I.T in the High court and the matter was not dragged till 2005, they were duty bound to implement the award latest by 7/7/1998 and the applicant would have been re-engaged accordingly.. Since the Writ Appeal has been dismissed and I.T award has survived, the



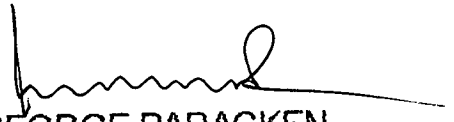
applicant is very well within her right to contend that her continuous date of appointment should have been treated as 7/7/1998 i.e. after one month from the date of publication of the award of the I.T. in terms of Section 17A of the Industrial Disputes Act, 1947. However, the fact is that the applicant was re-engaged only on 4/10/2005 and in terms of the existing rules, she is entitled for grant of temporary status only after 120 days of continuous service. Since the applicant has not actually worked from 7/7/1998 to 3/10/2005, it is not possible that she could be granted temporary status prior to a date from which she has been engaged after the award has been passed by the I.T. However, I do not find any justifiable reasons for the Respondents in delaying the re-engagement of the applicant as a Casual Labour till 4.10.2005 even after the Hon'ble High Court has dismissed the WA No.1772/2003 on 25/2/2005

5 In the above facts and circumstances of the case, the OA is partly allowed. The respondents shall treat that the applicant was initially engaged as Daily Wage casual labour w.e.f. 5/3/1975 as admitted by themselves in the counter affidavit. They should also treat that the applicant was deemed to have been re-engaged w.e.f. 7/7/1998 after the award of the I.T i.e. after one month from the date of its publication of the award on 6/6/1998. However, there cannot be any valid dispute about the date of temporary status already granted to the Applicant by the Annexure A-7 Office Order dated 6/3/2006 as she was re-engaged only from 4/10/2005. I, therefore direct the respondents to revise the Annexure A-7 order suitably so as to declare that Applicant was initially engaged as a



casual labour from 5/3/1975 and she was deemed to have been re-engaged w.e.f. 7/7/1998 with all consequential benefits except arrears of pay. The Respondents shall issue necessary orders in this regard within a period of two months from the date of receipt of copy a of this order.

6 There shall be no orders as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER

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