

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.205/95

Wednesday, this the 31st day of July, 1996.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

TN Kanakakumari, Rajesh Bhavan,
Railway Station Road,
Ettumanoor PO, Kottayam.

....Applicant

By Advocate Shri TC Govinda Swamy.

vs

1. Union of India through
the General Manager,
Southern Railway, Madras--3.
2. The Divisional Railway Manager,
Southern Railway,
Trivandrum--14.
3. The Divisional Personnel Officer,
Southern Railway,
Trivandrum--14.
4. The Divisional Commercial Manager,
Southern Railway,
Trivandrum--14.
5. B Dinesan, S/o N Balakrishnan,
Jalaja Bhavan, Mulavana PO,
Quilon.
6. The Regional Labour Commissioner (Central),
Kalathiparambil Road,
Ernakulam.

....Respondents

R.1-4 by Advocate Shri Thomas Mathew Nellimoottil.

The application having been heard on 30th July, 1996,
the Tribunal delivered the following on 31st July, 96:

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant was initially engaged as a literate casual labourer
in 1984 in the Reservation Office, Southern Railway, Kottayam.

contd.

Thereafter, she was again engaged from 8.4.91 to 31.5.91 as a Seasonal Water Carrier on daily rate. Her grievance is that she was not re-engaged thereafter, though many persons who had put in lesser number of days of service had been re-engaged and even regularised. She has cited the case of one B Dinesan in this regard.

2. The main contention of applicant is that persons like the fifth respondent, B Dinesan, who had been declared by the High Court of Kerala in OP 3357/85-N (A-5) as persons whose appointment was not in accordance with the scheme of decasualisation and which should not be considered as conferring any right on them, were re-engaged. The High Court of Kerala had also stated that it was open to such persons like the fifth respondent to urge their claim for absorption on compassionate considerations after all retrenched workmen entitled to employment in view of the decasualisation scheme were accommodated in future vacancies. The contention of applicant is that when persons like the fifth respondent, who did not have any right for re-engagement prior to her (the applicant) being re-engaged, are found to be empanelled by A-4 orders dated 5.9.91, she certainly has a right to be re-engaged and empanelled.

3. Respondents 1 to 4 have not met any of these points in their reply but have only urged the contention that the application is barred by limitation. According to them, fifth respondent had a total service of 266 days as on 30.6.91, while applicant had only 132 days. This, however, does not explain how the fifth respondent, who had been declared by the High Court of Kerala as having no right for re-engagement before all retrenched workmen are accommodated in future vacancies, was re-engaged and was further empanelled. In view of the paucity of pleadings, we directed respondents 1 to 4 to produce the seniority list concerning applicant.

A book was produced described as "Live Register (Duplicate)" bearing no signature, no office seal, nor any other identification of authentic nature. The book looks new. We, however, found that there was a mention in the book of folio 129 of file No.V/P 407/11/Ch/Sub. Vol 2 and asked respondents 1 to 4 to produce that file. Respondents have now stated that the indication of the file number in the book produced by them is not correct and have produced a file No.V/P 407/III/HSWC/Vol.II. This is the same file referred to by applicant in her application and it is the file in which A-2 engaging her as a Seasonal Water Carrier was issued. A perusal of the file shows that the list at folio 129 is not really a live register of the Traffic Department. Noting at page 66 reads as follows:-

"With regard to the live register maintained in Traffic, which is attached...this is not based on any aggregate No. (sic) of service put in by the casual labour as in Engg Dept live register where it is maintained based on the No. of days worked for arriving at the seniority for future engagement. In traffic this register is maintained based on the applications received from the persons stating that they were engaged earlier and requesting for employment. Some of such registrants have been re-engaged based on Court orders. Col 9 of the register indicates the total No. of days worked by the applicants."

Based on this note, there is an instruction to modify the live register by arranging the persons in the order of the number of days worked by them. It is also seen that in the case of another person, one KM Chandran, the note at page 62 states:

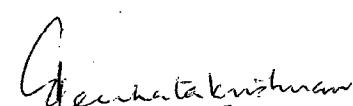
"His juniors have been empanelled and as such he is eligible for re-engagement in Traffic/Commercial Deptt...it is seen that the junior of KM Chandran has already been taken in service."

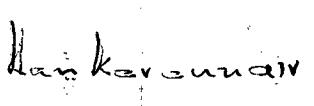
From this, it is clear that the Railways have not been following the list at folio 129 of that file for re-engaging persons in the order of their seniority and that re-engagement has been made on ad hoc basis depending on when and if a person approached the Railways for re-engagement. It is also not clear from either the reply statement of respondents 1 to 4, nor from the file produced as to how persons who had been petitioners in OP 3357/85-N before the High Court of Kerala and who were stated to be not eligible for absorption till all retrenched workmen entitled to employment are accommodated in future vacancies have been re-engaged and empanelled.

4. It is clear that the issues in this application call for a fact adjudication which is made almost impossible by the paucity of pleadings before us and the total confusion which is reflected in the records produced by the Railways. Under these circumstances, though we find considerable force in the contentions of applicant, we are unable to grant any relief. The counsel on both sides agreed that the matter may be placed before the sixth respondent, Regional Labour Commissioner (Central), Kochi, for a fact adjudication on the applicant's position in the live register and her position with respect to other persons who were engaged along with her in A-2 and her position with reference to the petitioners who were before the High Court of Kerala in A-5. Sixth respondent will consider the matter and make a fact adjudication. Respondent Railways will place the matter before the sixth respondent. Respondents 1 to 4 shall consider the claim of applicant for re-engagement/absorption as expeditiously as possible, in the light of the findings of the sixth respondent.

5. Application is disposed of as aforesaid. No costs.

Dated the 31st July, 1996.


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

List of Annexures

1. Annexure A-2: A true copy of the letter No.V/P 407/III/HSWC/Vol.2 dated 14.9.91 issued by the third respondent.
2. Annexure A-4: A true copy of the letter No.V/P 564/IV/Empl/TFC/1991 dated 5.9.91 issued by the third respondent.
3. Annexure A-5: A true copy of the judgement dated 31.10.85 in OP/3357/85-N filed before High Court of Kerala.
