

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA 289/2006

Wednesday this the 25th day of July, 2007

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

E.Sureshkumar, aged 45 years
(DOB 22/5/1960)
S/o Sathiyananthan Nair,
Prabha Nivas, Cheruvannur,
Feroke Post, Kozhikode.Applicant

(By Advocate Mr. Vellayani Sunderaraju)

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- 1 Union of India, represented by the Secretary to Government, Ministry of Railways, New Delhi.
- 2 The General Manager, Southern Railway, Chennai.3.
- 3 The Divisional Manager, Southern Railway, Mysore.
- 4 The Divisional Manager, Southern Railway, Palakkad Division, Olavakkode, Palakkad.
- 5 The General Manager, South-^{western} Railway, Mysore. (impleaded vide order dated 28.9.06 in MA 853/06).

(By Advocate Mrs.Sumati Dandapani (Sr) with Ms.P.K.Nandini)

The application having been finally heard on 7.6.2007, the Tribunal on 25.7.2007 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

This is the second round of litigation by the applicant who is a

retrenched project casual labour in the Mysore Division of the Southern Railway. Earlier he filed OA 1371/95 seeking directions to the respondents to re-engage him in terms of the decision of the Hon'ble Supreme Court in Inder Pal Yadav's case. His claim was that he had put in service of 962 days. Vide order dated 11.11.1997 (Annexure.A3) this Tribunal directed the 5th respondent therein, namely, Divisional Personnel Officer, Mysore Division, Southern Railway, Mysore to include his name in the Casual Labour Live Register of persons retrenched on or after 1.1.81. It was also held that the applicant was entitled to be re-engaged, if any person in the Casual Labour Live Register having service of less than 962 days has already been re-engaged. The 5th respondent was further directed to consider the case of the applicant in the light of the above directions and to pass appropriate orders. However, the respondents carried the aforesaid orders of this Tribunal to the Hon'ble High Court of Kerala in OP No.16301/98. After hearing both the sides, the Hon'ble High Court disposed of the Petition directing the respondents to examine the case of the applicant as to whether he was in service as on 1.1.81. The applicant was also given an opportunity to produce any documents available with him before the 5th respondent herein who would pass final orders after giving the applicant an opportunity of being heard. Accordingly the 5th respondent vide Annexure.A5 order dated 5.2.02 considered the case of the applicant in detail. The applicant submitted true copies of two casual labour cards. According to the first casual labour card issued by he IOW/9/KMPL with LTI No.169, he worked in two different spells (i) from 23.11.78 to 10.1.79 and (ii) from 11.1.79 to 12.3.80. According to the second casual Labour card issued by the IOW/11/SKLR (E), he worked for

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the period from 1.4.80 to 4.8.81. According to the 5th respondent, the claim of the applicant that he was engaged as on 1.1.81 was not genuine and therefore his name was not included in the live register. However, his name was already included in the Supplementary Live Register at Sl.No.32 for consideration of his case for re-engagement in the Railways in his turn as and when vacancies arise in Mysore Division. The reason given by the 5th respondent for coming to the above conclusion was that all persons who were engaged as casual labours in the Railways were issued with Casual Labour Service Card and simultaneously entries were also being made regrading their engagement in the LTI Register. The LTI Register being the basic record, it is always maintained by the administration. The casual labour card is to be kept in safe custody by the casual labourer himself. The information contained in the casual labour service card should tally with the information available in the LTI Register. The claim of the applicant that he worked on or after 1.1.81 as a casual labour was to be verified from the available records. The 5th respondent, accordingly, verified the relevant LTI Registers containing 330 names of casual labourers, but the name of the applicant was not available in them. Even the LTI number which was indicated in the Casual Labour Card of the applicant as SKLR/11/495 was also not available in the LTI Register. Further, in the LTI Register, the initials of the supervisors are available in the case of all the 330 casual labourers. The initial of the Supervisor in the Casual Labour Card available with the applicant was entirely different from the initial that was available in the LTI Register. In the Seniority List of Casual Labourers containing the names of 456 project casual labourers who were in service as on 1.1.81 also the name of the applicant was



available. During the course of the personal hearing, the applicant produced a copy of the letter issued by the then General Manager Shri Raj K. Shukla bearing D.O.No.P(S)443/I/Misc/MYS dated 13.6.94 addressed to Shri Anbarssu, Member of Parliament. In the second para of the said letter, it was stated that the applicant was engaged in MAS/MAQ Project from 27.11.78 to 12.3.80 and 1.4.80 to 4.8.81 under Inspector of Works/KMPL and SKLR. According to the 5th respondent, the aforesaid letter could not be taken as an authentic record as the Screening Committee which was constituted to verify the genuineness of the applicants who were engaged as Casual Labourers as on 1.1.81 in the HAS-SKLR Project have gone through all the relevant records, the LTI Register, the salary bills, seniority list etc. and the committee had in fact rejected the claims of 268 candidates and the name of the applicant was figuring at Sl.No.181 of the list of rejected candidates. The applicant, however, made further representations to the respondents but the Divisional Railway Manager, Mysore vide Annexure A7 letter dated 14.8.2002 again held that the claim of the applicant was not genuine and, therefore, his name cannot be included in the Live Casual Labour Register.

2 In the reply, the Respondent No.3 i.e., Divisional Manager, Southern Railway, Mysore, reiterated the aforesaid position. The respondents have also submitted that the Seniority List of Project Casual Labours who are retrenched on or after 1.1.81 "for want of work" or "completion of work" should be included in the register prepared as "Live Project Casual Labour Register". The explanation given by the respondents regarding the Live Casual Register is as under:

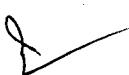
"A: Live Casual register: (Casual Labours retrenched on or after 1.1.191): Under the direction issued by the Railway

Board letter No.E(NG)II/84/CL/41 dated 11.9.86, the list of "Project CL" employed on works of each of the Department like Civil Engineering, Signal and Telecommunication, Electrical etc., within the geographical boundaries of a Division should be prepared with reference to each department in each division and also in regard to each category viz., Unskilled, Semiskilled and Skilled and trade-wise on the basis of the length of service, for the purpose of subsequent engagement/re-engagement/discharge of Project CL on the principles of "LIFO" as envisaged in Section 25-G of the Industrial Dispute Act, 1947".

The Supplementary Casual Labour Register is the register in which names of the casual labourers retrenched prior to 1.1.81 is maintained. The description of the Supplementary Casual Labour Register given by the respondents is as under:

"In terms of Railway board's directive vide letter No.E(NG) II/84/CL/41 dated 2.3.1987 and E(NG)II/84/CL/41 dated s1.10.87, Project Casual Labourers who were retrenched **Prior/Before 1.1.1981** should be included in a Supplementary List (Department-wise/Division-wise). This register is termed as **Supplementary Casual Labour Register.**"

3 According to the instructions of the Railway Board, after exhausting the names of persons retrenched as Casual Labourers from the Live Register, the names of the persons retrenched as Casual Labourers from the Supplementary Live Register shall be considered for engagement/re-engagement. The respondents have categorically denied that the applicant has ever worked from 1.4.80 to 4.8.81 as claimed by him and it was for this reason that his name was not included in the Live Casual Labour Register. However, they have submitted that since the fact regarding the service of the applicant from 27.11.78 to 12.3.80 is undisputed, his name has already been included in the Supplementary Live Register and he would be considered for engagement /re-engagement after exhausting the panel in the Live Casual Labour Register. The further



contention of the respondents is that though the 5th respondent ie., General Manager is the legal and final authority to decide matters under the Zonal Railway, it was under undue influence from the higher authorities that the General Manager has issued a letter to the DPO at Mysore. They have also submitted that the General Manager, Southern Railway had issued the D.O letter to Shri Ambarassu without holding any enquiry and without verifying the records.

4 The respondents 2&4, the General Manager, Southern Railway, Chennai and the Divisional Manager, Southern Railway Palakkad respectively have also filed separate reply. They have not stated any additional points in this regard but only concurred with the reply filed by the 3rd respondent.

5 The applicant filed a detailed rejoinder to the reply statements of the respondents. He submitted that on the basis of the Annexure.A2 letter of the General Manager, Southern Railway and also on the basis of the A.1 Casual Labour Service Cards issued by the competent authorities of the Railways, this Tribunal had already arrived at a finding that the applicant was in service as on 1.1.81 and he was retrenched only after the said date. It was for the aforesaid reason that this Tribunal held that the inclusion of the applicant's name in the Supplementary Live Register was untenable and his name should have been included in the Live Register. He has also submitted that the 5th respondent issued the Annexure.A5 order rejecting his claim after holding an inquiry without having all relevant records. He relied upon the submission of the 5th respondent itself in the Annexure.A5 letter reproduced as under:

"In this regard it is to mention that as all the relevant records of HAS-MAQ Railway project are not available, the



undersigned could examine the genuineness or otherwise of the casual labour card produced by Sr.E.Sureshkumar based on the available LTI Registers. In the absence of the LTI Registers, the undersigned is relied upon the seniority lists of casual labours available as on 1.1.1981. The following LTI Registers were available for verifying the genuineness of Sri E.Suresh Kumar, Ex Casual Labour:-

- 1) IOW/SKLR(E) consisting of 352 names of Ex-Casual Labourers.
- 2) IOW/IX/KMPI consisting of 94 names of Ex/Casual Labourers.
- 3) IOW/11/CN/SKLR/E consisting of 330- names of Ex-Casual Labourers.
- 4) IOW/R.11/E consisting of 461 names of Ex-Casual Labourers."

He has again stated that the re-engagement of the applicant from 1.4.80 to 4.8.81 was under the Inspector of Works of Sekleshpur as IOW-11/SKLR (E)-495 and none of the LTI Register examined by the 5th respondent at A4 contained the entire particulars of casual labourers engaged from 1.4.80 to 4.8.81. It was also admitted by the 5th respondent that the relevant LTI registers were not available for his examination. Further the 5th respondent had examined the seniority list of only 456 names of Project Casual Labourers whereas the applicant's name was at Sl.No.495 during the period from 1.4.80 to 4.8.81.

6 I have heard Advocate Mr.Vellayani Sunderaraju for the applicant and Ms.P.K.Nandini appearing on behalf of Smt. Sumati Dandapani (Sr) for the respondents. In the order dated 11.11.1997 in the earlier OA 1371/1995 filed by the applicant, there was a clear finding of this Tribunal that the applicant 'was in service on 1.1.1981 and he was retrenched after 1.1.81'. Accordingly, the contention of the Respondents that the applicant is to be included in the Supplementary Live Register was found untenable and held that the applicant is entitled to be included in the Casual Labour Live Register of persons retrenched after 1.1.1981. The 5th



respondent was, therefore, directed "to include the name of the applicant in the Casual Labour Live Register of persons retrenched after 1.1.81." It was further held that "If any person in the Casual Labour Live Register having service of less than 962 days has already been re-engaged, then the applicant is entitled to be re-engaged". The 5th respondent was also directed to consider the case of the applicant in the light of the above directions and pass appropriate orders." The respondents challenged the aforesaid orders of this Tribunal before the Hon'ble High Court of Kerala vide OP No.16301 of 1998 and vide the Annexure.A4 order dated 8.11.2001 the Hon'ble High Court directed the respondents "to examine the case of the applicant as to whether he was in service as on 1.1.81" and to pass final orders thereafter. Accordingly the 5th respondent has passed the Annexure.A5 final order dated 5.2.2002. According to the said order, the applicant produced the following documents in support of his claim:

- (i) D.O.No.P(S)443/I/Misc/MYS dn from GM/MAS to R.Anbarasu, MP/MAS
- (ii)Xerox copy of the C.L Cards for period he worked from 27.11.78 to 12.3.80 and from 1.4.80 to 4.8.81.
- (iii)Letter No.P(S)443/I/Misc/MYS dn dated 14.3.95 from CPO/MAS to Sri Suresh Kumar.
- (iv)Xerox copy of the school certificate.

The 5th respondent stated that the true copy of the Casual Labour Card produced by the applicant before him was very old and in order to confirm the identity of the applicant his Left Thumb Impression was again obtained and compared with the LTI on the Casual Labour Card and found that both the LTIs were similar. The personal marks of identification given in the Casual Labour Card were also verified to be correct. The 5th respondent has also admitted in his order that all relevant records of HAS/MAQ

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Railway Project were not available and he could examine the genuineness or otherwise of the Casual Labour Card produced by the applicant based only on the available LTI Registers. The following LTI Registers were available for verification of the genuineness of the applicant:

- i) IOW/SKLR(E) consisting of 352 names of ex-casual labourers.
- ii) IOW/IX/KMPL consisting of 94 names of ex-casual labourers.
- iii) IOW/II/CN/SKLR/F consisting of 330 names of ex-casual labourers.
- iv) IOW/R.II/E consisting of 51 names of ex-casual labourers.

According to the 5th respondent, if the applicant's claim that he worked during the period from 1.4.80 to 4.8.81 were correct, his name should have been entered in the 3rd Register mentioned above containing 330 names of ex-casual labourers. The Annexure A5 letter further reads as under:

"On verifying the LTI Register, it was found that even though it contained 330 names of casual labourers, the name of Sri E.Suresh Kumar, ex-casual labour was not available in the LTI register. Even the LTI number that has been indicated in the casual labour card of Sri E.Suresh Kumar as SKLR/11/495 is also not available in the LTI Register. In the LTI Register the initial of the supervisory official is available against all the 330 names of casual labourers. The initial that is available on the casual labour card of Sri E.Suresh Kumar is entirely different from the initial that is available in the LTI Register."

7 It is seen from the aforesaid letter of the 5th respondent that the 5th respondent has searched all the relevant records to find out whether "the applicant was in service as on 1.1.81. Except the photo copy of the Casual Labour Card for the period from 1.4.80 to 4.8.81 and the D.O. letter from the GM/MAS to Shri R.Ambarassu, the applicant has not produced any other documents to establish his claim. In the above facts and

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circumstances, without the original casual labour card, it would not be possible for the respondents to accept the claim of the applicant. The 5th respondent has in fact doubted the genuineness of the photocopies of the two Casual Labour Cards available with the applicant and stated that there was no reason for not making simultaneous entry in the LTI Register regarding the details of his engagement as per the photocopy of the Casual Labour Service Card made available by the applicant. Even the LTI number SKLR/11/495 as indicated in the Casual Labour Service Card was not available in the LTI Registers maintained by the Respondents. As per the findings of the 5th respondent, the initials of the Supervisor available in the photo copy of the Casual Labour Service Card produced by the applicant do not tally with the initials in the LTI Register. The applicant mainly relied upon his Annexure.A1 Casual Labour Service Cards and the Annexure.A2 DO letter from Shri Raj K.Shukla, the then General Manager, Southern Railway to Shri R.Ambarasu, M.P. In the absence of a corresponding entry in the LTI Register, generally the Casual Labour Service Card cannot be relied upon. In this case, the applicant is not in possession of the original Casual Labour Service Cards issued to him. He has produced only a photo copy. In my considered opinion, when the 5th respondent has made an extensive search and no proof regarding his engagement was found in any of the records maintained by the Railways, the applicant has failed to prove the genuineness of the photo copy of the Casual Labour Cards produced by him. In the absence of any documents to support, the authenticity of the Annexure.A2 D.O letter also has not been established. It is not the case of the applicant that the respondents have any malafide intention to keep his name out of the LTI Register or the Live

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Casual Labour Register. I, therefore, do not find any reason to disagree with the findings of the 5th respondent that the claim of the applicant that he was engaged on 1.1.1981 was not genuine and his name cannot be included in the Live Casual Labour Register. This O.A is, therefore, dismissed. There will be no order as to costs.

Dated this the 25th day of July, 2007


GEORGE PARACKEN
JUDICIAL MEMBER

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