

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATED THE 10TH DAY OF NOVEMBER ONE THOUSAND NINE HUNDRED  
AND EIGHTY NINE

PRESENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 304/86

1. M. Sasikumaran,
2. M. George,
3. C. Jayadhas,
4. M. Raveendran and
5. S. Varatharajan

Applicants

Vs.

1. Senior Divisional Personnel Officer, Southern Railway, Trivandrum

Respondents

M/s. K. Ramakumar, C. P. Ravindranath,  
E. M. Joseph & N. C. Geetha

Counsel for the  
applicants

Smt. Sumathi Dandapani

Counsel for the  
respondent

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The main grievance of the applicants in this case is that they have not been given the seniority in the regular category w.e.f. their date of regular service as/ 8.4.1981. Hence, they are seeking a direction to the respondents to grant them promotion based on the seniority with all other service benefits from 8.4.1981.

2. The brief facts are as follows:-

The applicants have all been working in the construction wing of the Southern Railway at Palayamkottai

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from 25.3.1974 to 15.2.1975 and thereafter between various periods until they were all posted in the Traffic department of Trivandrum Division of Southern Railway in 1984. According to them, temporary status was conferred to them in 1981 itself and they are entitled to the benefits of the decision of the Supreme Court in Inderpal Yadav's case (1985 (2) SCC 648). They submitted that even though they are all eligible to be regularised with all attendant benefits in the light of the Railway circular, Annexure A-1 and other connected circulars, they have not been given such benefits so far. But the respondents have given the benefits of the aforesaid circular to the applicants in O.P. No. 4753 of 1980 who approached the High Court and obtained direction in the following manner:-

"the claims of the applicants should be considered in the light of Annexure 'A'."

Therefore the applicants filed representations before the respondent seeking regularisation in the service from the date of joining. The applicants contended that had they been given the benefits as directed by the High Court in the earlier judgment, they would have been absorbed at least from 8.4.1981. They submitted that in spite of the High Court's direction and their request, none of the benefits was given to the applicants. Since their representations remained unattended to, they also approached the High Court and obtained Annexure-C judgment dated 6.3.1984 with the direction that their representation Ext. P-3 therein shall be disposed of taking into consideration the judgment

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referred to above within a period not exceeding one month from the date of judgment i.e. 6.3.1984. Since this direction was not complied with, the applicants filed Contempt O.P. 6503/1984. But the same was closed in the light of the submission made by the respondents that they have already complied with the directions in the judgment.

3. The applicant's case before us is that in spite of the directions and the submission by the learned counsel for the respondents before the High Court they are not complying with the directions. They have not been given the benefit of regularisation, but they are posted as substitute casual labourers as disclosed in Annexure 'D'. The claim of the applicants was to absorb them as regular employees under the respondents with seniority and other benefits from 8.4.1981.

4. The stand taken by the respondent in the counter affidavit is that the applicants were transferred to a new division during 1984 and started working under a different 'employer' in terms of Section 2(0)(i) of the I.D. Act. Hence, they can be given bottom seniority from 1984 since there were other regular employees working in Trivandrum Division when the applicants were posted in the new Division.

5. We see no justification in the stand now taken by the respondent. On the facts and circumstances of this case it is an admitted case that the applicants were transferred to Trivandrum Division in the exigencies of

service of the Railway while they were working at Palayamkottai in the construction wing of the Southern Railway from 1974 onwards as casual employees and it is also an admitted fact that they were transferred to the new Division without intimating them that they would be given only bottom position in the new Division. The respondent submitted that on account of establishment of new wing and additional works they were forced to transfer these applicants to the new Division under a new 'employer' and in terms of the practice followed by the Railway, the applicants were to be considered for only empanelment/against the vacancies as on 31.12.84. According to us the case of the Railway, if accepted, would result in injustice to the applicants who were working from earlier periods and they are eligible to be considered for regularisation from 1.1.1981 even in the light of the admission of the respondents in the counter affidavit which reads as follows:

"In pursuance of the Railway Board's letter No. E(NG)II/84/CL/41 dated 11.9.86, the applicants were considered for the grant of temporary status with effect from 1.1.81. This was in conformity with the formula enunciated by the Hon'ble Supreme Court of India in the decision in Inderpal Yadav V. Union of India."

6. The Deputy Chief Engineer (Construction), Palayamkottai is no doubt a separate 'employer' and that too in the Madurai Division. But that is for the purpose of implementing certain provisions under the I.D. Act and this would not apply in this case/of the applicants. They only claim

seniority and regularisation. For the purpose of absorption of the applicants, a divisional seniority has been prepared including all persons in the division whether in the open line or in the construction, irrespective of the fact that employees are working in different divisions. Here the only question to be considered is the right of absorption. Hence, when the applicants came from the construction side from Madurai Division to the open line in Trivadrum Division their entire service in construction in Madurai Division has also be taken into account for giving seniority on notional basis, even if empanelment is from 1984 in the new Division. However, when screening is to be done all casual labourers have to be taken into account based on their service records. Normally, empanelment is against the vacancies in the year in which the empanelment is done or in the preceeding year. But this is an exceptional case where persons similar to the applicants were empanelled earlier in 1981 because they were in the Trivandrum Division, while the applicants were not given ~~the~~ this benefits. Therefore, the benefits of the entire service of the applicants from the very beginning should be taken into account as if they were in Trivandrum Division only and on that basis the seniority should be fixed even though they ~~were~~ originally started working in a different Division.

7. The learned counsel for the applicants categorically submitted before us that they have been transferred to the new Division much against their wishes and hence they are entitled to seniority from their original service taking into consideration the position of persons who had been working with them but who were absorbed in the Railway without giving the same benefits to the applicants and according to the applicants these persons have been given regularisation in the service of the Railway from earlier date. When the fact that the applicants have been transferred from Palayamkottai to Trivandrum Division without considering their option is admitted by the respondent there is no legal justification in depriving them of the benefit of their earlier service and regularisation along with others similarly situated. In the light of the above facts, we are of the view that the employees shall not be allowed to suffer or forego their seniority.

8. It is now admitted before us that the applicants were empanelled for regular posting in the construction wing as casual labourers in the open line in Trivandrum Division from 1984 onwards. The applicants have also produced Annexures E & F along with rejoinder and submitted that there is discriminatory treatment between the applicants and S/s. Suseelan and R. Chinnayan, who according to the applicants had been absorbed in the Engineering Department (Open Line) treating them as having been continued on regular basis from the original date of their appointment.

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10. The above arguments of the applicants has not been considered by the respondents. According to the respondents consequent on grant of temporary status from 1.1.1981 their pay and increments have been redetermined from 1.1.1981. But since they were formerly working as casual labourers under the Construction organisation and a different employer the respondents are unable to reckon the previous service rendered by them for assigning seniority. The applicants have been allowed by the respondent to work from 1974 in the Railway as casual employees. The Supreme Court has taken the view that the employees in the lower cadre if allowed to work for long periods they would get the right for consideration as regular employees in the service and also other benefits available under law. The applicants are entitled to certain rights on account of their long and continued service. There is no fault on the part of the applicants so as to deprive them of the benefits of regularisation especially when persons who had worked along with them had been given regularisation as contended by them. When the respondent have given the benefit of regularisation to some of the employees who worked with the applicants as specifically pointed out by them in the reply affidavit, we see no legal justification to refuse the same benefits to the applicants. More over, when the applicants filed a contempt case before the High Court of Kerala, the learned counsel appearing on behalf of the respondents submitted that they had complied with the directions of the High Court in the judgment. The order

passed in pursuance of the direction in Annexure-C judgment has not been produced before us for our perusal. In Annexure-C judgment, the High Court directed the respondents to dispose of Ext. P-3 representation claiming the benefits of regularisation from the date of joining the service. Had the respondents rejected the claim while disposing of the representation, the applicants could have taken steps against such order. No order rejecting the representation was produced in this case but the impression given is that they had complied with the directions of the High Court. The claim of the applicants is that had the benefits of the earlier judgment in O.P. 4753 of 1980 been given to them also, they would have been absorbed at least from 1981 onwards. The applicants are entitled to this benefits in the facts and circumstances of this case.

11. We feel that justice will be served in this case if this case is disposed of with the direction to the respondent to grant the benefits of regularisation to the applicants from 1981 onwards.

12. Accordingly, we dispose of the Original Application with the direction that the respondent shall regularise the applicants in the service of the respondent from 1981 with reference to the date from which any of the juniors to them, had been given regularisation in terms of their length of service. We make it clear that for regularising the service of the applicants their service at Palayankottai should also be considered. The respondent is further directed to comply with the direction within a period of six months from the date of receipt of the copy of the judgment.

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12. There will be no order as to costs.

  
(N. Dharmadan)  
Judicial Member

10/11/89

  
(N. V. Krishnan)  
Administrative Member

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