

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.353/93

Tuesday, this the first day of February, 1994.

SHRI N DHARMADAN, MEMBER(J)
SHRI S KASIPANDIAN, MEMBER(A)

K Rajan
CPC Gangman
Office of the Permanent Way Inspector
Southern Railway, Kottayam. - Applicant

By Advocate Mr P Sivan Pillai

Vs.

1. Union of India through
General Manager,
Southern Railway,
Madras-3.
2. The Railway Board through
Chairman, Railway Board,
Rail Bhavan, New Delhi.
3. The Chief Engineer(Construction)
Southern Railway, Madras-8.
4. The Divisional Personnel Officer,
Southern Railway, Trivandrum-14. - Respondents

By Advocate Mr Thomas Mathew Nellimoottil

O_R_D_E_R

N DHARMADAN, MEMBER(J)

Applicant is a Casual Labourer. He is aggrieved by the refusal of the respondents to regularise him with all consequential benefits including the inclusion of his name in Annexure-A3 order of empanelment dated 5.9.1991.

2. The applicant joined as a project casual labourer from 27.10.1972. He was retrenched from the service from 5.1.1982, but re-engaged on 16.3.1989 in the open line(Engineering Unit). Again he was retrenched on 29.12.1989 but re-engaged in the traffic

department on 30.3.1990. Though he was again retrenched from the traffic department on 27.6.1990 he was taken back and granted temporary status ^{w.e.f.} 14.8.1989 and he is continuing as such. He has submitted several representations requesting for regularisation but he has not been given regularisation so far. According to the applicant, number of his juniors, who filed OP-3357/85 before the High Court were given regularisation and inclusion in Annexure-A3, notwithstanding the dismissal of their case by Annexure-A4 judgement holding that they have no right to get re-engagement until exhausting the engagement of retrenched casual employees. According to the applicant, being a retrenched casual employee, he is entitled to preferential right to be included in Annexure-A3 considering his past service from 27.10.1972. He relies on Annexure-A14 clarification regarding the empanelment of casual labourers. The question and answer in Annexure-A14 is extracted below:

"Question

(2) How the seniority of casual labour for purposes of empanelment should be computed.

Clarification

(2) For purposes of screening and empanelment the total cumulative aggregate service should be taken into account. Any break in service of casual labour/substitute will not be a bar for reckoning such service. i.e. the service rendered before and after the break should be taken into account In other words, for the purpose of empanelment, service rendered in the unit of empanelment alone is not the criterion for seniority among casual labour/substitution and it is the total service rendered in the Railway which should be taken into account.

Open line, Construction, Casual labour/substitute working within the territorial jurisdiction of the unit of empanelment should also be considered as on the date of empanelment.

However, the clarification given under items (3) & (4) relate to seniority of casual labour for the purpose of retrenchment and reengagement only as per the provisions of the Industrial Disputes Act and not for the purpose of empanelment."

3. The applicant also submitted that for getting regularisation, it is not necessary to establish that a casual labourer is actually working in any of the units at the relevant time. If it is shown that his name is included in the live register of casual labourers, he is entitled to regularisation notwithstanding actual engagement during the relevant time. This is the stand consistently taken by the Railway in all cases of regularisation of casual employee and it is clear from Annexure-A16 reply filed by the Railway in OA-1683/91.

4. In the light of the above facts, the learned counsel for the applicant submitted that the applicant has a right to be considered for regularisation and inclusion in Annexure-A3 in appropriate place.

5. We have also heard the learned counsel for respondents. The contentions of the applicant referred to above are not refuted by the respondents. Considering the submission of the applicant, we are satisfied that in the light of the facts and circumstances as stated above, the applicant is entitled to regularisation and inclusion of his name in Annexure-A3 empanelment list in appropriate place if all the facts stated above are true.

6. In the result, we are satisfied that the OA can be disposed of in the interest of justice with a direction to the fourth respondent to ^{consider the} ~~claim~~ of regularisation of the applicant and ~~xxx~~ inclusion in Annexure-A3 in appropriate place taking into consideration his aggregate service and the actual days of work from the initial engagement after due verification of the facts stated by him. This shall be done within a period of four months from the date of receipt of a copy of this order.

7. The OA is disposed of as above. No costs.

S. Kani
(S KASIPANDIAN)
MEMBER(A)

N. Dharmadan
(N DHARMADAN)
MEMBER(J)
1.2.84.

TRS