

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 359 OF 2007

Friday, this the 25th day of April, 2008

CORAM :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

1. C.Rajendran
P.Chinnamookanuur Pachal Post
Tirupattur
Velloore District, Tamilnadu
Working as Trolley Man under Section Engineer
Permanent Way Inspector S.R Sambalpatty
2. C.Balaraman
P.Chinnamookanuur Pachal Post
Tirupattur
Velloore District, Tamilnadu
Working as Track Man under Section Engineer
Permanent Way Inspector S.R Thirupattur
3. M.Saminathan
41/148-B Salainagar
Themaleimutture, Velloore District
Tamilnadu
Working as Track Man under Section Engineer/
Permanent Way Inspector S.R Thirupattur
4. L.V.Subramanian
8B, Railway Colony
Samalpattai P.O Uttakarai T.K.
Krishnagiri District
Working as Rest Gate Keeper
under Section Engineer/
Permanent Way Inspector S.R Sambalpetty
5. S.Masilamani
K.Ettipatti P.O
Uttankarai T.K.Krishnagiri District
Working as Gate Keeper under Section Engineer/
Permanent Way Inspector S.R Sambalpetty
6. G.Saminathan
Cookachenanur K, Ettipatti P.O
Uttankarai T.K.Krishnagiri District
Working as Trackman under Section Engineer/
Permanent Way Inspector S.R Kunnathur
7. M.Krishnan
Parachanure
Uttankarai T.K.Krishnagiri District
Working as Trackman under Section Engineer/
Permanent Way Inspector S.R Sambalpatty

8. T.Shanmugan
 Gowran Vattam
 E.Ettipatti P.O Uttankarai T.K
 Krishnagiri District
 Working as Trackman under Section Engineer /
 Permanent Way Inspector S.R Sambalpatty

9. S.Paribalan
 D No.146/1, Chinnamokkanur Vill,
 Pachal P.O. Tirupattur T.K.
 Working as Trackman under Section Engineer /
 Permanent Way Inspector S.R Sambalpatty

: Applicants

(By Advocate Mr.B Gopakumar)

vs.

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

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

3. Senior Section Engineer
 Permanent Way, Thiruppattur (Thirupathur)
 Vellore District,
 Tamilnadu

: Respondents

(By advocate Mr.Thomas Mathew Nellimoottil)

The application having been heard on 17.04.2008, the Tribunal
 on ...25..4..08. delivered the following :-

ORDER
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

This case has a chequered history. The applicants were engaged as casual labourer under Permanent Way Inspector, Southern Railway, Thiruppattur during November/December, 1979. However, as their engagement was illegally terminated they had approached Labour Court in I.D.No.202 of 1990 and were successful in their attempt vide Annexure A-1 order dated 01.10.1992. As per the said order, the Tribunal held that all the 15 workmen concerned satisfied the conditions regarding continuous service and therefore retrenchment effected in their case without compliance of the request under Section 25 (f) of the Industrial disputes



Act was illegal and void. The Tribunal also held "they will deem to be in service from the date on which there were denied of employment."

2. The above award of the Tribunal was challenged in O.P.No.4393/93 before the Hon'ble High Court of Kerala which, by judgment dated 26.09.1995 dismissed the Writ Petition. Consequently the applicants were reinstated in service with effect from 17.01.1996. Notwithstanding the reinstatement, the respondents challenged judgment in O.P. 4393/93 in Writ Appeal No.1735/95 before the Division Bench of the Hon'ble High Court of Kerala. This Writ Appeal was also dismissed by judgment dated 18.06.2002 whereby the following directions was issued:-

"In the result, we allow O.P.No.13238 of 1996, quash and set aside the order of the Labour Court in C.P.No.39 to 53 of 1994, and hold that claims of the applicants therein have to be computed to the full extent under the implementable award of the Industrial Tribunal in I.D.No. 202 of 1990 and resultant amounts paid after setting off the amounts already paid to them. This exercise shall be carried out within three months from today, failing which the amount shall carry interest at the rate of 12% per annum, and with liberty to the concerned workmen to move for recovery of the amounts due to them. Consequently, the O.P.No.19231 of 1997 is hereby dismissed."

3. After reinstatement while computing the emoluments payable to the applicants as there was some difference the matter was taken up with the Labour Court and the Labour Court found that certain amounts was to be paid to each of the workmen. This was challenged in W.P.3458/05 which is still pending. However, meanwhile certain interim orders were passed vide Annexure A-7 order dated 09.12.2005. In the meantime all the applicants were ordered to be promoted as Senior Track men in the pay scale of 2650-4000.

4. Vide Annexure A-8, the seniority list dated 31.08.2006 came to be issued on provisional basis and objections were called for. As the seniority of the applicants had been erroneously published down, each applicant filed separately identical representations dated 09.11.2006, a specimen of which is available at Annexure A-9. The contention of the applicants vide Annexure A-9 is that once they have been reinstated in service and were deemed to be in continuous service incomplete disregard to the retrenchment order passed, the seniority should be on the basis of such continuous service. As there was no response, applicants had filed OA 183/07 which was disposed of by an order dated 16.03.2007 with a direction to the respondents to consider and dispose of the pending representation by which respondents have negatived the claims of the applicants holding that the applicants were disengaged in 1983 and were taken back as casual labourer after a long time and that temporary status was given to them only with effect from 17.01.1996. Such grant of temporary status is not linked with their entitlements to fixation of seniority

5. In addition to Annexure A-8 provisional seniority list, Annexure A-11 seniority list dated 19.01.1997 indicating the seniority position of Trackmen in the scale of pay of Rs.2650-4000 had been published in which also the applicants position was at a lower place, based on continuous regular service without taking into account the service rendered till the date of judgment. The applicant has challenged Annexures A-8, A-11 and A-13 orders and prayed for quashing of the aforesaid orders and for a positive direction to the respondents to re-fix the pay of the applicants taking into account the pay fixation already made earlier and for such other reliefs, as may be deemed fit. As an interim order the applicants have prayed for a direction prohibiting the respondents from effecting promotion

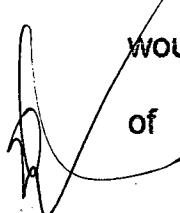


in preference to the applicant if their date of joining as Gangman is later than 05.11.1983.

6. Respondents have contested the O.A. According to them, the date of regular absorption in service is a criterion for fixing the seniority. They have contented that the grant of temporary status will not confer any right for continuous in the grade and service. Having accepted the same the applicants are estopped from claiming seniority during the period of casual service. Further the seniority of Gangman is maintained section-wise. Though the applicants were engaged as casual labourers in late 1979 / early 1980s, they were screened for regular absorption only in 1979 / 1999. According to the respondents the claim of the applicants to place them above all the casual labourers who had been engaged later (November 1979 onwards) is without basis.

7. Applicants have filed rejoinder reiterating their stand while the respondents have filed reply to the rejoinder sticking to their stand as contained in the counter. In addition, they have referred to the decision of the Apex Court in the case of **Secretary, State of Karnataka v. Uma Devi** as per which it is held that the casual labour appointees do not have any right to be made permanent and continuance of daily wages on account of Court's order could not entitle them to be absorbed or made permanent.

8. Counsel for the applicant submitted that the cumulative effect of the award, the decision of the Hon'ble High Court, the partial implementation of the judgment of the Courts by way of reinstatement etc., would mean that the applicant's seniority should reckon above the names of all those casual labourers who had joined the Railways after 5th



November, 1979/5th December, 1979. For, seniority is based on qualifying service, and qualifying service would alone enable one for entitlement of pay and allowance and the fact that the applicants have been paid their pay and allowance even for the period they were kept out of service, goes to prove that the applicants have the period of the period they were kept out of service counted for qualifying service and consequently for seniority. Under the circumstances denying the applicant the requisite seniority is illegal and unjustified.

9. Counsel for the respondents submitted that the pay and allowances were paid to the applicants were in their capacity either of casual labourers or at best temporary status. As such, whatever is the benefit or attendant concession that are available to such casual labourers or temporary employees, the same alone would be afforded to them. However, seniority is one which is not linked to temporary status or services rendered as casual labourer. Hence, the applicants cannot be entitled to the benefit of seniority on the basis of their being in casual labour service or of their temporary status. As their regularization took place only in 1996, there is no question of seniority from any date anterior to that of their regularisation. Reference to the decision of the Apex Court in the case of **State of Karnataka vs Uma Devi**, (2006) 4 SCC 1 SCC, has also been made.

10. Arguments were heard and documents perused. The effect of the award vide Annexure A-1 and the High Court order dated 18th June, 2002 vide Annexure A-3 read with order dated 9th December, 2005, vide Annexure A-7 is that the applicant is treated as not having been retrenched at all. Consequence of the same would mean that whatever is the benefit

available to all those who were casual labourers prior to 1979 are all available to the applicants. If regularisation of those who were engaged as casual labourers prior to 1979 had taken place only in 1996, then there is no question of the applicants getting their regularisation ante-dated. Instead, if the casual labourers earlier working with the applicants had been granted temporary status on the basis of their casual labour service and further regularisation on the basis of such casual labour service or temporary status service and such regularisation is anterior to 17th January 1996 (the date when the applicants had been afforded regularisation), then the applicants are certainly entitled to regularisation from that date when their immediate juniors were regularized.

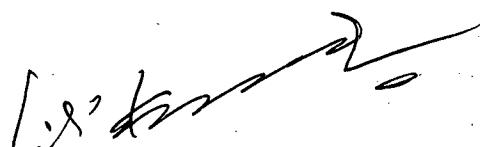
11. Umadevi's case is not applicable in the present case as the case of the applicants is not one of regularisation of the services when the entry into the service was by way of back-door. The claim is one of parity with others who were working as casual labourers along with the applicant at the relevant point of time. If no parity is maintained, then it would lead to a clear hostile discrimination amongst equals.

12. In view of the above, the OA is allowed. It is declared that the applicants are entitled to be regularised from the dates their immediate juniors had been regularized in service. Respondents are directed to afford due seniority to the applicants on the basis of their services without interruption as Casual Labourers and with temporary status and their position be compared with their immediate juniors and as and when such immediate junior was regularised, from the same date their regularization be advanced. The names of the applicants shall figure in the respective position in Annexure A-8 and Annexure A-11 seniority lists. Annexure A-13

order rejecting the claim of the applicants is hereby quashed and set aside. Consequential benefits of their entitlement to further promotion etc., shall remain in tact and the respondents shall act on such issues also subject to the applicants fulfilling their requisite qualifications. The entire drill shall be accomplished within a period of six months from the date of communication of this order. In case further time is needed, the same should be prayed for by a Misc. Application indicating the chronological sequence of action taken from the date of communication of this order till the date of such application and further time required for completion of the entire action.

13. Under the circumstances, there shall be no orders as to costs.

(Dated, the 25th April, 2008)



(Dr. K B S RAJAN)
JUDICIAL MEMBER

CVR.. v5