

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 363/2004

THURSDAY, THIS THE 26th DAY OF OCTOBER, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. KBS RAJAN, JUDICIAL MEMBER

M. Ganesan S/o Murugesan
Senior Gate Keeper, Section Engineer/
Permanent Way, Salem South, Southern Railway
residing at Behind Check Post
Rajiv Gandhi Nagar
Kalpudur, Katpadi-7

Applicant

By Advocate Mr. T.C.G. Swamy

Vs.

- 1 Union of India represented by
the General Manager, Southern Railway
Headquarters Office, Park Town PO
Chennai-3
- 2 The Divisional Railway Manager
Southern Railway
Palghat Division, Palghat.
- 3 The Senior Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat.

Respondents.

By Advocate Mr. Sunil Jose, ACGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant who is presently working as a Senior Gate
Keeper under the Section Engineer/Permanent Way, Salem South,
Palghat Division, Southern Railway, is aggrieved by the order No. P

(S)443/OA 5/2004/ERS dated 5.4.2004 issued by the first respondent by which his request for granting the benefit of regularisation on par with his juniors has been rejected.

2 The applicant was initially engaged as a casual Labourer under the respondents and was granted temporary status w.e.f. 23.10.1984. On certain allegation of misconduct he was removed from service w.e.f. 10.10.1988. The order of removal was challenged before this Tribunal in O.A. 892/1993 and the Tribunal set aside the impugned orders by order dated 22.6.1994 and thereafter he was reinstated in service on 24.4.1995. The order of the Tribunal was challenged before the Hon'ble Supreme Court in SLP No. 2585 of 1994 which was dismissed by the order dated 5.5.1998. During the pendency of the O.A. it is alleged that several juniors were screened and empanelled by memorandum dated 24.6.1993 (Annexure A-5) and if the applicant had continued in service he would also have been screened, empanelled and absorbed as a Gangman. Such absorption of a Junior one Shri P.K. Ganesan who is at Serial No. 71 in the above mentioned list has been cited in support of his case. By Annexure A-2 order the applicant was deemed to have continued in service and the intervening period has been treated as duty for all purposes including pay and allowances and drawal of increments. Later by Annexure A-6 order dated 26.3.1997 the applicant was screened and empanelled and absorbed under the Section Engineer, Permanent way Angadipuram. Thereafter on request and on loss of

seniority he was transferred to the Control of Section Engineer, Permanent Way, South Salem and he joined in 1998 itself. He had submitted several representations dated 12.3.1998, 7.6.99 and 11.7.2001 but there was no response to these representations. The applicant then submitted a detailed representation addressed to the first respondent in Annexure A-7 and filed O.A. 5/2004 before this Tribunal praying for a declaration that he is entitled to be considered for screening and absorption on par with the juniors included in Annexure A-5. The said OA was disposed of directing the first respondent to consider and dispose of Annexure A7 representation which has now been rejected by the impugned order.

3 It is contended that the said rejection was *prima facie* arbitrary and discriminatory and the contention that the the applicant had not worked as a casual labourer when the screening was held in 1993 is totally misleading. In view of the fact that Annexure A-2 orders have become final and conclusive with the dismissal of the SLP, the respondents should have considered him for screening and absorption on par with his juniors as he is deemed to have continued in service with all benefits. The applicant has claimed that he is entitled to be treated on par with his juniors.

4 The respondents have filed a reply statement refuting the averments of the applicant. They have pointed out that if he was aggrieved by the screening process he should have made

representation immediately and as per the contention of the applicant himself the first representation was submitted by him on 12.3.1998 which is one year after the publication of the Annexure A-6 list. The subsequent representations stated to have been submitted have not been received by the respondents and there is inordinate delay of six years in approaching the Tribunal. Also it has been contended that when the applicant was claiming seniority on par with his juniors the so called juniors, should have been impleaded as parties in this proceeding.

5 They have further alleged that the applicant had produced a casual labour service card purported to have been issued by the Divisional Signal and Telecommunication Engineer, Works, Tambaram certifying the service of the applicant from 20.9.78 to 26.3.79 for getting engagement under the Permanent Way Inspector, Quilandi and accordingly he was re-engaged as a Casual Labourer. But on receipt of certain complaints on the banafide of the Casual Labour Card produced by the applicant, enquiries were conducted which revealed that no such Service Cards were issued by the Senior Divisional Signal & Telecommunication Engineer, Works Tambaram. Therefore he was charge sheeted and an enquiry following the Disciplinary and Appeal rules followed and the penalty of removal from service was imposed with effect from 10.10.1988. The appeal preferred by the applicant was rejected. The applicant then filed O.A. 902/89 before this Tribunal challenging the order of

removal from service. The Tribunal directed the Appellate authority to consider the matter afresh and pass a detailed speaking order. The Appellate authority passed a detailed order Annexure R-2 rejecting his appeal. The applicant then filed O.A. 892/93 challenging the removal from service and the Tribunal allowed the OA quashing the impugned order holding that the Railway Services (Conduct) Rules cannot be applied to an employee when the alleged misconduct of producing the bogus service card was committed before his employment in Railway and further directed to reinstate the applicant in service. An SLP was preferred by Railway against the order of the Tribunal and it can be seen from Annexure A-4 order that the SLP was dismissed in a one line order without assigning any reason. Similar cases in O.A. 1412/93, 888/93 and 479/93 which were allowed by this Tribunal were taken up before the Hon'ble Supreme Court in appeal and the Hon'ble Supreme Court allowed the SLP filed by the Railways holding that disciplinary action is justifiable in such cases and set aside the judgment of the Tribunal. The applicants in the said OAs were again removed from service. The respondents have pointed out that the applicant was thus lucky to escape from termination of service as was done in identical cases as his case was listed in a different Bench which dismissed the SLP whereas in the identical cases, before another Bench the SLPs were allowed.

6 Further the applicant has been reinstated with back wages.

The O.A. 892/1993 was allowed purely on legal grounds. The empanelling of the applicant from a retrospective date was not considered since he had not worked as a Casual Labourer during the period from 1990-93. Further, inclusion of the applicant at such a stage and granting retrospective the seniority will unsettle the settled matters and the so called juniors are not parties in this O.A.

7 No rejoinder has been filed.

8 We have heard the learned counsel on either side.

9 The applicant has rested his case on two grounds (i) as he was reinstated in service with backwages by Annexure A-2 judgment of this Tribunal which was confirmed by the dismissal of the SLP filed by the respondents, he should have been deemed to have continued in service and (ii) that his juniors were empanelled by Annexure A-5 order dated 24.6.1993. Per contra, it is contended that the OA is liable to be dismissed on the ground of limitation and non-joinder of necessary parties.

10 The question of limitation is very relevant in this case. The SLP was dismissed on 8.5.1995. He could have agitated the matter then. Later he was empanelled and absorbed by Annexure A-6 order dated 26.3.1997. The respondents are therefore right in stating that if the applicant was aggrieved by his non-consideration for screening and

empanelment for absorption as Gangman he should have approached the Tribunal immediately after the issue of Annexure A-6 and they have also denied the receipt of any of the representations stated to have been submitted by the applicant. The applicant has also not enclosed any copy of these representations mentioned in the O.A. except the Annexure A-7 representation in 2002. There is clearly a delay of six years and more if delay is counted from 1995 in the applicant's prosecution of his case.

11 The second contention regarding his rights with reference to absorption of his juniors also fails in the absence of any supporting records and as rightly stated by the respondents by the non joinder of necessary parties. Though the applicant states that he is senior to those from Sl. No. 71 onwards in the Annexure A-5 list, no such seniority list of Casual Labourers has been produced in support of his argument. The respondents are therefore right in contending that any right of seniority granted on the basis of retrospective empanelment with reference to Sl.N0. 71 in the list would upset the settled seniority for the last ten years. Except stating that his juniors have been empanelled the applicant has not taken pains to produce any records to show the correct picture. He has not impleaded any of his juniors in the party array. Therefore on the grounds of limitation as well as on the ground of non-joinder of parties who would be affected by revision of seniority which is settled for more than 10 years, the OA is liable to be dismissed.

12 In addition to the above facts and circumstances on the question of law too the applicant has no legal right for regularisation, more so for retrospective regularisation. Regularisation could be considered according to the rules in two out of every three vacancies in Group-D, when Casual Labourers are employed, for which there has to be existence of posts at the relevant period of time and also the requirements of Recruitment Rules have to be fulfilled. In other words, it means that the applicant has to undergo a regular selection process. The Hon'ble Supreme Court in a recent judgment in Secretary, State of Kerala and others Vs. Umadevi and Others (2000 (5)SCC 480) clearly held that such casual labourer appointees do not have any right to be made permanent and that continuation of daily wages/temporary employees on account of Court's order would not entitle them to be absorbed or made permanent.

12A Therefore the applicant cannot claim to be regularised with retrospective effect and his contention that his right accrued due to regularisation of his juniors could not be proved in the absence of any supporting records.

13 It may be true that the words used by the respondents in the impugned order for rejecting his case are not xx proper as they had referred to the incident of the production of the bogus casual labourer card by the applicant and the disciplinary case as the reason for non-consideration of his empanelment. This matter had

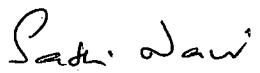
been settled by the dismissal of the SLP filed by the respondents before the Hon'ble Supreme Court, hence it was no longer open to the respondents to reopen the issue as far as the applicant is concerned even though it is seen that all similar cases have been upheld by the Hon'ble Supreme Court and applicants in those cases did not get the benefit of reinstatement like the applicant in this O.A. But it is equally true that, mere mention of this fact in the impugned order cannot confer any advantage on the applicant in deciding the question of his legal right for regularisation as the legal principles and the facts and circumstances of the case which go against the rights of the applicant are still valid, despite the reasons mentioned in the impugned order. In other words, the fact that the impugned order should have been worded more properly does not detract from the findings arrived at within the legal framework of the judgments of the Hon'ble Apex Court viewed in totality.

14 In the result, the O.A is dismissed with no order as to costs.

Dated 26.10.2006.



KBS RAJAN
JUDICIAL MEMBER



Sathi Nair
SATHI NAIR
VICE CHAIRMAN

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