CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.364/2005

Wednesday, this the 24th day of January, 2007

CORAM :

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

1. R.Kochucherukkan
Gangman, SSE / P.Way Office
Southern Railway, Thycaud PO
Thiruvananthapuram
R/o 10 CTS Building, Meenakshipuram, Nagercoil

2. S.Peermohideen
Lascar, Jr.Engineer (Works) Office
Southern Railway,
Thiruvananthapuram
R/o No.1, L.V.Street, Ervadi PO,
Nellai District : Applicants

(By Advocate Mr. M.R.Gopalakrishnan Nair)

Versus

1. Union of India represented by the
General Manager
Southern Railway
Chennai

2. The Senior Divisional Personnel Officer
Southern Railway
Thiruvananthapuram - 14 : Respondents

(By Advocates Mrs. Sumathi Dandapani, Senior
with Ms.P.K.Nandini)

The application having been heard on 10.01.2007, the Tribunal on 24.01.2007 delivered the following :

ORDER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This application has been filed by the applicants working as Gangman and Lascar, requesting regularisation of their services.

2. Both the applicants have similar service history. Both started as casual labourers. While working in open line, they were sent for medical

examination for empanelment in regular service as Gangman but were found unfit in B-1 class and not considered for alternative employment. They were terminated on that account. The dates of termination are 5.8.1983 and 3.12.1984. In pursuance of A-1 and A-2 orders of this Tribunal in O.A.Nos.131/1991 and 151/1991, they were reengaged as casual labourers and subsequently, regularised. The 1st applicant was given temporary status on 2.8.1992 and his services regularised and posted vide an order dated 25.2.1997. Likewise, the second applicant was given temporary status on 9.7.1992 and regularised and posted vide orders dated 25.2.1997. Despite the fact of such regularisation in 1997, the common contention of the applicants is that soon after their being found unfit medically, they should have been offered alternative jobs vide the dictates of the IREM in a lower category than the one for which they were sent for examination for fitness in the first instance. According to them, many of their juniors were allowed to continue without break by virtue of such re-deployment. This was injurious to the applicants because of the long gap between the dates of termination and dates of temporary status followed by regularisation. They claim to have made many representations, the latest of which was made by them by A-5 dated 27.4.2004 and A-6 dated 27.4.2004. Not receiving any reply, they filed O.A.853/2004 and secured an order directing the respondents to dispose of A-4 and A-5 representations therein (and A-5 and A-6 herein) with speaking orders. The respondents accordingly disposed of their representations vide impugned orders A-8 and A-9 dated 22.2.05. Challenging the A-4, A-8 and A-9 they have approached this Tribunal.

3. The reliefs asked for by them are as follows:

(a) immediate regularisation in 1997,or

(b) regularisation of applicant No.1 with effect from 2.8.92 and of applicant No.2 with effect from 9.7.92 and

(c) to extend all benefits consequential to such regularisation.

4. The following grounds are relied upon to sustain the above reliefs :

i) Subsequent to their being found unfit in B-1 class appointment, their services were terminated, without considering them for alternative employment as was done in the case of their juniors.

ii) Medical fitness under B-1 class is a condition precedent for holding regular post of Gangman and not for engagement as casual labourer/casual mazdoor.

iii) The rejection is contrary to various orders passed by the Railways.

5. The respondents oppose the application on the grounds that

i) there was no termination of their services but only a stoppage on account of medical unfitness,

ii) medical fitness is required even for working as a casual labourer,

Iii) the benefit of lower category consideration is available to only those casual labourers with six years of service who are included in a panel for appointment to Group D ; the applicants had not been so included,

iv) The challenge as relating to one of the impugned orders viz, A-4 dated 25.2.97 has become stale. Besides, they have not challenged any orders of re-engagement, and temporary status.

v) The rules quoted by the applicants vide order dated 19.9.89, actually disfavour their case.

vi) An employee's service is to be accounted from the date of his joining the post to which he is posted, as per rules-the claim for benefits from an earlier date is inadmissible. Again, from the date of stoppage of their services viz, 1983/1984 to 1992, they were not medically examined and their medical fitness were not assessed against any category. Thus the intervening period, when they were not under the employment of the

Railways, cannot be regularised nor can give them any service benefits like retiral and pensionary benefits.

6. The applicants have not contested any of the points made by the respondents in rejoinder .

7. Heard the counsel and perused the documents. During the pleadings, the applicants restricted the scope of relief (iii) by deleting the first limb which reads as follows:

> *"direct the respondents to regularise the service of the first and the second applicants with retrospective effect from 5.3.1983 and 3.12.1984 respectively with all consequential benefits, when their juniors were given alternative employment and regularised their services"*

8. The following issues need examination:

i) What were the consideration given to their juniors which was denied to the applicant.

ii) Was there any violation of orders by the Railways in denying the benefits of engagement.

Iii) Were the applicants vigilant in safeguarding their interests.

9. The first issue as to what were the consideration given to their juniors which was denied to the applicants may be considered. During the hearing, the applicants were given an opportunity to make specific details about the juniors, who had been supposedly given a preferential treatment over them. First of all, it had to be shown as to how certain persons were juniors to them-whether by way of any seniority list or otherwise. Secondly, the names of such juniors should be given. Thirdly, it should be shown whether they contested such discrimination at any time. Despite an opportunity given to them, the applicants admitted that they were unable to mention the names of the juniors who were regularized

earlier than they. Under these circumstances, we find that the applicants were unable to substantiate their claim of hostile treatment given to them compared to their juniors.

10. The next issue to be considered is whether there was any violation of orders by the Railways in denying the benefits of engagement. The first sub issue under this main issue is the circumstances under which medical fitness is a condition precedent. According to the applicants, the fitness is a condition precedent only for holding regular post of Gangman and not for engagement of a person as a casual labourer/mazdoor. Contesting this, the respondents point out that as per the IREM referred to by the applicants, the casual labourers should be subjected to medical examination as early as possible. The second sub issue is a contention of the applicants based upon the provisions in the IREM Rules 4(a) and (b). According to them, these provisions envisage a lower category engagement to persons found medically unfit. But rebuttal to this by the respondents is that the benefits of Rule 4(a) are available only to such of the casual labour with six years service and who have been included in a panel for appointment to Group D. In case they failed to make the grade, they may be considered for alternative category to the extent possible. The applicants were not certainly included in any panel for appointment to Group D posts. The third sub issue relates to the extension of benefits as envisaged in the orders issued by the Railways dated 27.1.88 and 19.9.1989. According to the resistance by the respondents to this point, the applicants' case is covered by the provisions of the said order dated 19.9.89 as reproduced below:

> *"b) Casual labourers not medically examined at initial engagement, should be examined before temporary status. Casual labourers not medically examined at initial engagement or at temporary status should be examined at regular absorption"*

The benefits of engagement in the lower category is available only to such of those casual labourers proposed for absorption, a point already made above.

Actually, the applicants were found unfit even at the time of consideration for temporary status not to speak of the time of consideration for absorption. On the basis of a combined consideration of these sub issues, we find that the applicants were not able to sustain their claim based upon any of the orders of the Railways.

11. The next point for consideration is whether the applicants were vigilant in safeguarding their interests. One of the impugned orders is dated as long back as 1997. As pointed out by the respondents, the applicants did not challenge it at the appropriate time. Besides, they did not chose to challenge the orders relating to re-engagement or temporary status or alleged discriminatory treatment given to their juniors. Under these circumstances, we find that substantial part of their claims is actually stale.

12. In sum it is found that,

(i) the applicants were unable to substantiate their claim of hostile treatment given to them compared to their juniors,

(ii) the applicants were not able to sustain their claim based upon any of the orders of the Railways and that

(iii) substantial part of their claims is actually stale

13. Based on the above, we dismiss the O.A. No costs.

Dated, the 24th January, 2007.

GEORGE PARACKEN
JUDICIAL MEMBER

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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