

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

.....

O.A. NO. 381/93

Tuesday, this the 1st day of February, 1994

SHRI N.DHARMADAN, JUDICIAL MEMBER
SHRI S. KASIPANDIAN, ADMINISTRATIVE MEMBER

Applicants

1. Shri P.Ganesan,
CPC Casual Labour,
O/o the Permanent Way Inspector,
S. Railway, Kottayam.
2. Shri N.Rajakumaran,
CPC Casual Labour,
O/o PWI/S.Rly. Kottayam.
3. Shri A.Sundaran,
CPC Casual Labour,
O/o PWI/S.Rly. Kottayam.
4. Shri Paul Raj,
CPC Casual Labour,
O/o PWI, S.Rly., Kottayam.
5. Shri P.Sathiyanesan,
CPC Casual Labour,
O/o PWI, S.Rly., Kottayam.
6. Shri V.Ponnappan,
CPC Casual Labour,
O/o PWI, S.Railway, Kottayam.

By Advocate Shri P.Sivan Pillai

Versus

Respondents

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

By Advocate Mr. Thomas Mathew Nellimoottil

O R D E RN.Dharmadan, JM

The applicants are casual labourers. They are aggrieved by the order of termination of their service, Ann.A10 dated 16.12.92. They seek regularisation and empanelment in Ann.A7 order of empanelment dated 5.9.91.

2. The applicants joined service as Casual Labourers in the Construction Unit of the Railways on 20.6.78 (1st applicant) and 19.6.78 (2nd to 6th applicants). They were retrenched on 5.1.82, but re-engaged on different dates in 1989/1990 in the Open Line Unit. The applicants were given temporary status in 1989 based on their open line service. When the services of the applicants were attempted to be terminated in December 1990 they filed OA 1209/90 and they are continuing in service as such. The applicants submitted several representations requesting for regularisation but they have not been given regularisation so far. According to the applicants, number of their juniors, who filed OP 3357/85 before the High Court were given regularisation and inclusion in Ann.A7 empanelment order. Hence the applicants submitted that they are entitled to preferential right to be included in Ann.A7 empanelment order taking into account their aggregate service from 1978. They rely on Ann.A16 clarification regarding the empanelment of casual labourers. The question and answer in Ann.A16 are extracted below:

Question

(2) How the seniority of the casual labour for purpose 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~~ ^{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 applicants 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.

4. In the light of the above facts, the learned counsel ^{the} for the applicants submitted that the applicants ^{have} right to be considered for regularisation and inclusion in Annexure-A7 in appropriate place.

5. We have also heard the learned counsel for respondents. The contentions of the applicants referred to above are not refuted by the respondents. Considering the submission of the applicants, we are satisfied that in the light of the facts and circumstances as stated above, the applicants are entitled to regularisation and inclusion of their name in Annexure-A7 empanelment list in appropriate place if all the facts stated above are true.

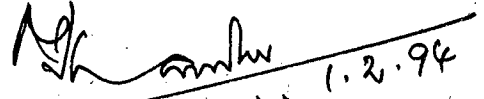
6. In the result, we are satisfied that the OA can be disposed of in the interest of justice with a direction to the fourth respondent to consider the claim of regularisation

of the applicants and for inclusion in Annexure-A7 in appropriate place, taking into consideration their aggregate service and the actual days of work from the initial engagement after due verification of the facts stated by them. 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. Kasipandian)
Member (A)

 1.2.94

(N. Dharmadan)
Member (J)

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