

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.404/93

Tuesday, this the first day of February, 1994.

SHRI N DHARMADAN, MEMBER(J)

SHRI S KASIPANDIAN, MEMBER(A)

TN Dinamani,
Ex. Casual Labour,
Planthadathil House,
Erumbayam,
Thalayolaparamba,
Kottayam District.

- Applicant

By Advocate Mr P Sivan Pillai

Vs.

1. The Divisional Personnel Officer,
Southern Railway,
Trivandrum-14.
2. The Executive Engineer(Construction)
Southern Railway, Ernakulam South. - Respondents

By Advocate Mr Thomas Mathew Nellimoottil

O R D E R

N DHARMADAN, MEMBER(J)

Applicant is approaching for the second time for getting a re-engagement considering his past service as a casual worker.

2. Applicant commenced his service as a casual employee on 23.11.1972. His services were terminated on 20.5.1974 due to participation in strike. He has produced Annexure-Al service card to establish his continuous service from 1974. He challenged the termination in an earlier OA-752/90. All the contentions raised in this OA were raised by the respondents before this Tribunal when the above OA came up for consideration on 22.10.1991. It is after considering the contentions, we specifically directed the respondents to re-engage the applicant in the light of Annexure-A5 order dated 25.8.1975. The operative portion of the judgement is extracted below:

"12. In these circumstances, we are of the view that this application can be disposed of with suitable directions to the

respondents. Hence, we dispose of this application with a direction to the respondents to consider, within one month from the date of receipt of this judgement, the re-engagement of the applicant in terms of the Circulars dated 25.8.75 and 18.9.76 referred to in the Annexure-A4 document and re-engage him, if so directed by those circulars. In case there are no instructions to the contrary in these circulars, such engagement shall be given to the applicant considering his seniority based on the service rendered by him as on 20.5.74 when he was discharged, which comes to 187 days."

3. Annexure-A5 proceedings were issued by the Railway Board with the object of re-engaging all the casual employees/substitutes who were discharged prior to 20.5.1974. Clause(a) of Annexure-A5 is extracted below:

"Discharged Casual Labourers/Substitutes who have not been re-employed will be re-engaged against future requirements in the order of priority on the basis of their total period of service prior to their discharge."

4. The learned counsel for the applicant submitted that all the other persons who have participated in the strike were re-engaged. He has also relied on Annexure-A8 seniority list of casual labourers(unskilled as on 30.6.1991) and contended that a number of others included in the list, who are juniors to the applicant, were re-engaged in service without considering the legitimate claim and seniority of the applicant. The directions in Annexure-A3 judgement, were not complied with. Hence the applicant was forced to move a contempt petition. The impugned order Annexure-A4 was issued pending the contempt petition, which was closed observing that the remedy of the applicant is to file a separate OA. Accordingly, the applicant has filed this OA under Section 19 of the Administrative Tribunals Act.

5. The learned counsel for the respondents submitted that Annexure-A5 has been superseded by Exhibit-R2 and hence the applicant's case would be considered in his turn and seniority.

6. Annexure-A5 has not been superseded by Exhibit-R2 as contended by the respondents in the reply. Exhibit-R2 letter was also brought to the notice of this Tribunal while Annexure-A3 judgement was passed.

It is after considering this contention, that the direction in the earlier case was issued by this Tribunal. We have also perused Exhibit-R2. It does not supersede Annexure-A5. Hence the contention of the respondents that Annexure-A5 has been superseded cannot be accepted. It is contrary to the facts. Having regard to the facts and circumstances there is nothing wrong in presuming that the applicant is denied reengagement on account of his filing ^{of a} ~~of~~ contempt petition against the respondents, for after a careful consideration of the contentions, we see no justification for denying reengagement to the applicant in the light of specific directions in the earlier judgement as extracted above. Respondents ought to have complied with the directions particularly when number of other juniors of the applicant were given reengagement. In fact directions in the judgement of this Tribunal in OA-752/90 are very clear and the respondents ought to have reengaged the applicant taking into account Annexure-A5 letter.

7. The failure of the respondents to implement the direction in the earlier judgement persuades us to allow the application. Accordingly, we direct the respondents to reengage the applicant with all attendant benefits legally due to him considering his prior service as indicated above bearing in mind the principles in Annexure-A5. This shall be done within a period of four months from the date of receipt of a copy of this order.

8. The OA is allowed as above. No costs.



(S KASIPANDIAN)
MEMBER(A)


1-2-94

(N DHARMADAN)
MEMBER(J)

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