

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 385/91

199

XXXXXX

DATE OF DECISION 26/11 November 1992

VASANT MANIK GIRI GOSAVI Petitioner

MR. K D KULKARNI

Advocate for the Petitioners

Versus

UNION OF INDIA & ORS

Respondent

MR. J G SAWANT

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Ms. Usha Savara, Member (A)

The Hon'ble Mr. C.J. Roy, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

W.S.
M(J)

mbm

TRK

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESCOT ROAD; BOMBAY-1

OA No. 385/91

Vasant Manik Giri Gosavi
Temporary Khalasi, Central
Railway; R/o. Vivekanandnagar
Manmad, Taluqa Nandgaon
Dist. Nashik

..Applicant

v/s.

Union of India through
General Manager, Central Rly.,
Bombay V.T., Bombay-1

2. The Executive Engineer
(B&F) Central Railway
Manmad; Dist. Nashik 423104

3. Bridge Foreman
Central Railway
Manmad; Dist. Nashik 423104 ..Respondents

Coram: Hon. Ms. Usha Savara, Member (A)
Hon. Mr. C J Roy, Member (J)

APPEARANCE:

Mr. K D Kulkarni
Counsel
for the applicant

Mr. J G Sawant
Counsel
for the respondents

JUDGMENT:
(PER: C J Roy, Member (J))

DATED : 26-11-1992

This is an application filed under
section 19 of the Administrative Tribunals Act, 1985
by the applicant claiming the following reliefs:

i) The order of the Competent Authority
conveyed vide ~~CGO~~ (E) BB - letter No.
HPB/204/RE/CL dated 8.3.1991 and
notified to the applicant vide letter
no. Stf/E-2/MRCL dt. 23.4.1991 be
quashed and set aside being arbitrary,
unjustified, unfair and illegal ab initio.

ii) The respondents be directed to consider absorption of the applicant as a regular employee by processing and forwarding his case to the competent Screening Committee.

iii) That the termination without notice being illegal, the applicant being a workman vide para 5(iii) and provision of Section 25 B, as also Section 25 F of Industrial Disputes Act, 1947, having not been complied with by the respondents this Tribunal be pleased to issue declaration for continuation in service of the applicant and full back wages from 18.10.1989.

iv) the respondents be directed to restore the name of the applicant in the 'Live Casual Labour Register' within a period of one month.

v) costs of the application.

2. The applicant was initially appointed as Khalasi on 26.10.1979 in Central Railway at Manmad. He worked in temporary capacity as under:

(a) 27.4.1979 to 12.5.1979

30.5.1979 to 15.6.1979

03.9.1979 to 18.9.1979 Khalasi

26.10.1979 to 18.11.1979

21.1.1980 to 30.1.1980

21.3.1980 to 26.3.1980

(b) 1-9-1980 to 9-10-1980 Khalasi

(c) 28-10-1982 to 18.11.1982 Casual Khalasi

25-11-1982 to 10-12-1982

(d) 3-2-1989 to 17-10-1989 Casual Khalasi
(256 days).

A service card was issued to the applicant bearing No. 164627.

3. The applicant states that his services were terminated from 18.9.1979 under the pretext of want of further productive work, and that his name has been borne on the Live Register of Bridge & Floods, Manmad. After his termination he frequently approached the respondents department to provide him a job.

4. The applicant was re-engaged on 3.2.1989 as casual labourer by Bridge Foreman, Manmad against modernisation work of Chief Engineer Workshop and on completion of 120 days he was sent to Divisional Medical Officer, Bhusawal on 16.10.1989 for medical examination in A-III category in order to give him MRCL status, but was found temporarily unfit for a period of six months as per remark in the Certificate of Medical Examination. After six months he was again asked to undergo medical examination.

5. He further alleges that having failed to qualify in the medical examination he has not been allowed to join duties from 18.10.1989 without giving any order or notice. On 28.4.1990 vide certificate No. 250295 the applicant was declared fit in A-III category. After he was declared fit on 28.4.90 the applicant approached the authorities for re-engagement. He made representations in this connection and got a reply dated 8.3.91 informing that his case is put up and the competent authority has stated that he need

not be taken on duty and whatever compensation due should be paid to him under the rules.

6. The applicant states that he has not received any compensation. Though a prayer has been made in this application to declare that the applicant is in continuous service as he was not given any notice before termination as he is a workman under Industrial Disputes Act, ~~across~~ ~~the~~ Bar the learned counsel for the applicant has not pressed the aspect ~~that~~ that the applicant be treated as workman under the Industrial Disputes Act.

7. The respondents have countered the application by filing their reply in which they have denied that the applicant worked in a temporary capacity all along. He was a Casual Labour and was not even given the status of enhanced rated casual labour as he had not completed 180 days of continuous service till 18.12.1982. He reported for duty after a lapse of six years under Bridge Foreman, Manmad, and on completion of 120 days continuous service he was sent for medical examination for A-III category on a Monthly Rated Casual Labour (MRCL) on 16.10.1989. He was declared medically unfit for A-III category temporarily. However the applicant was subsequently declared medically fit and by that time the work on which the applicant was engaged as Casual Labour on daily rate basis

had come to near completion, and hence he was not taken on duty. Then he approached the competent authority who considered his prayer and rejected the same by stating that the applicant need not be taken on duty and whatever compensation due under the rules should be paid to him. It is further contended that the applicant was borne on the Live Register in Construction Department as a daily rated casual labour and after a lapse of over six years on requisition from Executive Engineer (Bridges & Floods) he was directed to work under Bridge Foreman, Manmad on Open-line. After completing 120 days he was sent for medical examination and was declared medically unfit and the respondents denied that his services were terminated orally as alleged. It is further contended that the applicant never approached the department for re-engagement. It is also alleged that at present there is a ban of taking casual labourer into service.

8. The applicant filed a rejoinder and in the rejoinder he states that the compensation of Rs.1466/- offered to him is not acceptable to him and that he wants reinstatement/re-engagement, as prayed in the case filed before this Tribunal. More or less the rest of the points are asserted and in the rejoinder also the Industrial Disputes Act

is raised. As already stated in para 6 above the learned counsel for the applicant has already waived his right for relief under Industrial Disputes Act.

9. We have heard both the counsel at length and perused the record. Undoubtedly the applicant has put in more than 360 days of service and that he was in the live register in construction department as a daily rated casual labour. When he was medically found ~~if~~ fit he cannot be put off duty without assigning any reason but stating that there is no work in the place in which he worked. We are not prepared to accept this contention of the respondents. There are a number of decisions of this Tribunal as well as the Hon. Supreme Court wherein schemes were directed to be prepared in order to regularise, absorb and give temporary status to the casual labour. The Ernakulam Bench of the Tribunal in the case of M. JOHN ROSE AND ANOTHER V. HEAD RECORD OFFICER, R.M.S., TRIVANDRUM DIVISION, AISLJ 1992(2) CAT 243 quoting the Hon. Supreme Court judgment in the case of SURINDER SINGH AND ANOTHER V. THE ENGINEER-IN-CHIEF, CPWD AND ORS, SLR 1986(1) SC 435 has held that even part time casual labour in P&T are eligible for temporary status. In the case of INDERPAL YADAV Vs. RAILWAY BOARD, SLR 1985(2)248, the Hon. Supreme

Court has directed that the casual labour has to be conferred temporary status.

10. The learned counsel for the applicant states that the juniors to the applicant were appointed and that the applicant was not considered.

11. We find that the applicant has put in considerably long service and cannot be put off duty. The application succeeds in part. The respondents are directed to appoint the applicant in any of its project works in preference to his juniors. This exercise may be completed within a period of two months from the date of communication of this order.

The petition is disposed off without any order as to costs.

(C J ROY) 26/11/92
MEMBER (J)

(Usha Savara)
MEMBER (A)