

(2)

:1:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT: HYDERABAD

O.A. NO: 1751 OF 1997

BETWEEN:

Smt. M. Vimala, W/o. late Mallaiah,
Aged about 36 years, Ex-Substitute,
O/o. the Medical Director,
Railway Hospital,
Lallaguda, SECUNDERABAD.

APPLICANT

AND

1. Union of India, represented by
General Manager,
South Central Railway, Railnilayam,
SECUNDERABAD.
2. The Chief Personnel Officer,
South Central Railway, Railnilayam,
SECUNDERABAD.
3. Medical Director,
Railway Hospital,
South Central Railway,
Lallaguda, SECUNDERABAD.

RESPONDENTS

DETAILS OF THE APPLICANT:

Address for service of summons/
notices on the applicant:

SANKA RAMA KRISHNA RAO
ADVOCATE, 1-B-539/C,
II Floor, Chikkadpally,
HYDERABAD - 500 020

1. Particulars of the order against which the application
is made:

This application is against the impugned order
No.P(MD)269/M.V./Sub. dated 31.12.1996 issued by the Chief
Personnel Officer, South Central Railway, Secunderabad (IInd
Respondent herein) rejecting the claim for her re-engagement as
Substitute by putting her name in the Live Register despite
detailed representation dated 1.7.1996 to the General Manager
(1st Respondent) submitted in pursuance of the direction of this
Hon'ble Tribunal dated 4.6.1996 in O.A.No.610.96.

x M. Vimala.....

2 JURISDICTION OF THE TRIBUNAL:

The applicant declare that the subject matter of the order against which she wants redressal is within the jurisdiction of the Tribunal u/s.14(1)(b)(ii) of the Administrative Tribunals Act, 1985.

3. LIMITATION:

The applicant further declares that the application is within the limitation period prescribed in Section 21(1)(a) of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE:

(1) It is respectfully submitted that the applicant was engaged as a Substitute in casualties such as leave, sick etc. of regular Group-D staff of Railway Hospital, Lallaguda under the control of the IIIrd Respondent herein. She was issued a Casual Labour Identity Card with photo affixed to signify the engagements as substitute as and when required. Thus, she served for 73 days in different spells according to the needs of the Respondents-Railway Administration. The applicant was not given chances of engagement after 7.9.1985.

(2) It is further submitted that at the instance of the South Central Railway Employees' Sangh, a recognised Trade Union, (SCORES in short) held Permanent Negotiating Machinery Meeting (PNM Meeting in short) with the General Manager (R-1 herein) on 4.9.1990 and 19.12.1990 (PNM Meeting No.LVI/4) a decision was taken and the 1st Respondent directed that the ex-substitutes in Medical Department should be taken on live register for the purpose of re-engagement as and when required. While many ex-substitutes were taken on live register, a few were not taken as they were not aware of the decision and the applicant was one. The SCORE Sangh, Medical Branch as well as the CHS now

M.Vimala

Contd.....

re-designated as MD (IInd Respondent) advised the IInd Respondent to give orders to re-engage the left-overs including the applicant vide letter No. HQ/MD/136/Sub. Staff dated 29.11.1993 issued orders to take on live only Shri Komarajah & Rajalah Channalah vide letter No. P/MD/564/Vol. V dated 26.5.1994. The applicant who served as ex-substitute was not taken despite repeated representations. Later, the IInd Respondent advised the Sangh Secretary by letter No. P/MD/564/Vol. V dated 14.6.1995 that the applicant's request could not be agreed to since she had put in only negligible number of days of service which was impugned in O.A. No. 610 of 1996 filed before this Hon'ble Tribunal. The Hon'ble Tribunal by order dated 4.6.1996 directed as under:

"The applicant may if so advised put in a detailed representation for her re-engagement to R-I (GM) and if such representation is received by R-I he should dispose of the same in accordance with rule."

(3). It is submitted that in pursuance of the direction of the Hon'ble Tribunal, the applicant submitted a detailed representation dated 1.7.1996, i.e., immediately after the judgement. After inordinate delay of 6 months, the IInd Respondent communicated which was supposedly the decision of the 1st Respondent by letter No. P(MD)269/M.V/Sub. dated 31.12.1996 which is impugned in this O.A. In the said letter it was communicated that the applicant's case for re-engagement as Substitute or putting her name in the Live Register cannot be agreed to which is arbitrary, illegal and discriminatory among others on the following grounds:

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

(1) It is respectfully submitted that the applicant was engaged as Substitute Safaiwal for 73 days in casualties caused by availing of leave/sickness of regular employees in Railway

M. V. M. J. G. A. Contd.

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Hospital in different spells like others, viz., S/Shri Komaraiah and Rajaiah Channiah and has put in largest number of days after them and the contention that she was not engaged for more than 5 days at a stretch has no relevance in the absence of any Law or Rule to that effect.

It is further submitted that the applicant's substitute service was therefore not for emergencies as in Train. Accidents or breaches as alleged. Rly. Board's Lr.No.E(NG)II/78/CL/2 dated 25.4.1986 deals with persons engaged as Casual Labour for short durations like a week or 10 days or for emergencies like restoration of breaches etc., is not applicable. The case of the applicant is different in that she worked in vacancies for 73 days due to leave/sickness of regular incumbents working against permanent sanctioned posts where the particular duration of working as Substitute at a stretch is not contemplated. The interpretation of the said Rly. Board's circular should be so as to include the applicant's claim for re-engagement and contra is mis-conceived and an error of judgement by the decision taking authority, i.e., GM and 1st Respondent herein which is thoroughly misled by the IIInd Respondent and more particularly his dealing subordinates. There is therefore no proper application of mind by the Respondents-Rly. Administration., and therefore the decision communicated through the impugned order is arbitrary, illegal and liable to be quashed.

It is respectfully submitted that the Respondents-Railway Administration agreed to take the names of S/Shri. Komaraiah and Rajaiah Channiah on Live Register for engagement as Substitutes vide letter No.P(MD)564/Vol.V dated 26.5.1994 whereas the applicant's claim who has put in next maximum no. of days service, i.e., 73 days after them was not considered which is arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution of India.

X

M. Vimala
Contd.....

6. DETAILS OF THE REMEDIES EXHAUSTED:

With the passing of the order as communicated by the IInd Respondent through the impugned order dated 31.12.1996, despite the judgement of the Hon'ble Tribunal in O.A.No.610/96 to consider and dispose the applicant's claim; representation according to rule, there is no efficacious remedy than to file this O.A. challenging the legality and constitutional validity of the impugned order.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT

The applicant further declares that she has not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any other court or any other authority or any other Bench of this Tribunal, nor any such application, Writ Petition, or suit is pending before any of them.

8. RELIEF(S) SOUGHT:

In view of the facts mentioned above the applicant prays for the following relief:

It is respectfully prayed that this Hon'ble Tribunal may be pleased:

(a) to set aside the impugned order No.P(MD)269/M.V./sub dated 31.12.1996 declaring the same as arbitrary, illegal, unwarranted, and frivolous and in violation of Articles 14 & 16 of the Constitution;

(b) direct the respondents to take the applicant's name on live register as done in the case of Komaraiah & Rajaiah Channiah and provide re-engagement in casualties such as leave/sickness or vacancies caused by normal waster of regular Group-D staff of Railway Hospital, Lallaguda, with consequential benefits of seniority and out of turn priority in re-engagement

Contd.....

X M.V.imala.

SIGNATURE OF THE APPLICANT.

M. V. M. V.

SIGNATURE OF THE APPLICANT

COUNSEL FOR THE APPLICANT.

[Signature]

Hyderabad
Dt: 8-12-1997

I, Smt. M. Vimala, W/o. Late Malliah, Aged about 36 years, Ex-Substitute, D/o. the Medical Director, Railway Hospital, Lallaguda, SECUNDERABAD, do hereby verify that the contents from paras 1 to 11 are true to my personal knowledge and belief and that I am not suppressed any material facts.

VERIFICATION

12. LIST OF ENCLOSURES:

5. Name of the Office payable at: G.P.O. Hyderabad
4. Name of the Office of Issue: G.P.O.
3. Fee: Rs 50/-
2. Date: 9-12-97
1. P.O. No. 8 14 920806

[Signature]
12/12/97

11. PARTICULARS OF THE BANK DRAFT/POSTAL ORDER filed in respect of the application fee:
10. NOT APPLICABLE:

in the circumstances of the case.
pass such other or further order or orders as deem fit and proper her family having 4 children to be looked after and be pleased to ameliorate the sufferings of the applicant who is a widow and suality of regular staff pending final disposal of the main O.A applicant as substitute in any existing or future vacancy or call further pleased to direct the respondents to re-engage the applicant. It is further prayed that the Hon'ble Tribunal may be As the applicant is forced to seek judicial remedy

9. INTERIM ORDERS IF ANY PRAYED FOR:

under the circumstances of the case.
and be pleased to pass such other order or orders as deem fit grant costs for seeking repeated legal remedy;
over any others, if already re-engaged in the interregnum and

A-I

(13) (7)

दक्षिण मध्य रेलवे
SOUTH CENTRAL RAILWAY



महाप्रबन्धक का कार्यालय,
General Manager's Office
कापिक शाखा
Personnel Branch
सिकन्दराबाद (आ. प्र.)
Secunderabad (A. P.)

No. P (MD) 269/M.V./Sub.

दिनांक Date 31.12.1996

Smt. M. Vimala,
Ex. Substitute Safaiwali,
Railway Hospital/Lallaquda.

(Thro' MD/RH/LGD)

Sub: Re-engagement of Substitute Safaiwala -
Medical Department.

Ref: Your representation dt. 1.7.1996.

- x - x -

After perusing the judgment dt. 4-6-1996 delivered by the Hon'ble Central Administrative Tribunal/Hyderabad Bench, your representation dt. 1-7-1996 and papers available on record, the General Manager passed his orders on 30-12-96 as under:-

"Smt. M. Vimala was engaged as Substitute Safaiwali on 7-1-85 and continued as such for a total period of 73 days in different spells upto 7-9-85 in Sick/Leave vacancies. There after she was not re-engaged by RH/LGD.

The Secretary/SCRE Sangh/Medical Branch represented on 9-1-92 and further on 17-2-94 to register the names of CLs/Substitutes who had earlier worked against leave and sick vacancies in the Live Register including the name of the representationist.

The case was examined by CPO/IR and the request of Secretary/SCRE Sangh has not agreed to.

Thereafter Smt. M. Vimala filed the ~~above~~ O.A.No.610/96 in CAT/HYB.

The Hon'ble CAT/HYB disposed of the O.A.No. 610-96 on 4.6.96 with a direction that Smt. Vimala may submit a representation to Res.No.1 (i.e. GM/SC) for her re-engagement and if such representation is received, GM/SC should dispose of the same in accordance with the Rules.

Smt. Vimala was engaged as Substitute Safaiwali against the vacancies that arose due to sick/leave

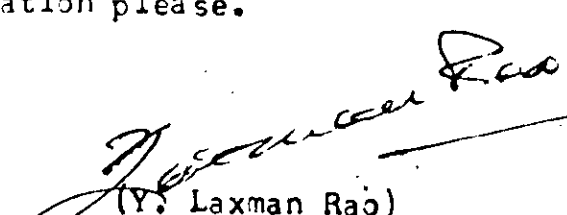
vacancies for a short period of 73 days for short durations ranging from 7-1-85 to 7-9-85. At no point of time she was engaged for more than 5 days at a stretch.

In this regard, Railway Board's letter No. E/NG/II/78/CL/2 dt. 25-4-1986 is relevant. As per the instructions contained in the said letter where a Casual Labour who had been discharged for want of work or on completion of work and whose name had been deleted in terms of instructions of Railway Board, the same can be entered in CL Live Register. However, the Board's instructions contained in their letter dt. 10-12-84, regarding persons engaged as Casual Labour for short durations like a week or ten days for work of short durations or for emergencies like restoration of breaches etc., will however continue to hold good. Accordingly, Casual Labour cards will not be issued to such labourers nor will their names be entered in CL Live Register.

As per the extant instructions if a substitute/CL who was earlier discharged from service on completion of work or on return of the person against whose post he/she was engaged as Substitute has not been booked again in the preceding two complete Calender years, his/her name should be struck off from the Live Register.


In view of the above, it is seen that the action taken in this case is in accordance with the Rules. As such, Smt. Vimala's case for Re-engagement as Substitute or for putting her name in the Live Register cannot be agreed to".

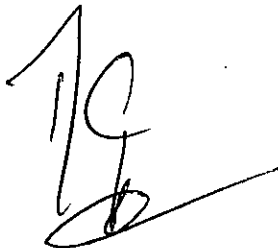
This is for information please.


(Y. Laxman Rao)
for Chief Personnel Officer

Copy to:

MD/RH/LGD: Matron(GAZ)/RH/LGD: 1 for information.
APO/Confl.


(Y. Laxman Rao)
for Chief Personnel Officer



A-II
SOUTH CENTRAL RAILWAY.

RAIL NILAYAM,
Personnel Branch,
Secunderabad,
Dated: 8-1-91.

NO.P(L)694/V1/SANGH/Review /
Vol-IX.

DRMS(P) BZA, CTL, UBL, SC-BG, MG-HYB.,
CWM/LGD, CWM/S&T/MFT, Dy.CME/WMS/GTFL,
CE/OL, CAOR/CN, CSTE, CME, CCS, CCPS, CHS/LGD.

SUB:- Review PNM Meeting held with SCRE
SANGH/SC on 19-12-90.

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A copy of the Minutes recorded in the above mentioned meeting is sent herewith for your information. Attention is invited to the minutes of the subjects pertaining to your Division/Unit as indicated below for taking necessary action and advise compliance at an early date:-

DIVISION/UNIT.

SUBJECT NOS.

x x x x x

CHS/LGD

LVI/4

sd/-----

(N.K. PRASAD.)

for CHIEF PERSONNEL OFFICER.

ENCL: One.

(16) (10) (2)

REVIEW PNM MEETING WITH SCRE SANGH/SC ON 19-12-90.

x x x x

SUBJECT NO.
LVI/4.

ENGAGEMENT OF CASUAL LABOUR IN
MEDICAL DEPARTMENT:-

CPO explained that the Division
would be directed to place on live register.
(Subject closed.)

1/c
[Signature]

22/7/98
I COURT

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE

VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

DATED: 10 - 7 - 1998.

ORDER/JUDGMENT

M.A./R.A./C.A.No.

in

O.A.No.

1751/97

T.A.No.

(w.p.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm.

