

43

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 1165/99

Date: 28-2-2000

Between:

A. Vijaya Kumar

.. Applicant

A N D

1. The General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
2. The Divisional Railway Manager,
Hyderabad Division,
South Central Railway,
Secunderabad.
3. The Senior Divisional Personnel
Officer,
Hyderabad Division,
South Central Railway,
Secunderabad. .. Respondents

Counsel for the applicant : Mr. Laxma Reddy

Counsel for the respondents: Mr. D.F.Paul, SC

Coram:

Hon. Shri B.S. Jai Parameshwar, Member (J)

2

(Per Hon.Shri B.S.Jai Parameshwar, Member(J)

44

learned counsel
Heard Mr. Laxma Reddy/for the applicant

and Mr. D.F.Paul, learned standing counsel for the respondents.

2. The applicant herein was engaged as casual labour from 10-2-80 to April, 1981 at Loco Foreman, Lalaguda, South Central Railway. His services were dispensed with for want of work and casual labour card was issued to him along with others on 7-5-1981.

3. His name was included in the live register of casual ^{labourers} ~~laborers~~ of Loco Foreman, Lalaguda.

4. In terms of CPO/SC letter No.P/677/R&M/IRT. III dt. 23-1-92 and 28-1-92 the ex-casual labours of Loco Foreman, Lalaguda were transferred for re-engagement as casual ^{labourers} ~~laborers~~ under CWS/Purna against the requirement to meet the exigencies of service.

5. The applicant submits that this letter dtd. 5-2-92 was only notified on the notice board, and it was not circulated to individual casual labours. This letter dt. 5-2-92 contains the names of 13 ex-casual labours of Loco Foreman, Lalaguda. The name of ex-casual labour at Sr.No.10 is one Vijayakumar.A.
The applicant submits that ^{those} ~~the~~ ex-casual labourers who came to know about this letter dt. 5-2-92 approached AME Purna and got themselves re-engaged there.

2

LSS

The applicant came to know of this fact in the year 1994. On 8-7-94 the applicant submitted a representation to the respondent no.2 explaining the circumstances under which he could not join the AME Purna immediately after the letter dt.5-2-92. He was in possession of casual labour card. The office of second respondent collected the casual labour card from the applicant and verified. As there was delay of nearly two years from the letter dt. 5-2-92 the third respondent sent the casual labour card for verification as to its genuineness. The applicant submits that Loco Foreman Lalaguda had certified that the applicant had worked as casual labour during the year 80-81 and that he is a genuine claimant as per his letter dt. 31-8-94. However the office of the third respondent attempted to secure further verification on the casual labour card and sought a report from the FA & CAO by letter dt. 20-1-95. The report of the finger print was not made known to him.

6. The applicant submits that he was the person who was engaged as casual labour during the year 80-81. He is the person whose reference has been made to in the letter dt. 5-2-92. He submits that he was not aware of the letter dt. 5-2-92 and that he came to know about it only in July'94. As he was engaged as casual labour at Loco Foreman

2

Lalaguda, he has a right to re-engagement. The respondent authorities by making some enquiries as to the casual labour card produced by him are attempting to deny him the right of appointment.

It is his grievance that he has not been made known what the steps they had taken to ascertain the genuineness of the casual labour card submitted by him.

7. Hence he has filed this OA for the following reliefs:

"To declare the action of the respondents in not re-engaging the applicant as casual labourer and absorbing him into regular service on par with other ex-casual labourers on the basis of his seniority in the live register and in terms of the second respondent letter dt. 4-2-92 only on the ground of an exparte adverse report of the Finger Print Expert said to have been obtained by the third respondent as totally illegal, without jurisdiction and violative of articles 14,16 and 21 of the Constitution of India and also in violation of the principles of natural justice and consequently direct the respondents to re-engage the applicant herein as casual labourer and further absorb the applicant herein into regular service on the basis of the applicant's seniority in the live register with all consequential benefits."

8. The respondents have filed a reply along with material papers. Their main contention is that the applicant is not the person who was engaged as casual labourer at Loco Foreman, Lalaguda during the

32

year 80-81. The name appearing in the letter dt. 5-2-92 at Sr.No.10 does not pertain to the applicant, that the cause of action arose on 4-2-92 and the application filed in the year 1999 is barred by time. Though 13 ex-casual labourers of Loco Foreman Lalaguda were transferred to AME Purna only 12 ex-casual labourers reported for duty. They admitt^t that the ex-casual labourer by name A.Vijaya Kumar.H. appearing at Sr.No.10 in the letter dt. 5-2-92 has not reported for re-engagement. They submit that the alphabet 'H' represents the name of the father of Vijayakumar. The got examined the left thumb mark appearing on the casual labour card with reference to the paid vouchers available in respect of A.Vijaya Kumar. Hence they have taken a decision that the applicant is not the genuine claimant for re-engagement.

9. Further the applicant had produced the school leaving certificate issued by the Headmaster of J.B.S.G.H School. They came to know that the headmaster had issued the certificate. However, they submit that when the PI wanted to have his personal interview, the correspondent of the school has not allowed the PI to see headmaster for verification of facts. The applicant was not engaged as casual labourer between 80-81. Thus they dispute the genuineness of the claim of the applicant.

2

10. By way of rejoinder the applicant has furnished the affidavits of B.Narasimha, son of Mallaiah and Md.Ishaq, son of Md.Usman. These two persons are now working at Purna and Kachiguda ^{to} respectively. They have sworn this affidavit stating that the applicant entered as casual labourer during the year 1980-81 at Loco Foreman, Lalaguda and they have identified that this applicant was the very person who was A.Vijaya Kumar and whose name appears in the letter dt. 5-2-92.

11. The name of the applicant is A.Vijyakumar and his father's name is Veeraiah.

12. The learned counsel for the applicant during the course of his arguments contended that the verification made by the office of respondent no.3 are perforce; that even the finger print report is not correct; that casual labour card was issued by the Loco Foreman Lalaguda at the time of his dis-engagement; that the thumb impression appearing in casual labour card has been attested by a responsible official of the railway that the respondents have not ascertained from the said official that even Loco Foreman has issued a certificate dt. 13-10-94 that inspite of these facts they have obtained finger prints verification from FA& CAO office and even that report was not correct. Thus he submits that he may be permitted to appear before the respondent no.2 and produce those persons who were

Deo S. S. C. A. O.

engaged as casual labourer along with him and that the report of the FA & CAO is not correct. ^{leg}

13. The report of FA & CAO is at Annexure 'C' & 'F', page 10 to the reply. The report reads as below :

- *1. The K. Vijaya Kumar/Veeraiah appear in the pay sheets of July 80 to Nov.80 made available.
- 2. In Jan 80 and Feb. this name does not appear. But the name K. Vijayakumar Venkata Swamy, wherein the father's name appears. "

Criticising the report, he said that the FA & CAO had made verification with regard to one K.VijayaKumar son of Veeraiah whereas the applicant A.Vijayakumar son of Veeraiah. There is no reason to ~~not~~ write the alphabet 'H' in front of the name of ex-casual labourer as father's name is Veeraiah. Therefore the version of the applicant that the initial H is not correct. Even from the report of the finger print expert between July '80 and November '80 the father of the casual labourer has been mentioned as Veeraiah. Between January '80 and Feb. '80 the name K. Vijayakumar appears whereas the father's name is mentioned as K.Venkataswamy. On the face of such a report it was not fair on the part of the respondents to come to the conclusion that the applicant is not the genuine claimant for the re-engagement.

2

14. When the applicant offered himself for personal verification before the respondent no.2 in the presence of the superior officials and others who were engaged as casual labourers between 80-81 at Loco Foreman, Lalaguda, the learned counsel for the respondents disputed the said fact and said that on enquiry the respondent authorities have formed an opinion that the case of the applicant is not a genuine one and no purpose will be served ^{the} and applicant has not made out a case for grant of any relief that the casual labour 'f' card produced by him is a bogus one and that OA is liable to be dismissed.

15. From the letter dt. 5-2-92 (Annexure IV page 17 to the OA) and Annexure 'D' to the reply it is clear that 13 ex-casual labourers of Loco Foreman Lalaguda were transferred to the live register of Mechanical (C&W) under AME Purna. It is an admitted fact ~~mm~~ that out of 13 ex-casual labourers 12 reported for duty at Purna and one ex-casual labourer appearing at sr.No.10 had not reported. The respondents have issued a casual labour card to that employee.

16. If there is a discrepancy in the casual labour card regarding dates of engagement the applicant cannot ^u be held responsible. It cannot be said that the applicant had manufactured a casual labour card. In fact the applicant is in possession of the zerox copy of the casual labour card submitted by him to

②

the office of respondent no.2. The original casual labour card produced by the learned counsel for the respondents at the time of hearing is in torn condition.

LT mark of
In fact the portion where ex-casual labourer was taken was not at all available. Further the discrepancy in the finger print report issued by the FA & CAO has been already extracted above.

17. In order to arrive at the truth the applicant ~~is~~ the real person who was engaged as casual labourer between 80-81 at Loco Foreman, Lalaguda and whether he is eligible for re-engagement as per letter dt. 5-2-92 at C&W Mech.Dept. of AME Purna, I feel it proper to issue the following directions:

(a) The applicant shall appear before the respondent no.2 along with B.Narasimha, Chargeeman-A¹ & O/O AME SC Rly., Purna and Md.Ishaq, Khalasi, in the o/o Sr.Section Engineer(C&W) Kachiguda;

(b) The respondent no.2 shall on the basis of the records available in the office and also on the basis of the enquiry of the 12 ex-casual labourers ~~who were~~ ^{are} working in the C&W Mech.Dept. AME Purna ascertain whether the applicant was the real person who was engaged as casual labourer along with them between 80-81 at Loco Foreman Lalaguda. The respondent shall ^{from} No.2 also ascertain the official who has attested the thumb impression appearing in casual labour card and if he is available in service he may be asked to

2

identify whether the applicant was the real person named as A.Vijayakumar who was engaged as casual labourer at Locoforeman, Lalaguda.

(c) From Annexure-G it is disclosed that on 1-11-1994 Loco Foreman Lalaguda had issued a letter confirming the engagement of casual labourer said at Lalaguda. It is not known whether the Loco Foreman was the immediate superior official then. He has issued this certificate on the basis of the identification made by S.D.Joseph and M.A.Baqi employees of the railway administration. The respondent no.2 shall also direct them to appear before him and ascertain whether the declaration made by them were correct or not.

(d) The respondent no2 may examine the finger print expert and ascertain whether the report made by him is acceptable or not.

(e) The applicant ~~was~~ shall produce all the documents in his possession to establish his identity that A.Vijayakumar son of Veeraiah appearing at Sr.No.10 in the letter dt. 5-2-92 is ~~none~~ other than himself.

(f) The respondent no.2 shall take a decision as to the identity of the person appearing before him. If he is satisfied that the identity of the applicant with A.Vijayakumar appearing in letter dt. 5-2-92 then he shall direct the C&W Mech.Dept. AME Purna to re-engage him, if there is work for such re-engagement.

(g) If he takes a decision otherwise the same shall be communicated to the applicant with reasons therefore;

(h) The applicant shall appear before the respondent No.2 within 10 days from the date of receipt of a copy of this order;

(i) Time for compliance is 4 months from the date of appearance of the applicant before the respondent no.2;

(j) With the above directions the OA is disposed of. No order as to costs.

MD

B.S.JAI PARAMESHWAR

(B.S.JAI PARAMESHWAR)
Member (J) *21/2/80*

*by
Agm*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

1ST AND 2ND COURT

COPY TO:

1. HON. J.
2. HON. M. (ADMN.)
3. HON. M. (JUDL.)
4. D.R. A (DMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE CHAIRMAN

THE HON'BLE MR. R. RANGAPAJAN
MEMBER (ADMN.)

THE HON'BLE MR. B.S. JAI PARAMESWAR
MEMBER (JUDL.)

* * *

DATE OF ORDER: 28/2/00

MA/RA/CD.NO.

IN

DA. NO. 1165/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

8 copies

केन्द्रीय प्रशासनिक विधिकरण
Central Administrative Tribunal
शेष / DESPATCH

16 MAR 2000

HYDERABAD BENCH