

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

DATED THIS THE 19th DAY OF FEBRUARY, TWO THOUSAND NINETEEN

PRESENT:
THE HON'BLE MR. T. JACOB, MEMBER (A)
OA/310/00743/2015

C. Govindaraj
No. 7, Noorthi Store
Kuduappu (Via)
Uyyakondam Thirumalai
Trichirapalli.

...Applicant

-versus-

1. The Union of India rep. by
The General Manager
Southern Railway
Chennai – 600 003.

2. The Divisional Railway Manager (Personnel)
Southern Railway
Trichirapalli Division
Trichirapalli.

3. The Senior Divisional Engineer
Southern Railway
Trichirapalli Division
Trichirapalli.

4. The Assistant Personnel Officer
Southern Railway
Trichirapalli Division
Trichirapalli.

...Respondents

By Advocates:

M/s. M. Vijaya Kumar, for the applicant.

Mr. P. Srinivasan, for the respondents.



ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"To call for the records in T/P 579/I/EA/Empanel/CG dated 04.03.2015 on the file of the 4th respondent and quash the same and to issue a direction directing the respondents to notionally regularise the service of the applicant as a gang man with effect from the date of his engagement as a casual labour and pay all the consequential benefits or pass any other appropriate order or direction"

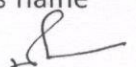
2. CAPSULATED FACTS AS PER THE APPLICANT: the applicant was engaged as Gangman on casual labour basis from 1964 to 20.5.1978 at Tiruchirapalli Division of Southern Railway. The Railway Board issued a letter dated 22.10.1980 for regularisation of similar placed persons as that of the applicant. The applicant submitted repeated representations for regularisation of his services in the light of the above order and also the Railway Board letter dated 12.11.1975. As there was no proper response, the applicant issued a statutory notice under Sec.80 CPC on 26.3.2005 and filed a



Suit in O.S.No.1545/2005 before the Principal District Munsiff, Tiruchirapalli, which by its Judgement dated 5.4.2010 dismissed the Suit by holding that it is barred by Sec.14 and 28 of the Administrative Tribunals Act, 1985. Thereafter, the applicant made representations to the authorities concerned to look into his grievances. As they remained unanswered, the applicant has chosen to file OA.779/2014 before this Tribunal wherein this Tribunal by order dated 9.6.2014 directed the respondents 1 to 3 to pass appropriate order on the comprehensive representation to be submitted by the applicant. The applicant submitted a representation dated 23.6.2014 and the 4th respondent passed the impugned order dated 4.3.2015 rejecting the claim of the applicant on the ground that his name did not figure in the Live/Supplementary Live Register.

3. The applicant has challenged the impugned order on the following grounds:-

(a) The Railway Board by its letter dated 22.10.1980 regularised the candidates similarly worked as that of the applicant. His juniors were appointed in the permanent post whereas his name was not considered.



(b) The applicant is having a Casual Labour Card with a LTI No.269/42 issued by the authorities concerned. The name of the applicant has neither been included in the Live Register nor in the supplementary live register.

(c) The 4th respondent has intentionally stated incorrect facts that the date of birth of the applicant in the LTI card and register is not tallying.

(d) The 4th respondent has no authority to reject the claim of the applicant and hence the impugned order is liable to be quashed.

4. The respondents have filed a detailed reply statement stating that the applicant was engaged as a Casual Labour during the period between September 1977 to May 1978. He deserted the work place on 21.5.1978. His name did not figure in the Live/Supplementary Live Register. He filed OA.779/2014 for a direction to the respondents to notionally regularise his services as a Gangman with effect from the date of his engagement as Casual Labour and pay all consequently benefits. The said OA was disposed of by the Tribunal with a direction to the applicant to make a comprehensive representation to the respondent on his grievance within a period of one week which the respondent shall



consider the representation of the applicant in accordance with law and as per rules and pass a reasoned and speaking order. In pursuance of the above direction, the applicant submitted a representation dated 23.6.2014 and the respondents disposed of the same by order dated 4.3.2015 rejecting the claim of the applicant on the ground that the service of the applicant has been discharged on 21.5.1978 for having deserted the post. Hence the name of the applicant has neither been included in the Live Register nor in the supplementary Live Register. In the absence of the name of the applicant in the Live Register/Supplementary Live Register, there is no provision to consider the applicant for absorption against the erstwhile Group 'D' vacancies. Hence the respondents pray for dismissal of the OA.

5. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

6. THE LEGAL ISSUE FOR CONSIDERATION: Whether in the present facts and circumstances of the instant case, the applicant is entitled to the relief sought by him and whether the impugned order of the respondents calls for any interference? This aspect depends upon various factors as contained in the discussion below.



7. TIME SPAN AND CAUSE OF ACTION: The period relating to initial cause of action and the vigil with which the applicant has taken action to have his claim of regularisation translated to action could be explained as hereunder:-

(a) The matter pertains to the period of 1977 vintage when the applicant joined as casual gangman (The claim of the applicant that he entered the services as a casual gangman in 1964 has to be outrightly rejected since he had averred that his date of birth is 08-09-1960, which fact cannot be untrue).

(b) Mandate of the Railway Board for regularization of services of the casual service was of the year 1975 followed by 1980

(c) The service of the applicant as gangman on casual basis ended in 1978.

(d) It was for the first time in 2005 that the applicant approached judicial forum ventilating his grievance the cause of action of which arose first in 1975 when the Board had issued instructions for regularisation, next in 1978 when the applicant left the service, and thereafter in 1980 when the Board had issued yet another circular for such regularisation.



(e) By the time the he had moved the civil court in 2005, it was almost a score of years since the Tribunal came into existence. Yet he chose to move the civil court. The suit was dismissed in 2010 on valid grounds referring to the A.T. Act of "jurisdiction of other courts barred"

(f) There was a hibernation for about four years before the applicant approached the Tribunal. This period of four years is attempted to be covered with the cause of making 'repeated representations', a customary and conventional ground for such delay.

(g) The Tribunal permitted the applicant to prefer a comprehensive representation and accordingly, the applicant moved a representation on 23-06-2014, which was considered but rejected by order dated 24-03-2015 by the respondents, against which the applicant preferred this OA.

8. GROUNDS FOR REJECTION BY THE RESPONDENTS : The rejection of representation by the respondents are on the following grounds:-

(a) Desertion on his own volition of the services by the applicant;



(b) Name not figuring in the Live Register and its supplementary;

(c) Mismatch of the LTI card on comparison with the documents already available in the records.


9. OWN ACTION OF THE APPLICANT: Admittedly the service rendered by the applicant till he deserted on his own volition in 1978 was purely casual. Just as it is the discretion of the Railways to disengage any casual labour (subject of course certain limitations such as the same be not arbitrary and the like) a casual labourer has his discretion to leave the casual service of his own. Where there is an element of *animus deserendi* (*intention to permanently leave the service*) there is no question of any regularization of such deserter. Here is a case of the applicant, who after 27 years gap, tries to seek regularization and claim "all the consequential benefits" It is trite that while resignation is a legal form of severance, desertion is couched with illegality. When even resignation would mean forfeiture of past services, needless to mention that desertion cannot be treated otherwise. Thus, by his own conduct, the applicant has severed his connection with the respondents which itself disentitles him to claim regularization. Absence of name in the Casual Labour Live Register is a sine-qua-non for consideration for regularization –



comparable to availability of name in voters list for casting the legitimate right to vote. When the respondents have permitted to regularize others – who in the words of the applicants were his juniors, there is no reason to omit the name of the applicant had his name been figuring in the Casual Labour Live register. In case the applicant had any intention to return to service at the material point of time, he ought to have approached the authority at the appropriate time and have his name reflected in the Live Register by producing appropriate proof of his eligibility and entitlement to have the name registered. This having not been done, obviously, the applicant has missed the bus.

10. LIMITATION PERIOD CANNOT BE ELONGATED: Repeated unsuccessful representations do not elongate period of limitation as held by the constitutional Bench of the Apex Court in the case of **S.S. Rathore vs State of Madhya Pradesh [(1989) 4 SCC 582]**.

10.1 RESCUCITATION OF DEAD CLAIM IMPERMISSIBLE: Further a stale claim cannot be given life even when direction has been given to consider representation. Provisions do not exist for reviving what are clearly dead and stale claim, as discussed and declared in **C. Jacob vs Director of Geology and**



Mining (2008) 10 SCC 115 and endorsed by the Apex Court in **Union of India vs Chaman Rana (2018) 5 SCC 798**.

11. There is nothing on record to establish that the applicant had worked from 1964 to 20.5.1978 as claimed by him in the OA. It is also seen from the record that the applicant had approached the competent authority after an inordinate delay which was not explained by the applicant. Even the Principal District Munsiff, Tiruchirapalli in his order dated 5.4.2010 has observed that the applicant had filed the O.S., after a period of 28 years and accordingly dismissed the O.S. on the ground of limitation. The applicant herein was negligent qua in pursuing his remedy before the department as well as in other forums.

12. In view of the above facts and circumstances of the case and the discussions hereinabove, I am not inclined to interfere in the impugned order of the respondents. In the result, the OA is liable to be dismissed and is accordingly ordered, however, with no order as to costs.