

CDJ 2010 CAT ERNAKULAM 190

Court : Central Administrative Tribunal, Ernakulam Bench

Case No : O.A. No. 767 of 2009

Judges: HONOURABLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

Parties : T. Gnanavel, Ex Casual Labourer Versus Union of India represented by the General Manager Southern Railway Headquarters Office, Chennai & Another

Appearing Advocates : For the Applicant: Mr. Martin G Thottan, Advocate. For the Respondents: Mr. K.M. Anthru, Advocate.

Date of Judgment : 21-01-2010

Head Note :-

Subject

Judgment :-

HON'BLE Dr. K.B. S.RAJAN, JUDICIAL MEMBER

The applicant is a retrenched casual labourer having 1153 = days of casual service. Based on number of days of casual service rendered, applicant was provisionally selected for appointment in a Group 'D' post in the year 1998. In the medical examination conducted in pursuant to that, unfortunately applicant was found medically unfit in B1 category. Applicant submitted several representations to the respondents, but without any avail. Aggrieved, Applicant approached this Tribunal by filing OA 580 of 1999. The said Original Application was disposed of by an order dated 27.05.1999. In obedience to Annexure A-1 the applicant submitted a representation Annexure A-2. Unfortunately, referring to a Railway Board letter dated 08.06.1981, the applicant's request for absorption in a Group 'D' post commensurate with his medical fitness was rejected by the first respondent.

2. Thereafter, in the year 2008 several persons having lesser number of days of service were considered and absorbed in Group 'D'. One N Dasan who worked along with the applicant and having only 1071 = days of service approached this Tribunal by filing OA 85 of 2008. The applicant in OA 85/2008 was considered for absorption in the year 1998 along with the applicant and found to be medically unfit in B1 medical classification. This Tribunal

was pleased to allow the Original Application 85 of 2008 directing the respondents to subject the applicant for re medical examination and to consider against a Group 'D' post for which the lower medical classification is required. Having come to know about the Annexure A-4 order passed by this Tribunal having found that the [persons who are lower down in the live register were Being considered for absorption, the applicant submitted a representation to the 2nd respondent. (Annexure A-5). So far there is no response to Annexure A-5 representation. Hence the applicant has filed this OA seeking the following reliefs: -

i, To declare that the applicant is entitled to be considered and absorbed against a Group 'D' post which requires only a lower medical classification and to direct the Respondents accordingly with all consequential benefits;

ii, To direct the respondents to subject the applicant for medical classification and consider his for absorption against a Group 'D' post commensurating with his Medical fitness.

3. Respondents have contested the O.A. According to them, the applicant is a retrenched Casual Labourer. His name is at Sl. No. 1677 in the Merged Seniority List of retrenched Casual Labourers. As per this seniority list is 996 days, his statement that h is having 153 = days of service is denied. The statement regarding the representation from the applicant subsequent to 1998 is found to be untrue and hence denied. The applicant has not challenged Annexure A-3 in the OA. On the basis of Annexure A- 4 order, the documents submitted by the applicant therein as regards his date of birth is found to be not genuine and accordingly, he could not be considered for absorption in a post requiring lower medical standard.

4. Though the order in OA 590/08 has been complied with by the respondents, the number of posts requiring lower medical classification is very limited and that vacancies are not available in the said posts. Already regular employees in the list, who have rendered more than 10 to 15 years of service, having been medically de-categorized, are waiting to be absorbed in alternative appointment under the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995.

5. Learned counsel for the applicant argued that as precedent exists for accommodating the retrenched casual labour in the lower medical category the same may be applied in the case of the applicant also.

6. Learned counsel for the respondents submitted that a number of individuals are in the waiting list even in that category including those who are to be absorbed in alternative appointment under the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995.

7. Arguments were heard and documents perused.

8. The applicant has referred to the case of one N. Dasan, who worked along with the applicant and approached the Tribunal vide O.A. No. 85 of 2008 for consideration/absorption against Group 'D' post in preference to his juniors in the list of retrenched casual labourers. In that case, the Tribunal allowed the OA directing the respondents to subject the applicant for re-medical examination and to consider against Group 'D' post for which the lower medical classification is required. This submission made in para 4.4 of the OA has not been denied by the respondents and existence of Annexure A-4 referred to in the said para has been accepted. It is the different matter that in the said case, some documents were not found genuine and hence, the applicant therein could not be considered for absorption. But the legal position remains intact.

9. In view of the aforesaid discussion, it would be only appropriate if a direction is issued to the respondents to consider the case of the applicant in turn and on his turn maturing, the applicant shall be considered for any Group-D appointment in any Department under Respondent No. 2 and subject to fulfillment of attendant conditions for such appointment. With the above directions, the OA is disposed of. No costs.