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Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Apr-03-2009

Judge : The Honourable Mr.George Paracken, Judicial Member

Appeal No. : O.A.No.769 of 2007

Appellant : M. Lawrence and Others

Respondent : Union of India Represented by General Manager, Chennai and Others

Advocate for Pet/Ap. : For the Appellants: M. Ramaswamy Pillai, Advocate. For the Respondents: K.M. Anthru, Advocate.

Judgement :

Hon'ble Mr.George Paracken, Judicial Member

This joint application has been filed by three retrenched casual labourers of Southern Railway. They claimed that they are entitled to be considered for the regular absorption having regard to their seniority as casual workers on the basis of the decision rendered in O.A.271/06 and connected cases -A.Sasidharan and others Vs. Union of India and others decided on 14.3.2007 (Annexure A-8).

2. It has been stated in the O.A that the 1st applicant was working with the 2nd respondent for a period of more than 570 days and he was retrenched with effect from 5.12.1980. The 2nd applicant was working with the 2nd respondent for a period of more than 405 days and he was retrenched with effect from 5.12.1980. The 3rd applicant had put in 669 days and he was also retrenched with effect from 5.12.1980. They have also produced the casual labour service cards in support of their claim. Along with the O.A. Annexure A-5 representation dated 7.4.2003, Annexure A-6 representation dated 4.9.2003 and Annexure A-7 representation dated 7.1.2005 made by the 3rd applicant to the 2nd respondent were also enclosed. Counsel for the applicant submitted that even though the cut off date as prescribed was 31.3.1987, according to his knowledge, several applications of the casual labourers, who had not applied before the said cut off date, have been entertained and their names have been included in the Live Register and later on absorbed in the services.

3. Respondents in their reply statement submitted that the applicants in this case are not similarly placed as the applicants in O.A.271/06 and connected cases (supra). Although all the three applicants were retrenched prior to 1.1.1981, the 2nd and 3rd applicants did not apply before the cut off date 31.3.1987 for inclusion of their names in the supplementary seniority list of retrenched casual labourers pursuant to the judgment of the Hon'ble Supreme Court in *Dakshin Railway Employees' Union, Trivandrum and others Vs. General Manager, Southern Railway and others* reported in 1987 (1) SCC 677. The cut off date of 31.3.1987 was fixed as per the orders of the Hon'ble Supreme Court. According to the respondents, the said cut off date has never been varied by any authority so far. As the 2nd and 3rd applicants did not apply for registration of their names in Live Register of retrenched casual labourers before the said cut off date of 31.3.1987, their names have not been included. However, the 1st applicant's name is already available at Sl.No.2271 with his date of birth as 3.4.1958 and he has completed 45 years of age as on 1.1.2003 and he belongs to OBC community. He was not granted regularisation on the ground of over age. However, counsel for the respondents submitted that in terms of the subsequent order of this Tribunal in O.A.271/06 and connected cases (Annexure A-8 supra), he will be considered for regularisation irrespective of the age limit. The respondents have also

categorically refuted the submission of the applicants that casual labourers who have applied for regularisation after the cut off date have been entertained and their names were registered in the Live Register.

4. We have heard Shri.M.Ramaswamy Pillai for the applicants and Shri.K.M.Anthru for the respondents. Admittedly, 2nd and 3rd applicants have not applied for registration of their names in the Live Register of casual labourers before the cut off date of 31.3.1987 as fixed by the Apex Court in DREU case (supra) and, therefore, their names have not been included. The operative part of the said judgment is as under:-

"2. The petitioners before us who are 149 in number claim that they are entitled to the benefits of the modified scheme and they pray that they should be forthwith taken back into employment. The Railway Administration admits that 84 of the petitioners are entitled to the benefits of the scheme as they were in employment on January 1, 1981 and that the remaining 65 petitioners are not entitled to the benefits of the scheme as they were not in service on January 1, 1981 having been retrenched sometime prior to that date. The contention of the Railway Administration is clearly wrong in view of the express provision in paragraph 5.1.(a) (ii) that "these orders will cover casual labour on projects, who, though not in service on January 1, 1981, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or have since completed or will complete the said prescribed period of continuous employment on re-engagement after January 1, 1981". A direction will, therefore, issue to the respondents to include the petitioners in the scheme for absorption as formulated pursuant to the directions of the court.

3. Shri.Krishnamurthy, learned counsel for the Railway Administration brings to our notice the difficulty which will be experienced by the Railway Administration if without any limitation persons claiming to have been employed as casual labour prior to January 1, 1981 keep coming forward to claim the benefits of the scheme. We understand the difficulty of the Administration and we therefore, direct that all persons who desire to claim the benefits of the scheme on the ground that they had been retrenched before January 1, 1981 should submit their claims to the

Administration before March 31, 1987. The Administration shall then consider the genuineness of the claims and process them accordingly. The writ petition is allowed accordingly."

5. Based on the aforesaid judgment of the Apex Court, this Tribunal has also considered same issue in O.A.192/08 and later on in O.A.18/08. This Tribunal had relied upon the aforesaid judgment of the Apex Court as well as the later judgment of the Hon'ble High Court of Kerala in O.P.22849/99 -Senior Divisional Personnel Officer, Southern Railway Vs. Sunil K Rani and others. The operative part of the said judgment of the Hon'ble High Court is as under :

"The challenge is on Ext.P7 award passed by the Industrial Tribunal, Kollam. The Tribunal has held that the 1st respondent is liable to be included in the list of persons eligible for re-engagement. Admittedly the 1st respondent has not submitted the application within the time permitted by the Supreme Court, namely, 31.3.1987. This crucial aspect has missed the notice of the Tribunal. Unless it is permitted by the Supreme Court, the petitioners cannot include any person to submit an application beyond the date fixed by the Supreme Court. Since the award suffers from the infirmity as above, it is set aside and the Writ Petition is allowed."

6. In the above facts and circumstances of the case, I do not find any merit in the cases of the 2nd and 3rd applicants for their regularisation in Group 'D' post in the Railway Administration. However, as far as the 1st applicant is concerned, as submitted by the counsel for the respondents, he shall be absorbed and regularised in the Railways without any further delay and he shall be granted appropriate seniority also from the date on which his junior in the Live Register has been appointed in the Group 'D' post. With the aforesaid directions, the O.A is partially allowed. There shall be no order as to costs.

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