Sadhan Chandra Dey and Others

Vs

Union of India and Others

Civil Appeals Nos. 14144-46 of 1996

(G. T. Nanavati, S. R. Babu JJ)

27.08.1998

JUDGMENT

NANAVATI, J.

The appellants were employed as Volunteers by the Eastern Railway to help the staff to check ticketless travel. They were paid Rs. 8 per day. They had worked as such for a long time without a break. By an order dated 31-1-1986, the DRM, Sealdah withdrew the scheme of utilising services of Volunteers. The appellants, therefore challenged that order before the Central Administrative Tribunal. The said order was set aside and the Railway Administration was directed to treat all of them as casual employees with temporary status.

2. In spite of that order, the Railway Administration did not treat them as temporary employees and extend the benefits available to temporary employees. Therefore, they filed OA No. 439 of 1988 before the Tribunal. That application was heard along with OAs Nos. 139 and 420 of 1988. All the three applications were disposed of by the Tribunal by a common order dated 31-7-1990. The relevant part of the order is quoted below :

> "22. After giving our anxious consideration to the facts of these three cases, the materials on record and the submissions of the learned counsel for both the parties, we find merit in the contention of the applicants that the respondents have sought to avoid implementing the judgment in Samir Kumar Mukherjee case by denying all the benefits specified in that judgment to the applicants. Since in view of the special circumstances of the cases, the applicants were held to be casual employees with temporary status, entitled to the same service conditions as other temporary railway employees, there cannot be any question of absorbing them as casual labourers as 'fresh facts' as that would be contrary to the judgments in Samir Kumar Chatterjee, Debabrate Banerjee and Dhruba Kumar Das. Hence, the impugned Annexure F dated 30-10-1987 to CA No. 139 of 1988 has to be quashed.
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> 23. In view of our discussion above, we allow these applications and give the following directions:
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> (i) Annexure F dated 30-10-1987 to OA No. 139 of 1988 is hereby quashed.
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> (ii) All the applicants in OAs Nos. 139, 439 and 420 of 1988 shall be treated as casual employees with temporary status w.e.f. 25-3-1986, 3-10-1986 and 25-8-1987 respectively and their service conditions will be governed by the relevant rules of the

Railways.

(iii) Their fitment as such casual employees against appropriate posts shall be done by the respondents on the basis of their qualifications and experience from the aforesaid dates within four months from the date of communication of this order.

(iv) As regards pay and allowances, they will get the said benefits from the date of this judgment as the Tribunal has earlier held while ordering reinstatement of the applicants that they would be paid daily wage of Rs. 8 as was being paid before their disengagement. However, those of the applicants who have already got any benefit in respect of pay and allowances before the passing of this judgment shall continue to enjoy the same.

3. It appears that pursuant to this order of the Tribunal, the Railways Administration of Asansol Division fixed the pay of the applicants in one of those applications notionally, with effect from the date on which they were granted temporary status by the Tribunal. As that benefit was not extended by the Sealdah Division to the appellants, they approached the Tribunal by way of OAs Nos. 1197, 1240 and 1243 of 1993 and prayed for a direction to the Union of India and the Railway authorities to extend similar benefit to them. The Tribunal dismissed those applications and therefore the applicants are now before this Court.

4. It was contended by the learned counsel for the appellants that once the Tribunal by its order dated 31-7-1990 declared that the appellants were to be treated as casual employees with temporary status, w.e.f. 25-3-1986, 3-10-1986 and 25-8-1987, as the case may be and that their service conditions shall be governed by the relevant rules of the Railways, it became the duty of the Railways to grant them all the benefits available to temporary employees, right from the date they acquired the temporary status under the order of the Tribunal. It was submitted that what was denied to them by the Tribunal was payment of arrears of wages from the date they acquired the status of temporary employees till the date of the order of the Tribunal; but they are entitled to get their pay fixed notionally in appropriate pay scales right from the date they acquired temporary status, and from the date of the order of the Tribunal, they should be paid their wages as per the pay fixed notionally in that manner. This contention was raised before the Tribunal also and it was rejected on the ground that benefit of pay and allowances was to be given only from the date of the order and till then they were to be paid daily wage of Rs. 8. In our opinion, the Tribunal was right in taking that view of its earlier order dated 31-7-1990.

5. In view of the special facts and circumstances of these and other cases which were decided together, the appellants and other applicants though casual employees were ordered to be given temporary status. Their services were already terminated. Not as a recognition of their right that they were ordered to be reinstated but it was by way of solving a human problem that the Tribunal wanted them to be taken back in service not as fresh employees but as casual employees with temporary status. A middle course was chosen by the Tribunal and therefore it ordered that benefit of pay and allowances as an employee with temporary status will begin from the date of its order. They were ordered to be treated as casual employees with temporary status with effect from earlier dates in order to preserve their seniority for other purposes.

6. Merely because one Member of the Tribunal on a subsequent occasion interpreted that order in a different manner and because of that some persons working under the Asansol Division got a wrong benefit, it would not be proper to extend it to persons working in other divisions. The Division

Bench of the Tribunal was right in observing that the view taken by the Single Member was wrong as it was not consistent with the decision of 31-7-1990. The Division Bench judgment dated 31-7-1990 was not challenged and it has thus acquired finality. The view taken by the Tribunal in these cases is correct and does not deserve to be interfered with. The appeals are therefore dismissed.