

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 423 of 2009

Tuesday, this the 16th day of March, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. S. Raman, aged 45 years, S/o. Subbaiah, Ex-Casual Labourer, Southern Railway, Trivandrum Division, Residing at Elayarkulam, Unnankulam P.O., Nanguneri, Tirunelveli District.
2. S. Nainar, aged 48 years, S/o. Swaminathan, Ex-Casual Labourer, Southern Railway, Trivandrum Division, Residing at Cehmbaka Ramanalloor P.O., Tirunelveli District. **Applicants**

(By Advocate – Mr. Mohana Kumar for Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town P.O., Chennai-3.
2. The Divisional Railway Manager, Southern Railway, Trivandrum Division, Trivandrum-14.
3. The Senior Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum-14. **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimootttil)

This application having been heard on 16.3.2010, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Mr. Justice K. Thankappan, Judicial Member -

The applicants have filed this Original Application aggrieved by Annexure A-1 order and they have prayed that a direction may be issued to the respondents to pass appropriate orders for their claim for regular



appointment in the Railways.

2. The case of the applicants is that they were casual labourers retrenched from service of the Southern Railway, Trivandrum Division and after the judgments of the Hon'ble Supreme Court pronounced in Inderpal Yadav & Ors. Vs. Union of India & Ors. - 1985 SCC (L&S) 526, Dakshin Railway Employees Union & Ors. Vs. General Manager, Southern Railway - AIR 1987 SC 1153 and the Secretary of Karnataka Vs. Uma Devi - 2006 (4) SCC 1, the casual labourers who fulfilled the conditions stipulated by the Apex Court are entitled for regular appointment in the Railway service either in Group-C or Group-D or from which post they were retrenched as the case may be. After the judgments of the Apex Court the applicants and three others approached this Tribunal by filing OA No. 353 of 2006 and connected OAs and this OA was disposed of by a common order in OA 271 of 2006 and connected OAs by this Tribunal vide order dated 14th March, 2007 wherein it was directed that "the case of the applicants may be considered for regular absorption in the existing vacancy having regard to the seniority in the above mentioned retrenched list and without applying any age limit, subject to medical fitnesss and other conditions for such absorption being fulfilled". Though the above judgment was taken before the Hon'ble High Court of Kerala in WP No. 3246 of 2006 and connected Writ Petitions, the Hon'ble High Court of Kerala has confirmed the finding rendered by this Tribunal except in the case of persons who were over aged and thereafter the applicants approached the respondents for their absorption in the service. However, by taking a stand to the effect that the



applicants are not having 360 days of casual days work in their account, the case of the applicants was rejected vide Annexure A-1, which is impugned in this Original Application.

3. The Original Application has been admitted by this Tribunal and notice has been ordered to the respondents. In pursuance to the notice issued by this Tribunal, the reply statement has been filed for and on behalf of the respondents. The stand taken in the reply statement is to the effect that the applicants are not having the required 360 days of casual period of work in their account and it is further stated that after the receipt of the copy of the notice from this Tribunal the applicants were directed to produce the documents regarding their claim and as per Annexure R-1 it was verified with the documents available with the department wherein it was found that the identity of the applicants are not correct and the claim of the applicants cannot be considered for absorption in the service.

4. We have heard the counsel appearing for the applicant Mr. Mohana Kumar and also the counsel appearing for the respondents Mr. Thomas Mathew Nellimoottil and we have perused all the documents relating to the case produced before this Tribunal. The counsel appearing for the applicants submits that since the question of absorption of the applicants and the similarly placed retrenched casual employees have already been concluded by this Tribunal in the order passed in OA No. 271 of 2006 and connected OAs dated 14th March, 2007, the only question remains is implementation of the order passed by this Tribunal. Further it is submitted

68

by the counsel that even though the matter has been considered by the Hon'ble High Court of Kerala, the Hon'ble High Court has only directed that those who have completed 50 years of age or crossed the age bar, as per the directions issued by the Railway Board has to complete 360 days of casual work in their account. As far as the others are concerned as per the judgment of the Apex Court they needed only 120 days of continuous work for absorption in the service. If so, the present stand taken in Annexure A-1 is irregular and illegal and this Tribunal has to interfere with the said order Annexure A-1. Further the counsel for the applicants submits that the stand taken in the reply statement regarding the identity of the applicants cannot be considered as true as they have no such case when this Court considered the issue in the earlier Original Applications and they have admitted the position before this Tribunal that their registration numbers are 2661 and 2539 respectively. Even if there is any mistake in the spelling of the names the numbers of the registration card kept by the applicants as well as the department is tallying. In such case the flimsy ground now stated in Annexure R-1 cannot be taken as a ground to reject the case of the applicants at all.

5. To the above contention the counsel appearing for the respondents submits that after the order passed by this Tribunal on 14th March, 2007 the entire matter has been considered by the department and on getting a notice from the Tribunal in this Original Application the matter has been verified by calling the applicants by the 3rd respondent and 3rd respondent after verification of the records now available with the department to that of the



registration cards available with the applicants found that the names of the applicants are not tallying with that of the registration cards kept by the department. Hence, the stand now taken by the department is justifiable and the OA has to be dismissed.

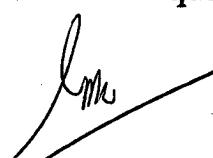
6. From the rival contentions raised by the counsel appearing for the parties, the question to be considered is whether the stand taken in the reply statement and the contention put forwarded on behalf of the respondents are to be admitted or not. It is a fact that the respondents have contested the case of the applicants and similarly placed persons in OA No. 271 of 2006 and other connected Original Applications and as per the order passed by this Tribunal dated 14.3.2007 it has upheld the question of registering all the cards and allowing registration numbers as that of 2661 and 2539 to the applicants. If so, it is not possible to believe the present stand taken by the respondents to the effect that the identity of the applicants are in doubt. That apart the question whether the department has got any authentic records available with them to prove the stand taken in the reply statement, in this context either the counsel appearing for the respondents or the reply statement there is no whisper regarding the non-availability of the records by the department which would show the identity now claimed by the applicants are correct or not.

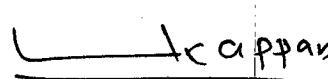
7. In view of the above circumstances we are of the opinion that with regard to identity position now claimed by the respondents cannot be accepted at all. It is only a reasonable conclusion we would have that the



applicants are awarded registration numbers by the department and the registration cards are with them, so the question has to be answered accordingly. The next question to be considered is that whether the applicants are under the obligation to have 360 days of casual work which they have with the department and this question has been already considered by the Apex Court in Inderpal Yadav's case and subsequent case and last in Uma Devi's case stated supra. If so, the question has to be answered is that whether the applicants are entitled for absorption as per the orders passed by this Tribunal or not. We are concluding with the materials now placed before this Tribunal that the applicants are entitled for consideration of their cases for absorption in the service in existing vacancies and that apart it has also come out in evidence that juniors of the applicants have already been absorbed, if so, the case of the applicants requires re-consideration by the respondents and the respondents are directed to pass an appropriate orders in their claim within a reasonable time at any rate within three months from the date of receipt of a copy of this order. Ordered accordingly.

8. The Original Application is allowed to the extent indicated above and Annexure A-1 is quashed. There shall be no order as to costs.


 (K. GEORGE JOSEPH)
 ADMINISTRATIVE MEMBER


 (JUSTICE K. THANKAPPAN)
 JUDICIAL MEMBER

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