

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.426/2004

Wednesday, this the *14th* day of February, 2007.

CORAM:

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER**

C. Lalitha,
W/o late Maniyan,
Gang Woman, Gang No.10, Kazhakkuttam,
Trivandrum, Residing at: Manakkadu Vilakam,
Near Shaji Hospital, Kazhakkuttam P.O.,
Trivandrum District. Applicant

(By Advocate Shri Martin G Thottan)

Vs.

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.
3. The Senior Divisional Personnel Officer, Southern Railway, Trivandrum Division. Trivandrum. Respondents

(By Advocate Smt. Sumathi Dandapani, Sr.)

(By Advocate Ms. P.K. Nandini)

The application having been heard on 2.2.2007
the Tribunal on *14-2-07* delivered the following:



ORDER

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

1. The applicant is presently working as a Gangwoman in the pay scale of Rs.2610-3540. She was initially engaged as Casual Labour under Permanent Way Inspector, Construction, Trivandrum on 6.4.1975 and was retrenched on 10.10.1981. At the time of retrenchment she has around 1500 days of casual service. Her name was included in the Integrated Seniority List of Project Casual labourers of Trivandrum Division and she was offered re-engagement and directed to report to the Office of the 3rd respondent on or before 2.7.96. The applicant completed all the formalities and was awaiting the order for re-engagement. Though months have passed, no such order was issued by the respondents and as such, the applicant along with some others, filed O.A. 320/97, inter-alia praying for a direction to the respondents to re-engage the applicant as offered with attendant consequential benefits.

2. During the pendency of O.A.320/97, the applicant came across A-2 Memorandum dated 13.2.1997 which is a list of empanelled casual labourers in which a number of persons with lesser number of days of casual service than that of the applicant figured in, the applicant sought permission to withdraw the O.A. with liberty to seek appropriate remedy. The prayer was allowed and O.A. 320/97

was closed as withdrawn vide A-3 order dated 12.9.97.

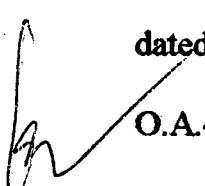
3. Later on, the applicant filed O.A.1618/97 and inter-alia prayed for the following reliefs.

"a) Call for the records leading to the issue of Annexure A11 and quash the same to the extent it excludes the applicants and include persons with lesser number of days of service than the applicants;

b) Declare that the applicants are entitled to be included in Annexure A11 panel and direct the respondents accordingly and to grant the applicants the consequential benefits thereof."

4. During the pendency of this O.A., the applicant and some others were appointed as temporary Gangwoman vide A-4 order dated 4.3.99. In view of this development the applicant prayed for closure of the O.A. with liberty to the applicant to take up the matter further with the respondents in regard to the surviving grievance. This was allowed vide A-5 order dated 9.4.99.

5. In pursuance of A-5 order the applicant submitted a representation dated 11.10.99 for grant of regularisation, at least on notional basis, with effect from the date from which persons with lesser length of casual services were empaneled and absorbed. As this was not responded to, the applicant submitted another representation dated 9.3.2000 (A6). This was followed by further representations dated 11.2.2001 & 17.6.2002 (A7 & A8). The applicant thereafter filed O.A.462/03 which was disposed of by A-9 order dated 9.6.2003 directing the

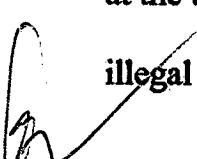


Respondent No.1 to consider and pass appropriate orders on A-6 pending representation.

6. In pursuance of and in implementation of A-9 order of this Tribunal the 1st respondent by order dated 26.9.2003 rejected the applicant's representations vide Annexure A-10. It is this order that has been impugned in this O.A.

7. The respondents have contested the O.A. They have raised the preliminary objection of limitation. According to them, after the initial representation did not yield any response, the applicant should have approached the Tribunal. The applicant could not be re-engaged earlier because there was a policy decision not to re-engage casual labourers and her name could not be included in A-2 list. As regards the contention that persons with lesser days of casual service, have been inducted, the respondents have stated that, in view of there being no specific allegation pointing out individual cases, the respondents are unable to counter their contention. It has further stated that, the applicant was considered for appointment, according to her turn in the Live Casual Labour Register.

8. Counsel for the applicant submitted that, non-consideration of the applicant at the time when persons lesser number of days of casual service were appointed is illegal and the applicant is entitled to notional engagement alongwith the juniors.



9. Per contra, counsel for the respondents submitted that the matter is belated and therefore, on account of limitation, the O.A. may be dismissed. Further those who have appointed with lesser number of days of casual service were appointed either on shortfall vacancies for SC or in pursuance to the order of this Tribunal or on the basis of compassionate appointment. Counsel invited our reference to Annexure R-1, filed along with the affidavit dated 27.11.2006. It has also been stated that vide order dated 30.11.1998 (Annexure R-4) the applicant's seniority No. in the merged list 1537 figuring at S1 No.50 of the list of empanelment and she could not have been appointed prior to the aforesaid date of 30.11.98. Counsel for the respondents further submitted that the applicant was not engaged as Casual Labourer whereas appointed as a regular Gang Woman. Lastly, counsel submitted that the plea of the applicant for notional absorption is not covered by any rule. Instructions in para 179 (XIII)(c) of the IREM are applicable in respect of casual labourers of rolls.

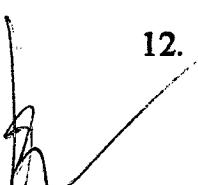
10. Arguments were heard and documents perused. Before considering the merit of the case, preliminary objection raised by the respondents has to be considered. The respondents have contended that the OA is barred by limitation.

11. The challenge in this OA is order dated 26-09-2003 (Annexure A-10) and

the OA had been filed on 08-06-2004. Thus the OA has been filed within one year from the date of impugned order. Hence, the question of limitation does not arise here. Prayer in this OA is for a declaration to the effect that the applicant is entitled to be empanelled/absorbed as Gang Woman with effect from the date of absorption of those persons at SI Nos 38 and below in Annexure A-2 and for a direction to the respondents accordingly, to grant the applicant the consequential benefits of at least notional service with effect from the date of absorption of those at Serial No. 38 and below. It is admitted that the applicant's earlier casual service is for a period of 1500 days and the number of days of casual labour service in respect of those in the Annexure A-2 list from serial 38 and thereafter is admittedly less than that of the applicant. Twin reasons were given by the respondents in their counter for not including the name of the applicant in the Annexure A-2 letter:-

- (a) That there was a ban on recruitment of casual labourer.
- (b) Those whose names figured in from serial No. 38 and thereafter in the Annexure A-2 letter were appointed under any one of the three classes viz.,
 - (i) under the SC quota or (ii) on compassionate appointment or (iii) under courts' orders. Whether non inclusion of the name of the applicant in the said list of Annexure A-2 is legal or not, is the question.

12. It is essential to refer to an order dated 19-06-1996 of this Tribunal in OA No.



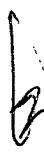
1706/94, which is closely knit with the subject matter of this O.A.. In that order, the following findings/decisions have been made:-

"There is only one scheme, that dated 11-09-86, and both groups - those in service on 1-1-81 and those not in service on 1-1-81 - are covered by the same scheme dated 11-9-86....We are led irresistibly to conclude that there is only one scheme (that of 11-9-86), which covers both those in service on 1-1-81 and those not in service on 1-1-81 and there is only one seniority list, namely, that prescribed in the letter dated 11-9-86. The only difference which has been created by the letter dated 11-9-86 confining itself to those who were in service on 1-1-81 is that this group gets on to the seniority list without having to apply for it, while those not in service on 1-1-81 have to make a clear claim with relevant supporting documents before a cut-off date, namely, 31-3-87. We, therefore, direct that the seniority list prepared pursuant to the orders dated 11-9-86 and the supplementary list prepared pursuant to the orders dated 2-3-87 be merged as on 1-7-96 and any engagement/re-engagement/discharge made after 1-7-96 shall be in accordance with the merged seniority list. Any person already engaged/re-engaged prior to 1-7-96 will not be disturbed. After 1.7.96, any engagement/re-engagement/discharge of project casual labour will be only in the order of their position in the merged seniority list. In other words, no person who is already engaged by virtue of his position in the erstwhile "live Register" would be discharged merely on the ground that he is junior in the merged list and that his seniors in the merged list are engaged; but if he is discharged after 1-7-96 due to any other ground, he will be engaged only in accordance with his seniority in the merged seniority list."

13. It would be seen from Annexure A-2, that the one at serial No. 37 had 1551 days of casual labour service and his initial date of entry in casual labour service was 1978. The applicant's initial date of entry is 06-04-1975. She had at her credit a total of 1500 days of casual labour service till 10-10-1981 (i.e. 330 days per year for 6.5 years). Under the then instructions, the name of the applicant



should have figured in the Live Casual Labour Register by a positive action on the part of the respondents, without expecting the applicant to move any application, as her date of disengagement was posterior to 01-01-1981. Omission of the name in the Live Register is totally attributable to the Respondents. Non inclusion of the applicant's name for regularization at serial No. 38 has been made good by inclusion of the same vide order dated 30th November, 1998, in the wake of the afore said order dated 19-06-1996 in OA 1706/96. In the said order of the Tribunal, direction was that no person who is already engaged by virtue of his position in the erstwhile "Live Register" would be discharged merely on the ground that he is junior in the merged list and that his seniors in the merged list are not engaged; This direction impliedly meant that there shall be one merged list of all in the appropriate place on the basis of seniority and regularization made on the basis of such seniority, but if the same resulted in a compulsive situation to discharge junior, in that event, the junior shall not be discharged. But the direction does not extend to the extent of protection of the seniority of such juniors. Hence, inclusion of the name of the applicant between Serial No. 37 and 38 with notional fixation of pay etc., is not going to adversely affect any one else, but at the same time, that would enable the applicant to add to her qualifying services by 2 years plus, which would be advantageous in respect of her pension. The applicant by now is 57 and in all expectation, there would not be any possibility of any promotion during the rest of her service career.



14. Keeping in view the fact that services of at least on individual with less than 100 days of casual service were regularized, it would be most unjustified to deny the applicant of his claim for regularization on notional basis w.e.f. the date his junior had been regularized. The OA, therefore, is allowed. It is declared that the applicant is entitled to have her services regularized from the date services of Ms. G. Thankammal - D.O.B. 10-12-1952, (serial No.38 of the list at Annexure A-2 order dated 13-02-1997) was regularized. The regularization shall be on notional basis and the applicant would be fixed her pay accordingly and future increments be also worked out accordingly. The period of qualifying services would commence from the date such regularization takes place. This order shall be complied with, within a period of 2 months from the date of communication of this order.

15. No costs.

(Dated, the 14th February, 2007)


Dr. K B S RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

rv/cvr.