

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 451/2002

Dated Friday this the 19th day of September, 2003.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

Smt. T.N.Radhamani
W/o late Krishnan Kutty
Retrenched Casual Labourer
Kandanallur Kizhakkethil Veedu
Konakam, Mavelikara.

✓ Applicant.

(By advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India, represented by
The General Manager
Southern Railway
Chennai.
2. The Divisional Railway Manager
Southern Railway
Trivandrum Division
Trivandrum.
3. The Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum.

(By advocate Mrs.Rajeswari Krishnan)

The application having been heard on 19th September, 2003,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant, a post 1.1.1981 retrenched casual labour of the open line unit of Southern Railway, Trivandrum Division, filed OA No.874/1998 before this Bench of the Tribunal, having been aggrieved by the exclusion of her name in the panel dated 13.2.1997 for empanelment of retrenched open line casual labourers for absorption on Group-D posts while names of persons with lesser length of service than the applicant were included. The applicant also had the grievance that the respondents were considering re-engagement and absorption of project casual labours ignoring the preferential claim of the applicant. The OA

was filed seeking to set aside the order dated 13.2.1997 to the extent of her exclusion and for a direction to the respondents to consider re-engagement and other benefits to her in preference to project casual labours and on the basis of her seniority as open line casual labour retrenched after 1.1.1981. Respondents raised the contention that in terms of the order of the Tribunal in OA No.1706/1994, a merged seniority list of all the casual labours including project and open line was prepared in which the applicant was at Sl.No.2111, that her turn accordingly had not reached and, therefore, she was not entitled to the relief. Finding that the direction of the Tribunal in OA No.1706/1994 was not to prepare a merged seniority list of open line casual labours and project/construction casual labours but was only to prepare a merged seniority list of retrenched project casual labours irrespective of pre or post 1.1.1981 and that the applicant had to be considered for re-engagement/absorption on the basis of her seniority as a post 1.1.1981 retrenched casual labour of the open line, the Tribunal allowed the OA declaring that the applicant was entitled to be re-engaged as a casual labour in the open line unit of Southern Railway, Trivandrum Division, in preference to and along with casual labours and directing the respondents to consider the case of the applicant for re-engaging and pass appropriate orders within a period three months. Dissatisfied with the decision, the respondents carried the matter before the Hon'ble High Court of Kerala in O.P.No.19705 of 1998. The only dispute raised before the High Court was that the genuineness of the casual labour card produced by the applicant was doubted. Therefore, the said O.P. was disposed of with the following directions:

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"Heard.

2. We dispose of the Original Petition with a direction that if petitioners have any doubt about the genuineness of the document Annexure A-1 to the OA, filed before the Central Administrative Tribunal, Ernakulam Bench (in short 'the Tribunal'), same can be verified within a period of two months from today. If it is found that the documents referred to above is genuine, the order of Tribunal has to be worked out and if it is found to be not genuine, necessary follow up action shall be taken, about which we express no opinion as the same has to be done in accordance with law."

2. In obedience to the above directions of the Hon'ble High Court of Kerala, A-3 communication dated 21.3.2001 was issued to the applicant, calling upon her to produce the casual labour card in original. Accordingly the applicant produced the original casual labour card. The 3rd respondent issued the A-4 impugned order dated 6.5.2002 stating that the applicant's position in the merged seniority list dated 8.7.1997 was at Sl.No.2111 and that as per the extant policy, the Railways should not engage any casual labours and that re-engagement of retrenched casual labours borne in the seniority list was not possible. Aggrieved by that, the applicant has filed this application praying that the impugned order be set aside, declaring that the applicant is entitled to be re-engaged/absorbed in any one of the Group-D posts, in preference to project casual labours and casual labours with lesser number of days of service and direct the respondents accordingly with all consequential benefits.

3. It has been alleged in the application that the contention of the respondents that the applicant's seniority in the merged casual labour list was at Sl.No.2111 is not tenable since it was rejected by the Tribunal in its order in OA No.874/1998 and that casual labours with lesser length of service than the applicant having been re-engaged/absorbed, the respondents are bound to re-engage the applicant and absorb her on a Group-D post in her turn.

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4. The respondents in their reply statement seek to justify the impugned order on the ground that there was no declaration in the order of the Tribunal in OA No.874/1998 regarding the entitlement of the applicant for re-engagement and the applicant's position in the merged seniority list of casual labours prepared pursuant to the order of this Tribunal in OA No.1706/1994 being as Sl.No.2111 and no person junior in the list having been absorbed/re-engaged, the applicant has no right to claim the relief. In the additional reply statement, it has been contended that in terms of the policy decision taken by the Railway Board (Annexure R-1) for absorption of casual labours on Group-D posts, the upper age limit is relaxed only upto 43 years in the case of OBC candidates and 45 years in the case of SC/ST candidates. The applicant who was born in the year 1952 had crossed the upper age limit at the time of filing the OA and it has not been possible to relax the upper age limit, contend the respondents.

5.. I have, with meticulous care, gone through the pleadings and all the material placed on record and have heard the learned counsel of the applicant as also of the respondents. From the pleadings and the material on record and from the submissions of the counsel, the undisputed fact that has emerged is that the applicant has been concluded to be a post 1.1.1981 retrenched open line casual labour of the Trivandrum Division, that she was retrenched on 1.10.1981, that on the date of her retrenchment, she had put in total number of 618 days of casual service and that by A-5 order dated 13.2.1997, persons who had less than 618 days of service have been empanelled for absorption on group-D posts, that in A-5 all those whose names figure from Sl.Nos.



54 to 68 are persons with lesser length of service than the applicant, belonging to post 1.1.1981 retrenched open line casual labour, that the claim of the applicant for re-engagement is dependent on her placement in the merged seniority list of casual labour prepared pursuant to the order of the Tribunal in OA No.1706/1994 which had been rejected by the Tribunal in its order in OA No.874/1998 between the same parties, which has become final. Therefore, the entitlement of the applicant for the benefit of casual service is on the basis of the number of days of casual service rendered by her as a post 1.1.1981 retrenched open line casual labour. It is evident from A-5 that post 1.1.1981 retrenched open line casual labours of Trivandrum Division, who had lesser length of service than the applicant have been empanelled for absorption by order dated 13.2.1997. The contention of the respondents that the extant policy of the Railway Administration is not to re-engage any casual labour and, therefore, the applicant cannot be considered for re-engagement or absorption is absolutely untenable because the right of the applicant as also the obligation on the part of the Railway Administration to re-engage/absorb the applicant has already been crystallised by the order of the Tribunal Annexure A-1 and the judgement of the Hon'ble High Court of Kerala Annexure A-2. There is no dispute regarding the genuineness of the casual labour card issued to the applicant. The applicant was entitled to be conferred the same benefit as was given to persons belonging to her category as on the date of A-1 order and even prior to that date, similarly situated persons were empanelled. Any policy decision taken thereafter has no effect of erasing the right which the applicant has acquired and which has been recognized by the Tribunal and the Hon'ble High Court. The

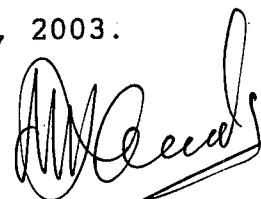
contention of the respondents that the applicant's case for re-engagement/absorption cannot be considered as the applicant has crossed the upper age limit of 43 prescribed for OBC in terms of R1 dated 20.9.2001 is also absolutely baseless and untenable because the Railway Board Circular R-1 does not ~~mention~~ ^{apply to} the case of the applicant. Casual labours similarly situated like the applicant were empanelled by A-5 order dated 13.2.1997. It can be seen from A-5 that Sl.No.1 in the empanelled list was born on 11.4.1951 and Sl.No.61 was born on 22.7.1946. If casual labours who were born in 1946 and 1951 could be empanelled for re-engagement and absorption, I fail to understand how the applicant who was born in 1952 would not be entitled to the benefit, because the rules and instructions which govern those who were empanelled by Annexure A-5 would undoubtedly apply to the applicant also. Under these circumstances, I find no merit in the contentions raised by the respondents that the applicant does not have a right to claim the reliefs sought in the application.

6. In the result, the application is disposed of directing the respondents to re-engage the applicant and consider her for absorption on a Group-D post with effect from the date on which Sl.No.59 and below were re-engaged and absorbed on Group-D posts. The applicant would not be entitled to the arrears of pay and allowances consequent on the re-engagement/absorption but would be entitled to notional fixation of pay in case she is appointed

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on a Group-D post. Impugned order Annexure A-4 is set aside. Resultant orders shall be issued accordingly by the second respondent within a period of three months from the date of receipt of a copy of this order.

Dated 19th September, 2003.



A.V. HARIDASAN
VICE CHAIRMAN

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