CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 996/2010 and O.A.467/2011

Wednesday, this the 12th day of September, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

O.A.No.996/2010

1. M.Krishna Prasad, S/o Madhavan Pillai,
Trackman/SE/P.Way/Nagarcoil,
Mala Veedu, Pada Nilam, Pacode.P.O.
Kanyakumari District, Tamil Nadu.

2. R.Thiruvazhimarban, S/o Ramaswamy Konar,
Trackman/SE/P.Way/Nagarcoil,
Near Park. Thirupathisaram.P.O.
Kanyakumari Dist. Tamil Nadu.

3. T.Yesudhasan, S/o Thavamani Nadar,
D.G.Man/SE/Works, Trivandrum,
Poojapura Vilai, Agastheeswaram.P.O.
Kanyakumari Dist. Tamil Nadu.

4. S.Mariyadhas, S/o Stanislaus,
Trackman/SE/P.Way/Nagarcoil,
Udayar Vilai, Kattuvilai, Colachal.P.O.
Kanyakumari Dist. Tamil Nadu.

5. G.Vijayan, S/o Ganapathi Achari,
D.G.Man/SE/Works/Trivandrum,
Thakkeveedu Vilai, Puthen Veedu, Pacode.P.O.
Kanyakumari Dist. Tamil Nadu.

6. A.Mariya George, S/o Antony Muthu,
Trackman/SE/P.Way/Nagarcoil,
Sirayanvilai, Konamcadu,
Kanyakumari Dist. Tamil Nadu.

7. T.Sivasankaran, S/o G Thankappan,
Trackman/SE/P.Way/Nagarcoil,
15/17/A, Thanumalayan Nagar,
Sucheendram.P.O. Kanyakumari Dist.
Tamil Nadu.

8. R.Maharaja Pillai, S/o Ranganathan Pillai,
Trackman/SE/P.Way/Nagarcoil,
16, East Street, Police Station Road,
Krishnan Kovil, Nagercoil,
Kanyakumari Dist. Tamil Nadu.

9. A.Pinnavanam, S/o Arunachala Thevar,
Trackman/SE/P.Way/Nagarcoil,
Nambiswamy Koil Street, Seithunkanellur.P.O
Tuticorin Dist. Tamil Nadu.

10. G.Sundar Rajan, S/o Gnanasigamani,
Trackman/SE/P.Way/Nagarcoil,
Pandaravila Kaviyallur, Kattathurai.P.O.
Kanyakumari Dist. Tamil Nadu.

11. R.Suresh Lal, S/o Rajamony,
Trackman/SE/P.Way/Nagarcoil,
99/7-1, Nesavalar Colony,
Vetturnimadom Post, Nagergoil,
Kanyakumari Dist. Tamil Nadu.

12. K.Authinarayanan, S/o Kutti Nadar,
Trackman/SE/P.Way/Nagarcoil,
Nariyan Vilai, Agastheeswaram.P.O.
Kanyakumari Dist. Tamil Nadu.

13. S.Chellathurai, S/o Sivalinga Nadar,
Trackman/SE/P.Way/Nagarcoil,
Ponnar Pillai, Agastheswaram.P.O,
Kanyakumari Dist. Tamil Nadu.

14. R.Harison Daniel, S/o Robinson Daniel,
D.G.Man/SE/Works/Trivandrum,
520-F Kesava Thiruppapuram,
Vetturnimadom, Nagercoil, Tamil Nadu.

15. G.Peachie, S/o Ganapathy Thevar,
Trackman/SE/P.Way/Nagarcoil,
83, 23-A-1, Thevar East Street,
Valliur P.O., Thiruvelveli Dt. Tamil Nadu.

16. P.David Gnanadas, S/o Ponnaih Nadar,
Trackman/SE/P.Way/Nagarcoil,
80, Thalavaipuram, Raman Puthur,
Nagercoil, Tamil Nadu.

17. T.Thankavel, S/o Thuraimani,
Trackman/SE/P.Way/Nagarcoil,
Vellayam Thoppu, Chanthayadi.P.O.
Kanyakumari Dist. Tamil Nadu. - Applicants

(By Advocate Mr M.P.Varkey)

v.

1. Union of India represented by
General Manager, Southern Railway,
Chennai-600 003.

2. The Divisional Railway Manager,
Southern Railway, Trivandrum-695 014.

3. Sr. Divisional Personnel Officer,
Southern Railway, Trivandrum-695 014. - Respondents

(By Advocate Mr K.M.Anthru)

O.A.No.467/2011

C.Kurusumuthu Nagar, S/o Chellkannu,
Trackman, O/o Section Engineer,
Permanent Way, Nagercoil Junction,
Southern Railway,
residing at: Kaithathu Knam Perai,
Thiruvattar Post-629 177. - Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by
the General Manager, Southern Railway,
Headquarters Office, Park Town.P.O.
Chennai-600 003.

2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum-695 014.

3. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-695 014. - Respondents

(By Advocate Mr Sunil Jacob Jose)

This applications having been finally heard on 06.09.2012, the Tribunal on 12.09.2012 delivered the following:

ORDER

HONBLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

As the issue involved in the abovesaid two O.As is one and the same, these are dealt with in this common order.

2. The applicants in both the O.As were retrenched casual labourers of the Railways and by two separate earlier orders of the Tribunal, these have all been absorbed on regular basis in 2008/2010 respectively. The seniority of the absorbed employees had been reckoned from the date of their absorption, while the claim of the applicants is that the same should be at par with their juniors in the Live casual Labour Register. Reliance has been placed by the applicants in both the O.As, to the order in OA No. 37 of 2009, where the Tribunal has dealt with the case as under:-

> *"4. We have already gone through the averments and the Original Application and also Annexure A-1 Judgment of this Tribunal. On considering the averments in the Original Application and the stand taken in the reply statement, we are of the view that the applicants are entitled for absorption on the principles laid down by the Apex Court in Inderpal Yadav's case. The Department has to consider their case, as and when their junior has been absorbed in service. It is accepted fact before us that Viswanathan has been absorbed with retrospective effect from 1996. If so, it is incumbent on the part of the respondents to give that*

benefit to the applicants also be antedating their absorption and granting them benefit of absorption with effect from 1996. Ordered accordingly. This exercised at the earliest, at any rate within sixty days from the date of receipt of a copy of this order."

3. Thus the applicants seek identical orders of retrospective absorption in their case as well.

4. Respondents have contested the O.A. They have contended that the applicants cannot seek parity with the juniors for advancing their date of absorption. In their reply, the respondents have given a detailed narration of the full history of the case relating to absorption of retrenched casual labourer.

5. After completion of pleadings, when the case came up for hearing, counsel for the applicants submitted that in the case of one Shri Viswanathan, the Tribunal directed the respondents to fix the seniority of that individual and accordingly his seniority had been fixed from 1996, though he had been actually absorbed in 2007. This date of absorption was sought to be shifted to 2003 and the counsel for the applicants fairly stated that the date of absorption had been antedated to November, 2003 in that case and as such, in the case of the applicants as well, if such a date be fixed, the same would render justice to them. They have further candidly stated that the insistence of such antedating of absorption is with a view to enabling the applicants to become entitled to the Pensionery benefits under the CCS(Pension) Rules, 1972, as the same

would not be available to the post 31-12-2003 entrants.

6. Counsel for the respondents had taken us through the contents contained in paragraph 6 onwards of the counter, which gives the full narration of the history of the re-induction of the retrenched casual labourer, preparation of seniority lists, merger of such lists, etc. He has further stated that in so far as the decision in OA No. 37 of 2009, which is heavily relied upon by the applicants, the counsel has invited the attention of the Tribunal to the order dated 2nd August, 2010 of the High Court in WP(C) No. 23757/2010(S) whereby, the order of the Tribunal in the said OA stands stayed. In addition, he has invited the attention of the Tribunal to the observation of this Tribunal in OA No. 877 of 2011 and connected O.As, wherein it has been observed that the decision in Viswanathan is considered as *per incuriam*. Thus, according to the counsel for the respondents, reliance on the said order for seeking the reliefs by the applicants cannot be accepted as an order declared *per incuriam* loses its precedential value.

7. Arguments were heard and documents perused. The respondents have given with terse sufficiency the background of the entire case relating to absorption of retrenched casual labour in paragraphs 6 and 7 of the reply in OA No. 996 of 2010 and the same is reproduced below:-

> "6. It is further submitted that the re-engagements/absorptions from the list of retrenched casual labourers took place on different occasions under different circumstances/parameters as detailed hereinbelow and accordingly, a prayer for deemed absorption on par with persons juniors in the list is not at all maintainable.

(i) The reengagements merely as casual labourers done prior to 1.7.1996 were on the basis of the seniority list of the casual labourers retrenched from the project subsequent to 1.1.1981. At that time, though there was no one in the post 1.1.1981 Open Line retrenched casual labourers list, occasions came when the retrenched casual labourers claiming to have been retrenched from Open Line subsequent to 1.1.1981 requested for considering them for engagement in preference to the post 1.1.1981 Project Casual Labourers. Their cases had to be considered on receipt of such claims.

(ii) The pre 1.1.1981 casual labourers retrenched both from the Open Line and the Project also claimed re-engagement, citing the cases of re-engagement of post 1.1.1981 retrenched casual labourers.

(iii)Thus, Railways had to face innumerable claims for re-engagement, quoting one or the other. Quite a few cases were also filed before this Hon'ble Tribunal, praying for re-engagement, on the basis of re-engagements of some other casual labourers. Many such cases were disposed of directing reengagements from prospective dates. After sometime, this Hon'ble Tribunal passed the celebrated order in O.A.1706/94 on 19.06.1996 directing Railways to merge the seniority lists of both pre 1.1.1981 and post 1.1.1981 retrenched casual labourers and to start reengagement from the said merged list from 1.7.1996. It was held categorically therein that the reengagement/absorption done under whatever circumstances prior to 1.7.1996 shall not be disturbed and whatever the reengagement/absorption required from 1.7.1996 should be on the basis of the merged list of retrenched casual labourers. Thus, it is humbly submitted that a definite programme was drawn by this Hon'ble Tribunal giving a cut off date for the purpose of future implementation. Accordingly, the subject matter regarding reengagement/absorption of retrenched casual labourers already done came to an end and from the merged list, reengagements were resorted to without any complaint subsequent to 1.7.96. Accordingly in 1998, persons upto Sl.No.1877 in respect of UR and upto Sl.No.1971 in respect of SC/ST, the casual labourer were directed to attend office for being considered for absorption. In this process, however, many senior retrenched casual labourers did not respond to the notification. The junior casual labourers who had responded to the notification were

considered and absorbed on having fulfilled the other eligibility conditions.

(iv) Thereafter, the next recruitment was resorted to only in 2003. For this purpose, the upper age limit for recruitment was fixed as 40/43/45 in respect of UR/OBC/SC&ST candidates, in accordance with the instructions in Railway Board's letter dated 20.9.2001, whereas for the earlier recruitment done in 1998 it was not so. Though considerable number of persons responded, many of them could not be considered for absorption as they were found to be beyond the prescribed upper age limit. Thus, only a limited number of persons could be absorbed and in order to consider more persons, the persons who did not respond on the earlier occasion in 1998 were given another chance and were directed to report for absorption. Accordingly, many such persons reported for absorption and they were absorbed, on they fulfilling the required conditions, including the upper age limit. At this stage it is respectfully submitted that though the persons unwilling earlier were not liable to be considered on a later occasion, Railways considered them in the good faith of providing absorption. On doing so, it is submitted that the socalled seniors in the list became juniors in service to their juniors in the list.

(v) Subsequently, a series of cases came up before this Hon'ble Tribunal filed by the casual labourers who could not be considered earlier in spite of their reporting, as they were beyond the upper age limit, challenging their non-absorption. The Hon'ble Tribunal as per the orders in those cases directed Railways to absorb the retrenched casual labourers, the applicants therein, without any age restriction. The said orders of this Hon'ble Tribunal were appealed before the Hon'ble High Court of Kerala. Finally, as per the judgment of the Hon'ble High Court, it was held that the upper age limit need not be insisted in respect of the casual labourers who had rendered more than 360 days of service. The said judgments have been appealed before the Hon'ble Apex Court by filing suitable SLPs and the same are pending. However, as Contempt Petitions were filed in the individual OAs during the pendency of the SLPs, the orders in the OAs have been complied with pending the outcome of the SLPs filed in the matter. It is humbly submitted that here also, the orders in individual OAs were complied with, under different occasions, depending upon the developments in the Contempt Petition filed. In other words, an order in

favour of a junior in the list came to be complied with ahead of the favourable order of a senior persons in another OA, merely on the reason of filing contempt proceedings. The orders in different OAs were complied with not on the basis of the seniority of the persons in the list or but on the basis of the contempt petitions as and when filed. It is further submitted that within the same OA also, appointment orders could be issued only on different dates. In this process also, situations were there that a person senior as per the list took longer duration to complete the pre-requisite formalities like verification of documents, medical examination etc. whereas a person junior as per the list could complete the formalities ahead of the senior and thus got absorbed earlier. Likewise also, the absorption done was not strictly as per the seniority in the list.

7. After appointment, their seniority in service is to be governed from the date they joined the post as provided in paragraph 302 of the Indian Railway Establishment Manual, Vol.I. Thus, it is humbly submitted that the persons got appointed under different circumstances cannot claim parity on par with various other persons. It is respectfully submitted that the Hon'ble Tribunal also having come across these developments, were not pleased to grant benefits on par with some other persons in spite of pleadings to that aspect and accordingly, pleased to allow absorption only with prospective effect. Thus, the prayer in the present OA is not maintainable and deserves to be dismissed. If the prayer of the applicants is allowed, it will lead to more claims and counter claims, resulting in continuous litigation and administrative deadlock. The order of the Hon'ble Tribunal in O.A.37/2009 allowing the benefits on par with K Viswanathan has already been challenged before the Hon'ble High Court in WP(C) No.23757/2010 and the Hon'ble High Court stayed the proceedings."

8. It is seen that in all, two times (1998 and 2003) the retrenched employees were directed to attend office for being considered for absorption. In fact, in 1998, many senior retrenched casual labourers failed to respond to the Notification. It was under such circumstances that the juniors who promptly responded to the notification of 1998 were

absorbed. It was later, in 2003 that such left over seniors were to be considered, subject to their fulfilling age restrictions. In that process, certain seniors who were over-aged had not been absorbed and it was by 2007 that the High Court in WP(C) 21777 of 2007 had held that in so far as those casual labourers who had put in 360 days of casual labour service that the age limit be not insisted. On the basis of the same, as well as on the basis of the orders passed by the Tribunal in individual cases, such retrenched casual labourers were absorbed irrespective of their age.

9. In so far as applicants in OA No. 996 of 2010, their claim for absorption has been accepted by the Tribunal vide Order dated 14-03-2007 in the batch matter (OA No. 271 of 2006 etc). In that order, the decision was for a direction to the respondents to **"consider for regular absorption in the existing vacancies having regard to the seniority in the abovementioned merged list and without applying any age limit subject to medical fitness and other conditions for such absorption being fulfilled..... The respondents shall also endeavour to exhaust this list as early as possible while filling up future vacancies so that this category are not again driven to knock at the doors of the court of justice."** The prayer column therein inter-alia included *"to direct the respondents to consider the applicants in preference to and on par with their juniors with all consequential benefits emanating therefrom."* The term 'consequential benefits' in the said prayer does include seniority from the date the junior was absorbed. Nevertheless, the Tribunal restricted the relief only to the above that the

applicants shall be only absorbed against existing or future vacancies. This order has attained finality.

10. In so far as the applicant in OA No. 467/2011, he had earlier filed OA No. 438 of 2010 in which the relief sought included interalia, *"Direct the respondents to grant the applicant the benefit of such absorption on par with his juniors, including arrears of pay and allowances arising therefrom."* The said OA, in view of the action of the respondents calling the applicant for medical examination with a view to absorbing him, had been allowed with a direction to the respondents to implement their own order (dated 15-06-2010, Annexure R-1 to the said OA) within a time bound schedule. Thus, the applicant came to be absorbed in mid 2010. It is thereafter that the applicant requested the respondents *'to consider and grant him the benefit of regularization on par with his juniors with lesser number of days of service, particularly one Shri Viswanathan who has been granted the benefit of absorption recently from 1996 onwards.'*

11. It is the admitted fact that the applicants in OA No. 996 of 2010, are all senior to the said Viswanathan. In so far as OA No. 467 of 2011 is concerned, respondents have contended that the applicant therein is not senior to Viswanathan. Counsel for the applicant in his rejoinder submitted that in the earlier application filed by the applicant in OA No. 467/2011, the applicant contended that he is senior to Viswanathan and the respondents had not refuted the same. It is for the first time in the additional reply in the present OA that the respondents contend that the

applicant is not senior to the said Viswanathan. The counsel for the applicant emphasized that the applicant is senior to the said Viswanathan.

12. In so far as the case of Viswanathan is concerned, the following orders are important to be kept in mind:-

(a) **OA 615 of 2004**: The order of the Tribunal in this case, filed by Viswanathan, was to revise the seniority and accordingly, his absorption came to be antedated.

(b) **CP No. 21/2006**: This contempt petition was filed by Viswanathan in OA No. 615 of 2004. The individual was in fact entitled to seniority only on 03-11-2003. However, due to lack of time and the observations of the Tribunal, the seniority was granted erroneously as of 1996.

(c) **OA No. 320/2010** and connected matters: In this case, the above facts were all reflected and further the Tribunal has also observed that as per the respondents, the seniority assigned to the said Viswanathan was a mistake and the respondents were contemplating to withdraw the unintended benefit of seniority afforded to him.

(d) **OA No. 877 of 2011** (with two more O.As) In this case filed by Viswanathan, the applicant has claimed the disbursement of gratuity, monthly pension and other retiral benefits. While dealing with the same, the Tribunal referred to the decision in OA No. 615 of 2004 and observed that whatever benefits were granted to the applicant, the same was by virtue of the fact that the order in that OA became final and being an interparty judgment, it was complied with. However, the fact remains that the actual date of seniority in that case was only 05-11-2008. **The said order was, thus, held to be one of *per incuriam*.**

13. Based on the decision in Viswanathan, OA No. 37 of 2009 was allowed with a direction to grant seniority to the applicant therein vide order dated 18-02-2010. As stated earlier, reliance is placed upon the said order by the applicants in both the cases in hand. However, the said

order remains stayed by the High Court in C.W.P. No. 23757 of 2010 by order dated 02-08-2010.

14. It is in the above factual backdrops, that the case of the applicants has to be considered. When the Tribunal has held the decision in Viswanathan as *per incuriam*, it is not to be taken as precedent. In this regard, support could be had from the decision in the case of **A.R. Antulay vs R.S. Nayak** (1988) 2 SCC 602 by Hon'ble Justice M.N. Venkatachaliah, as his Lordship then was, wherein it has been observed as under:-

> ***"183.*** *But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A co-ordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter parties, in the previous decision is overturned. In this context the word 'decision' means only the reason for the previous order and not the operative order in the previous decision, binding inter parties. Even if a previous decision is overruled by a larger Bench, the efficacy and binding nature, of the adjudication expressed in the operative order remains undisturbed inter parties."*

15. Thus, decision in the case of Viswanathan cannot act as a precedent for the case of the applicants. The case of the applicants has to stand on the strength of their own merit – i.e. Whether any legal and vested rights of the applicants have been hampered by the action or inaction of the respondents and if so to what extent and what relief the applicants are entitled.

16. As already stated, the absorption of the applicants was purely on the basis of two orders of this Tribunal and in the case of Applicants in OA No. 996 of 2010, their prayer for consequential benefits at par with their juniors consequent to the absorption has not been granted. The respondents have been directed only to absorb the applicants, against the existing or future vacancies. Thus, there was an implied negation of the other relief i.e. Consequential benefits, which do include the aspect of seniority as well. The applicants have not come up in review before the Tribunal in regard to antedating of their seniority nor had they challenged the order of the Tribunal before the High Court. In fact the respondents have filed O.P(CAT) 1979/11 against the order of this Tribunal dated 15.03.2011 in O.A 72/10. While the order of this Tribunal was upheld by the Hon'ble High Court the following observation was made:-

> *"The Tribunal noticed that the omission to respond to the notification does not deprive the first respondent of his eligibility for re-employment. So long as CAT has not ordered employment with retrospective effect, we do not find any grievance for the Railways because if first respondent had responded to the notification, he would have got job..... Seniority necessarily has to be granted to the first respondent from the date of order of the CAT based on which he is going to be appointed."*

So the Hon'ble High Court has made it clear that while the applicants are to be given an opportunity to take part in 2003 selection even though they did not respond to earlier notification issued in 1998, their appointment can only be prospective.

17. In so far as the applicant in OA No. 467 of 2011 is concerned, here again, the prayer in OA No. 438 of 2010 included consequential benefits.

That was not granted. The applicant later on, on absorption claimed antedated seniority, with particular reference to the case of Viswanathan, vide Annexure A-6. That has not been granted by the respondents. The case of the applicant in this O A is no better than that of the other O.A.

18. It would have been a different matter had the applicants appeared before the authorities in 1998 itself and it was due to any mistake of the respondents that they could not be absorbed at that time. Since the applicants themselves presented for verification etc., only at a very late stage, and having accepted the decision of the Tribunal for absorption from a prospective date, we are afraid that any of their vested rights have been hampered. In view of the above, there is no merit in these cases. The O.As are **dismissed**. However, it is to be observed here that if the decision of the High Court in the case of the applicant in OA No. 378/2009 (which has been relied upon by the applicants in the present O.As and in which case the order of the Tribunal stands stayed) goes in favour of the applicant therein and in case the respondents, by themselves, on sympathetic basis or otherwise, ante date the seniority in respect of all similarly situated including the applicants in the present O.As, this dismissal order would not come in their way in so far as the applicants are concerned.

19. No costs.

sd/-
K.NOORJEHAN
ADMINISTRATIVE MEMBER

sd/-
Dr K.B.S.RAJAN
JUDICIAL MEMBER

CERTIFIED TRUE COPY
Date .....

trs

Deputy Registrar