

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.49/2003.

Wednesday this the 18th day of June 2003.

CORAM:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.Velayudhan,
residing at Kezhepatt House,
P.O.Kadalundi Nagaram,
Malappuram District.

Applicant

(By Advocate Shri T.C.Govindaswamy)

Vs.

1. Union of India, represented by
Secretary to the Ministry of Railways,
Rail Bhavan, New Delhi.
2. The General Manager,
Southern Railway, Madras.
3. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
4. The Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat. Respondents

(By Advocate Mrs.Rajeswari Krishnan)

The application having been heard on 18th June 2003,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant is a retrenched casual labourer of the Palghat Division of Southern Railway. He was retrenched from service on 28.6.1981 and having a total of 1745 days of casual services. According to the averments in the O.A. that the applicant was entitled to be considered for re-engagement/absorption on the basis of his position in the Live Register in preference to his juniors. But by a mistake committed by the office of the 4th respondent he had only 18 days' casual service was reckoned for placement in the Live



Register. On account of that several persons having lesser number of days service were considered for re-engagement and absorbed overlooking the applicant's preferential claim. The applicant filed O.A.61/99 before this Tribunal seeking a direction to the respondents to register and fit in his name in the appropriate place in the Live Register of retrenched Casual Labourers and to re-engage him as Gangman with retrospective effect. The same was dismissed by the Tribunal. The applicant filed O.P.No.15648/2001 before the Hon'ble High Court of Kerala and the Hon'ble High Court found that no opportunity was given to the Petitioner to produce the Annexure A-5 communication dated 10.2.1994 issued by the Divisional Railway Manager/Personnel, Palghat which will show that the applicant had worked for 1745 days and directed the respondents to look into the veracity of A-5 document dated 10.2.1994 and vide A-2 order dated 26.4.2002, the 4th respondent admitted that the applicant is having 1745 days Casual Labour Service and he would be put on the appropriate place in the list of Live Casual Labour Register and in Annexure A-3 dated 14.11.2002 it is mentioned that the applicant's name has been included in the Live Register as S1.No.12(A) with 1745 days service against S1.No.1989. The respondents had not given any consequential benefits by upgrading his seniority in the Live Casual Labour Register. Aggrieved by the same, the applicant has filed this O.A. seeking the following reliefs:

- a) Declare that the applicant is entitled to be considered for re-engagement/absorption as a Group 'D' Railway employee on par with his Juniors by virtue of his position in the seniority list and direct the respondents to consider him for appointment accordingly, and to grant him consequential benefits thereof on par with his next junior in the seniority list.
- b) Award costs of and incidental to this application;
- c) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.



2. When the matter came up before the Bench, Shri T.C.Govindaswamy, learned counsel appeared for the applicant and Mrs. Rajeswari Krishnan, learned counsel appeared for the respondents. Learned counsel for the respondents submitted that as per the directions of the Hon'ble High court, the name of the applicant was included in the Live Casual Labour Register as item No.12(A), duly counting 1745 days of his employment in Railway as casual labour. During the year 1998-99, candidates upto the serial No.635 were considered for appointment, out of the list of 2284 names in the Live Register and this appointment was given as per the sanction communicated from the office of the second respondent for intake of manpower. It is also submitted that, the sanction has been received from the office of the second respondent for absorption of candidates from the Live Casual Labour Register and the applicant also would be considered, if he is otherwise found suitable in the screening. It is also submitted that the O.A. is premature and does not have any merit.

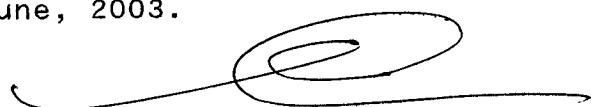
3. I have heard the learned counsel on both sides. I have gone through the various pleadings, evidence and material placed on record and given due consideration to the pleadings. It is an admitted fact that as per A-3 order dated 14.11.2002, the applicant's position is upgraded to Serial No.1 12(A) with 1745 days' service. It has also come out on record that his name at appropriate place was not included at appropriate time and he was denied the benefit that he should have received at that point of time. It is also admitted that, during 1998-99, candidates upto the serial No.635 were considered for appointment out of the list of 2284 names in the Live Register. The fact remains that, had the applicant being considered for appointment at that time, he

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would have been the beneficial person among all of his juniors and therefore, there is a clear case of violation of the guidelines of the Railway Board and the rule position. The main contention that has been canvased by the learned counsel for the respondents is that, he could not be given a retrospective employment benefits by putting him above his juniors. If the right thing has been done at the right time, the applicant would have been gained the benefits and it could nothing but a mistake which has prejudicially affected the interests of the applicant. Therefore, I am of the view that the applicant is entitled to get consequential benefits as if he has been put on the appropriate place of his seniority, considering his length of service as Casual Labourer.

4 In the conspectus of facts and circumstances, the O.A. is allowed and direct the respondents to consider the absorption of the applicant on a group 'D' post on par with his juniors in the seniority list of Live Casual Labour Register, who was absorbed earlier subject to the pre-appointment formalities like screening etc. and that if the applicant is found suitable for appointment he should be given notional seniority with effect from the date on which his immediate junior at Sl.No:13 has been absorbed in the casual labour service and place below in the merit/merged list as No.12 on Group 'D' post. The applicant will not be entitled to any arrears of pay and allowances and other monetary benefits. This direction shall be complied within a period of 3 months from the date of receipt of a copy of this order. In the circumstances, no order as to costs.

Dated the 18th June, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER