

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.486/08

Thursday this the 15th day of October 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

M.Shunmugavel,
S/o.Muthaiah Thevar,
Ex-Casual Labourer,
Southern Railway, Trivandrum Division.
Residing at No.4/131-F, Radhapuram Road,
Valliyur P.O., Tirunelveli Distt.

...Applicant

(By Advocate 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 Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
 3. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
- ...Respondents

(By Advocate Mr.P.Haridas)

This application having been heard on 15th October 2009 the
Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant in this O.A is a retrenched casual labourer. He seeks a declaration that the refusal on the part of the respondents to consider and absorb him as a Group 'D' employee taking into consideration of his entire service as reflected in Annexure A-3 service cards is arbitrary, discriminatory and violative of the constitutional guarantees enshrined

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under Articles 14 and 16 of the Constitution. He has also sought a direction to the respondents to consider and absorb him as a Group 'D' employee and to grant all the consequential benefits thereof at par with his juniors in the list of retrenched casual labourers including arrears of pay and allowances emanating therefrom.

2. This is second round of litigation by the applicant. He had earlier filed O.A.352/06 which was disposed of on 14.3.2007 along with O.A.271/06 and connected cases, directing the respondents to consider the applicants who were retrenched casual labourers of Southern Railway, Trivandrum Division for re-engagement and absorption without insisting for any age limit. The said order was challenged before the Hon'ble High Court of Kerala in W.P.(C) No.21777/07 (to the extent it related to the applicants in O.A.271/06) which was finally disposed of by judgment dated 29.11.2007 upholding the directions of this Tribunal and hold that casual labourers with 360 days casual labour service and above are entitled to be considered for absorption, in preference to their juniors, without any restriction as to the age limit. The respondents have also taken up the remaining connected cases by filing W.P.(C) No.29813/07 which was disposed of by order dated 11.12.2007 in the light of its earlier judgment dated 29.11.2007. The applicant herein was the respondent in the aforesaid W.P(C) No.29813/07. Later on, the respondents called upon all the applicants to report to the office of the 2nd respondent with all requisite documents by Annexure A-2 letter dated 7.7.2008. The applicant herein was also one of the persons who was called upon to submit his documents. According to the applicant, he has reported before the said authority and

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submitted all his requisite documents in original including the service cards. He has also produced the Annexure A-3 photo copies of the said service cards. The contention of the applicant is that while Mr.Peachi, Mr.Davi Gnanadhas and Mr.Jeevanandam etc were absorbed, he was not considered. On enquiry he was informed that the respondents have considered his service for the period from 11.2.1981 to 1.8.1981 alone (171 days) but the period from 11.2.1980 to 5.12.1980 (299 days) has not been considered. He has, therefore, submitted Annexure A-4 representation to the respondents to consider him also for re-engagement. The applicant has further submitted that Mr.Peachi, Sl.No.3 in the Annexure A-2 was working with him under the same Permanent Way Inspector. During the period of the applicant's service from February 1981 to August 1981 his LTI No. was 1802 whereas that of Mr.Peachi was 1795. Similarly, during the period of service in the year 1980, the applicant's LTI No. was 316 and that of Mr.Peachi was 309. According to the applicant, there is no justification on the part of the respondents to deny him absorption as both of them are similarly placed.

3. The respondents in their reply statement submitted that the applicant had completed 45 years of age as on 1.1.2003 and he belongs to OBC community. They have denied that he has 470 days of casual labour service. As per the merged seniority list of the retrenched casual labourers published pursuant to the order of this Tribunal in O.A.1706/94 he had rendered only 171 days of service. They have also submitted that the applicant had earlier filed O.A.352/06 before this Tribunal praying for absorption. The aforesaid order was challenged before the Hon'ble High



Court of Kerala and it was disposed of by Annexure A-1 judgment, according to which, the age limit prescribed in letters dated 28.2.2001 and 20.9.2001 is not applicable to the casual labourers who have completed 360 days of service. As the applicant is not having 360 days of service, he is not entitled to be considered for absorption.

4. The applicant in his rejoinder has denied the contention of the respondents. He has reiterated his contention that he has more than 360 days of service as casual labourer rendered during the period from 11.2.1981 to 1.8.1981 and 11.2.1980 to 5.12.1980. Accordingly he is eligible to be absorbed as a casual labourer in terms of the Annexure A-1 judgment of the Hon'ble High Court.

5. I have heard the counsel for the applicant. I have also gone through the entire pleadings. The applicant's contention is that he has got 470 days of casual service at his credit in two spells ie. from 11.2.1981 to 1.8.1981 (171 days) and from 11.2.1980 to 5.12.1980 (299 days), (total 470 days). On the other hand, the respondents have submitted that he had only 171 days of casual service. The applicant has specifically stated that he was allotted two LTI numbers. In 1980 he was allotted LTI No.316 and in 1981 he was allotted LTI No.1802. It was not difficult for the respondents department to verify the number of days of casual service rendered by the applicant for which he was assigned LTI No.316 in 1980 and LTI No.1802 in 1981. I, therefore, dispose of this O.A with a direction to the respondents to verify their records and find out the number of days of casual service the applicant has rendered with his LTI No. 316 in 1980 and

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LTI No.1802 in 1981 and if the applicant is found to have rendered more than 360 days casual service during the aforesaid two spells of service he shall be considered and if he is otherwise eligible he shall be absorbed as a Group 'D' employee. The respondents shall also give an opportunity to the applicant to explain his position before the concerned authority personally and to verify the departmental records in the presence of a responsible officer of the department with the aid of another literate person. With the aforesaid direction, the OA is disposed of. There shall be no order as to costs.

(Dated this the 15th day of October 2009)



GEORGE PARACKEN
JUDICIAL MEMBER

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