

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 495 / 2008

Friday, this the 11th day of December, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

1. M.Charles,
Retrenched Casual Labour,
Southern Railway, Trivandrum Division,
Residing at Orupanai Nintra Vilai,
Poottetti.P.O.
Kanyamumari district.

2. C.Pandian,
Retrenched Casual Labour,
Southern Railway, Trivandrum Division,
Residing at Murunka Vilai,
Rajakkamangalam.P.,O.
Kanyakumari district.

....Applicants

(By Advocate T.C.Govindaswamy)

v.

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 Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum.
4. The Chief Engineer,
Construction,
Southern Railway,
Egmore, Chennai-8.

....Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 2.12.2009, the Tribunal on 11.12.2009 delivered the following:



ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The applicants herein are two of the many retrenched Casual Labourers of the Southern Railway, Trivandrum Division. They are aggrieved by the refusal on the part of the respondents in not absorbing them as Group'D' employees.

2. According to the applicants, they have 525 and 476 days respectively of casual service at their credit. In support of the aforesaid claim, the 1st applicant Shri M Charles has submitted Annexure A-1 casual labour card which is a typed copy of a letter stated to have been issued to him by the Permanent Way Inspector-II/Construction, Southern Railway, Nagarcoil. He has also produced a certificate dated 11.2.1992 issued in his favour by Depot Store Keeper's Office, Construction, Palayamkottai according to which he worked as Casual Labour khalasi with LTI No.790 for the period from 6.3.1979 to 15.5.1979 and LTI No.1327 for the period from 21.1.1980 to 5.12.1980 under the control of Permanent Way Inspector, Construction, Southern railway, Nagercoil and for the period from 12.3.1981 to 1.8.1991 with LTI No.1935 under the control of Permanent Way Inspector, Construction, southern Railway, Palayamkottai. The 2nd applicant, Shri C.Pandian has submitted photo copies of the casual labour card issued to him under the signature of Inspector, Construction, Southern Railway, Nagercoil.

3. Aggrieved by the refusal on the part of the respondents for considering them for absorption as Group'D' employees on the ground of over age, they along with other similarly placed casual labourers had earlier approached this Tribunal vide O.A.271/2006. The said O.A and connected cases were allowed

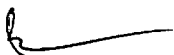


by a common order dated 14.3.2007 holding that the prescription of upper age limit need not be insisted upon in the case of retrenched casual labourers whose names have already figured in the Live Register of Casual Labourers maintained by the respondents. The aforesaid order was challenged before the Hon'ble High Court of Kerala in W.P.(C) No.21777/2007. The High Court held that those persons who had completed 360 days of service were entitled for temporary status as per the decision in **Inder Pal Yadav's** case and the ceiling limit of upper age need not be imposed on them. The High Court in its judgment has also observed the seniority positions and the number of days worked by the respondents in the Writ Petition including the applicants herein as recorded in the live register of casual labourers. The details regarding the applicants herein as recorded in the judgment is extracted as under:

<i>Sl.No.</i>	<i>Name</i>	<i>Age</i>	<i>Sr. List</i>	<i>Days</i>
5	M Charles	50	12799	142
10	C Pandian	55	2315	348

4. As the respondents did not comply with the aforesaid order of the Tribunal as modified by the Hon'ble High Court of Kerala, the Applicants filed a Contempt Petition before this Tribunal. Thereafter, the respondents issued the Annexure A-4 letter dated 7.7.2008 directing the Applicants to submit the documents such as original casual labour card, certificate of proof of age, certificate of proof of qualification etc. After verification of the details, some of them were sent for medical examination for eventual absorption as Group'D' employee but the applicants were not directed to undergo any medical examination. On enquiry they came to know that they were not being called for medical examination because the respondents have reckoned only 143 and 334 days respectively of their service as rendered as casual labourers.

5. The applicants have, therefore, sought a declaration in this O.A that they



are entitled to be treated at par with their co-applicants in O.A.271/2006 duly reckoning the entire service rendered by them as reflected in the Annexure A-1 and A-2 casual labour cards. They have also sought a direction to the Respondents to absorb them as Group'D' along with the co-applicants in O.A.271/2006.

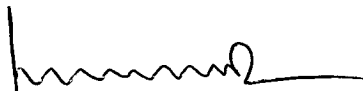
6. The respondents in the reply have submitted that the applicants' names have been registered at Sl.No.2799 and 2315 respectively in the casual labour live register and according to the record they have rendered only 142 and 348 days respectively. They have also relied upon the observation made in the judgment by the High Court wherein the number of days of casual service in respect of them were recorded as 142 and 348 respectively. Since they do not have more than 360 days of service they have not been absorbed as Group'D' employees.

7. I have heard the learned counsel for the parties. The dispute is regarding the number of days of casual service rendered by both the applicants. According to the applicants, they have rendered 525 and 476 days respectively. On the other hand, according to the information available with the respondents, they have rendered only 142 and 348 days respectively. As the number of days of casual service was not above 360, they have not been subjected to the process of selection such as medical examination etc. It is seen that the observation regarding the number of days of casual service rendered by the applicants in the Annexure A-3 judgment made by the High Court was on the basis of the information made available by the respondents themselves. There was no occasion for the applicants to inform the High Court about the number of days of casual service rendered by them. Rather, at that time, the number of



days casual service rendered by the Respondents in the Writ Petition was a non-issue. Until this dispute is resolved, neither the Respondents can deny them absorption finally nor the applicants can be absorbed as Group'D' employees. In these circumstances, the only direction that can be given to the respondents is to resolve the dispute regarding number of days of casual service actually rendered by the applicants as the basis of the relevant records. For this purpose, the 3rd respondent, namely, The Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum shall give an opportunity for personal hearing to the Applicants and permit them to establish their claim regarding the number of days casual service rendered by them. Applicants shall make available all documents at their custody and the respondents shall examine and verify them from the source from which they have been issued to the applicants. If they are found to be correct and it is established that they have more than 360 days of casual service, they shall be considered for regularisation as Group'D' employee subject to fulfilment of other conditions. The respondents shall take a decision in this matter within a period of two months from the date of receipt of copy of this order.

The O.A is disposed of with the above directions. There shall be no order as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER

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