

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 505 of 2008

Wednesday, this the 3rd day of March, 2010

CORAM:

**HON'BLE SRI JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE SRI K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

C. Ravikumaran Nair,
S/o. Chandrasekharan Pillai,
Senior Trackman/Gate Keeper, Karuvetta,
(Under the Section Engineer/Permanent Way/
Southern Railway/Trivandrum Division/Alappuzha),
Residing at : Viju Bhavanam,
Mannarasala P.O., Harippad

... **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 Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14
3. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14
4. The Chief Engineer,
Southern Railway, Construction,
Egmore, Chennai – 8

... **Respondents.**

(By Advocate Mr. Thomas Mathew Nellimootttil)

The Original Application having been heard on 18.02.2010, this Tribunal
on 03.03.2010 delivered the following :

O R D E R
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant has filed this O.A. with the following prayers :

- (i) Declare that the non-feasance on the part of the respondents to regularize the applicant as Gangman / Trackman on par with his junior Shri A. Sankunny is arbitrary, discriminatory, contrary to law and hence, unconstitutional;
- (ii) Direct the respondents to grant the applicant the benefit of regularization including the benefit of arrears of pay and allowances arising therefrom with effect from the date of regularization / absorption of the applicant's junior Sri A. Sankunny referred to in A4;
- (iii) Direct the respondents to grant the applicant the benefit of regularization on par with his junior Sri A. Sankunny including pay and allowances arising therefrom; or in the alternative
- (iv) Direct the respondents to take a final decision on A6 representation and to communicate the same to the applicant within a time limit as may be found just and proper by this Hon'ble Tribunal;
- (v) Award costs of and incidental to this application.

2. To state the facts of the case in brief, the applicant was a casual labourer who could not be included in the list of retrenched casual labourers at the appropriate place resulting in denial of timely absorption at par with his juniors. He approached this Tribunal in O.A. No. 60/91, which was disposed of directing the respondents to ascertain from the records the details of the applicant's casual service and include his name in the live register of Trivandrum Division and to grant him the reliefs if he satisfies all the requirements. Consequently, his name was included in the proper place at serial No. 438(A) between Smt. C.O. Kalikutty (Sl.No. 438) and Shri A. Sankunny (Sl. No. 439). The applicant was reinstated as casual labourer with effect from 03.10.94. He was regularized with effect from 17.04.96. The grievance of the applicant was that he is not regularized at par with his junior



A. Sankunny, who was regularized as early as December, 1988. His last representation dated 12.09.07 addressed to the second respondent is still pending. Hence the O.A.

3. The applicant contends that his junior Sri A. Sankunny was regularized with effect from December, 1988. Failure on the part of the respondents to absorb him with effect from the date of regularization of his junior was not for reasons attributable to him but for reasons attributable to the respondents. The inaction on the part of the respondents to grant him the benefit of regularization with effect from December, 1988 is arbitrary, discriminatory and contrary to law.

4. The respondents submitted that the prayer of the applicant in the O.A. is hit by res judicata. The applicant has not impleaded the other employee on par with whom he claims the benefit nor the authority in the project who had entered appearance in the earlier case. The applicant never challenged the empanelment of his alleged junior. The prayer of seniority on the basis of absorption of his junior is not permissible after a lapse of 20 years.

5. In the rejoinder, the applicant citing the directions of Hon'ble Supreme Court in Inder Pal Yadav's case submitted that it would be equitable and natural that he is given the benefit of absorption with effect from date of absorption of Sri A Sankunny, his junior. This principle is recognized by the Railways themselves in Para 227 of Section-B of Chapter II of Indian Railway Establishment Manual Vol.I, which reads as under:

"The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed pro-forma at the proper time. The enhanced pay may be allowed from

the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

6. In the additional reply, the respondents submitted that neither the IREM nor the Inder Pal Yadav's case permits comparison of cases of reemployment/absorption done in earlier period.
7. In M.A. No. 52/09 filed by the applicant for impleading the Chief Engineer, Southern Railway/Construction, Egmore, Chennai, as 4th respondent in the present OA, it is submitted that the respondents have stated in para 12 of the reply statement that Annexure A-6 representation of the applicant has been referred to the authorities in the project organisation.
8. Arguments were heard and documents perused.
9. The direction of this Tribunal in O.A. No. 60/91 was to include the applicant's name in the live register after ascertaining the details from the records and to grant him the reliefs if he satisfies all the requirements. Accordingly, the respondents placed the applicant at sl. No. 438(A) above one Sri A. Sankunny at sl. No. 439. It is seen from Annexure R-1 that Sri A. Sankunny was regularized against the vacancies as on 30.06.88 to 31.12.88 alongwith others. It goes without saying that if the applicant is placed higher in the seniority list than Sri A. Sankunny, then all the other benefits of regularization granted to the latter should be given to the applicant also if he satisfies all the requirements. The respondents have not taken any effective steps towards this end. The representation from the applicant at Annexure A-6 dated 12.09.2007 addressed to the second respondent is sent to the authority

in the project organization, who is impleaded as respondent No.4 in this OA. The outcome of the representation is still not known even after many years.

10. In the circumstances of this O.A, once the applicant is placed appropriately in the live register of casual labourers, it is only just and right that he should be given the consequential benefits. That the applicant has not impleaded his junior on par with whom he claims benefits is not a reason to reject the case of the applicant because he is not claiming any right over his junior. On the suggestion of the respondents, the Chief Engineer of the Construction Organization has been impleaded as the additional 4th respondent. The applicant has approached this Tribunal as early as 1991 in O.A. No. 60 for getting his rights upheld. There is no wilful delay or latches on his part. As per averment of the respondents, the applicant's representation dated 12.09.2007 has been sent to the authorities in the project. No decision on the grievance of the applicant is taken so far. As it is still pending for a decision, the delay is on the side of the respondents.

11. In the light of the above, our considered view is that in the interest of justice the applicant should be given all the benefits which had been given to his immediate junior, if he satisfies all other requirements. Therefore, his representation for the same on which the 2nd respondent is the competent authority to take a decision should decide on merit without further delay.

12. Accordingly, the O.A. is disposed of as under:

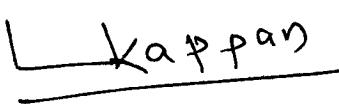
The respondents are directed to consider the representation dated 12.09.07 at Annexure A-6 of the OA on merit and communicate

*the decision taken to the applicant within a period of three months
from the date of receipt of a copy of this order.*

13. No order as to costs.

(Dated, the 3rd March, 2010)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

CVR.