

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.530 of 2011

Friday, this the 19th day of August, 2011

CORAM:

Hon'ble Dr. K.B.S Rajan, Judicial Member

**S Rajamoni, aged 54 years
 S/o Silomani Nadar
 (Ex-Casual Labourer, Southern Railway,
 Trivandrum Division)
 Residing at: Manchadi Puthen Veedu, Kottamom
 Parasuvaikal P.O
 Parassala, Neyyattinkara,
 Trivandrum Dist**

..... Applicant

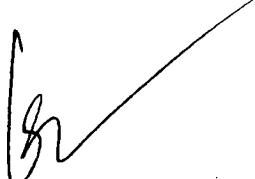
(By Advocate – Mr.T.C.G Swamy)

V e r s u s

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.** **Respondents**
3. **The Senior Divisional Personnel Officer
 Southern Railway, Trivandrum Division
 Trivandrum – 695 014**
4. **The Chief Engineer
 Construction, Southern Railway
 Egmore, Chennai – 600 008**
5. **The Sr.Divisional Medical Officer
 Southern Railway Hospital, Pettah,
 Trivandrum – 695 024**

(Bt advocate – Mr.Thomas Mathew Nellimoottil)

**This Original Application having been heard on 19.08.2011, the Tribunal on
 the same day delivered the following :**



ORDER

By Hon'ble Dr.K.B.S Rajan, Judicial Member -

1. The applicant, a retrenched casual labourer, earlier approached this Tribunal by filing O.A No.373/04 claiming absorption in preference to his juniors engaged and absorbed during the year 2003 and this Tribunal directed the respondents to dispose of the comprehensive representation to be submitted by the applicant, vide order dated 10.11.2004 at Annexure A-1. As the case was rejected by the respondents on account of over age, the applicant had filed O.A 793 of 2005 which was disposed of by a common order dated 14.03.2007 vide Annexure A-2, wherein, it was held that the applicant was entitled to be considered and re-engaged irrespective of the age limit fixed later by the respondents. An unsuccessful attempt was made by the respondents when they took up the matter in writ petition No.29183 of 2007, whereby, the decision in yet another writ petition 16330 of 2006 which upheld the decision in O.A 793/05 with a slight modification that for reengagement without any age limit one should have completed 360 days of service was adopted. As the respondents rejected the claim of the applicant for absorption on the ground of non-fulfillment of this condition of 360 days of casual labour service, the applicant moved O.A 440/08 which was disposed of by order dated 07.01.2010 (Annexure A-4) with a direction to the third respondent to consider the Original Casual Labour Cards produced by the applicants and to engage the applicant in case he fulfilled the requisite 360 days of service.

2. On the direction of this Tribunal in the aforesaid Annexure A-4 order, the applicant was also given audience by the authorities and was directed to undergo a medical examination for A-3/B-1 medical qualification (Annexure A-5 refers). The applicant appeared before the medical authorities but he was informed that he was not found possessing the requisite medical standards of

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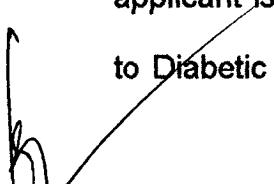
the A-3/B-1. This resulted in an appeal filed by the applicant vide Annexure A-6 series. The applicant was subjected to a medical examination by the appellate authority. An order dated 06.10.2010, was issued, in which the third respondent, referring to the certificates of the Senior Divisional Medical Officer, Southern Railway, Pettah, informed that the applicant was found unfit for all categories (Annexure A-7 refers).

3. It is against the Annexure A-7 order dated 06.10.2010 that the applicant has moved this O.A seeking for the following relief.

- (i) Call for the records leading to the issue of Annexure A-7 and quash the same;
- (ii) Declare that the applicant is liable to be considered for absorption against a Group D post requiring medical classification Bee-one or below and direct further to absorb the applicant as a Group D employee forthwith with all consequential benefits from the date of absorption of the applicant's juniors in the list of retrenched Casual Labours and direct the respondents accordingly;
- (iii) Award costs of and incidental to this Application.

4. Respondents have contested the Original Application. As initially the full details of the medical report were not made available, the respondents were directed to communicate various medical standards required for the posts in which the applicant may be accommodated. They were also directed to communicate as to how he could not fulfill the requisite medical standards.

5. In their reply the respondents have furnished various categories of Railway Posts and the requisite medical standards thereon. They have indicated that as per para 511 3(k), candidates have to be examined for any acute or chronic disease pointing to an impaired situation. According to the respondents the applicant is found to be suffering from Diabetic Mellitus (Chronic illness) leading to Diabetic Retinopathy which is pointing to impaired constitution of progressive



nature. It was on this reason that the respondents have declared the applicant as unfit. The applicant on his side has produced Annexure A-6 series of medical certificates from an eye specialist, wherein it was certified that the applicant is fit after wearing glasses. Through yet another certificate, it was also been stated that the applicant's Diabetic is controlled and blood sugar is within normal range.

6. Counsel for the applicant submitted that the medical certificate issued by the Railway medical authorities does not clearly reflect the ailment though in one of such certificates the term Diabetic later on related to Diabetic in both the eyes has been mentioned. The medical certificates produced by the applicant relates to subsequent period and as such the applicant can well be accommodated in one of the posts of Trackman.

7. Counsel for the respondents submitted that the applicant having been examined by railway medical officers and Sr.Divisional Medical officer having certified the applicant is unfit for all categories/the applicant cannot be considered for any appointment.

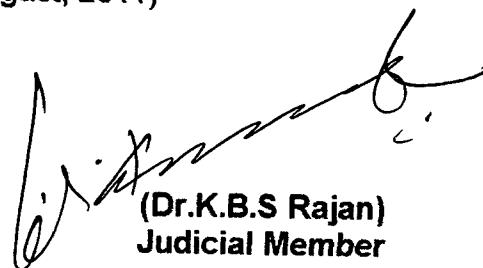
8. Arguments were heard and documents were perused. The certificate issued by the Railway medical authorities on two different dates ie; 26.06.2010 and 06.08.2010 and these certificates by two different medical authorities. The certificates issued by the Medical Superintendent, a higher authority above the Senior Divisional Medical Officer, whose certificate is posterior to that of the Senior Divisional Medical Officer does not contain the specific term of Diabetics nor it contain the ultimate report as unfit for all categories. It has reflected only "unfit for appointment". Thus there is slight contradiction in the two medical certificates. Over and above, the certificate issued by the Private Doctor is a different one. Since it is a question for regularisation of casual labourer service

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of the applicant, it is imperative that the medical examination takes place properly and the report of the medical authorities implemented. In the instant case such medical examination should take place, in view of the difference in opinion by the Railway Medical authorities and private doctor. Interest of justice would be met, in case, the applicant is examined by a Medical Board constituted by Railway authorities at Perambur and that report forwarded to the DRM, Trivandrum Division for further necessary action. Accordingly, the DRM, Trivandrum Division is directed to liase with the medical authorities at Perambur, Chennai for constitution of a medical board to examine the applicant. The medical report shall reflect the ailment suffered by the applicant, the gravity of the same and whether the applicant would be eligible for absorption as a Trackman on the basis of the medical standards and if not for any other job suitable to his medical standards of the applicant.

9. As the DRM has to liase with the medical authorities at Peramboor and as a medical board has to be constituted, no time limit is prescribed for conducting a medical examination by the medical board. Surface it to mention that the respondents should act expeditiously in constitution of the medical board. On the above lines the Original Application is disposed of.

(Dated this the 19th day of August, 2011)



(Dr.K.B.S Rajan)
Judicial Member

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