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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH



O.A Nos. 573/05, 30/06 & 570/06

Wednesday this the 1st day of August, 2007

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

OA 573/2005:

I.K. Velayudhan, aged 40 years
S/o Kunju retrenched Casual Labourer,
Southern Railway, Palghat Division,
resident of Iringalakudakaran House, Kanjani Post,
Trichur District.Applicant

(By Advocate Mr. T.C.Govindaswamy)

V.

- 1 Union of India, represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town PO
Chennai.3.
- 2 The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
- 3 The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.Respondents

(By Advocate Ms. P.K.Nandini)

O.A. 30/06:

K.K.Basheer, aged 42 years
S/o late Kunjooran Kutty
Ex-Casual Labourer, Southern Railway,
Palghat, residing at Manakkampattu Padikakael
House, Kamba, Kinavalloor Road Postal
Paroli, Palgaht District.Applicant

(By Advocate Mr. T.C.Govindaswamy)

V.

- 1 Union of India, represented by the
General Manager, Southern Railway,

Headquarters Office, Park Town PO
Chennai.3.

2 The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.

3 The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.Respondents

(By Advocate Mrs. Sumati Dandapani (Sr.Counsel)
with Ms. P.K.Nandini)

O.A.570/2006:

C.Sreenivasan, S/o C.Unichundan,
aged 43 years, Haritham,
Pulliparamba PO
Malappuram District.Applicant

(By Advocate Mr. P.Santhoshkumar)

V.

1 Union of India, represented by the
Secretary, Ministry of Railways,
New Delhi.

2 The Senior Divisional Personnel Officer,
Southern Railway, Palakkad.Respondents

(By Advocate Mrs. Sumati Dandapani (Sr.Counsel)
with Ms. P.K.Nandini)

These applications having been jointly heard on 6.6.2007, the Tribunal on 1.8.2007 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicants in all these O.As are retrenched casual labourers of the Palakkad Division of Southern Railway and they are aggrieved by the denial of their re-engagement/absorption by the respondents in spite of the fact that their names have been entered in the Live Casual Labour Register. Since the issues raised in all these cases and the rules/laws governing them are the same, these O.As are disposed of by this common

order.

OA 573/05:

2 According to the Annexure A2 casual labour service card issued to the applicant with LTI No. SRR/19, he was engaged as a casual labourer from 18.4.83 and was retrenched w.e.f. 17.9.85. Though he made a request to the Sr.DPO, Palghat on 27.3.89 to include his name in the list of ELRs for appointment in Group 'D' service as per the Railway Minister's orders, yet he did not get any response from the respondents. When he came to know in 1997 that the respondents had published a seniority list of retrenched casual labourers, he made inquiry but he was informed that his name was not included in the relevant list. He has, therefore, made Annexure.A3 representation dated 17.3.97 inviting attention to his said letter dated 27.3.89 stating that he had worked as ELR Khalasi for 884 days from 18.4.83 to 17.9.85 in the Construction Unit and requested the respondents to include his name also in the list for consideration for his appointment in Group 'D' service. Even after the aforesaid A3 representation dated 17.3.1997, the respondents continued to re-engage/absorb persons junior to the applicant. Later, when he came to know through reliable sources that his name was actually registered in the Live Register at SI.No.315 but he was overlooked, he made the A4 representation dated 6.6.05 requesting the respondents to order for his regular appointment from the date his immediate juniors were given regular absorption, with all consequential benefits. In response to the said A4 representation dated 6.6.05, the respondents issued the impugned A.1 letter dated 6.7.05 stating that the competent authority has examined his request in detail but the same was rejected because when the respondents decided to empanel and absorb ex-casual labourers borne on the live register during 1998, the applicant was advised to report to the

office of the respondents on 25.6.1995 and again from 26.10.1998 to 28.10.1998 for LTI verification but he did not do so and, therefore, his name was deleted from the casual labour Live Register itself. It is against this impugned order that the applicant has filed the present OA.

3 The respondents in their reply have also submitted that the applicant is a retrenched causal labourer borne on the Live Register at Sl.No. 315 based on his service from 18.4.83 to 17.9.85. The applicant was directed vide Annexure.R.1 letter dated 15.6.98 to attend the office of the respondents on or before 25.6.98. The applicant's address in the list was shown as Shi T.K.Velayudhan, Ex.CLR,XEN/CN/PTJ. Since the home address of the applicant was not available, the call letter was sent to the Depot Office, namely, the Office of the Executive Engineer,Construction, Podanur, where he last worked. Later, the Sr. Divisional Engineer,Coordination, Palakkad who was over-seeing the updating of Live Register at that time advised the Ex-Casual Labourers to attend the Personnel Branch for verification of the Finger Prints from 26.10.98 to 28.10.98. However, only 10 casual labourers have responded. The Sr.Divisional Engineer sent necessary instructions to all the retrenched casual labourers by registered post ack. Due. The concerned supervisory officials under whom those casual labourers have last worked, they were requested to exhibit their names in the notice boards. They contend that the applicant did not turn up on the dates fixed for verification of the documents when the screening was held during 1999 for the ex casual labourers upto Sl.No.635 in the Live Register and those found eligible were later absorbed into regular service. According to them, all the 224 ex-casual labourers listed in the Live Register were called for screening in the years 1998, 1999, 2003 and 2004 and 2005 and the entire Live Register has since been exhausted. Since the applicant did not

attend as called for, he was not considered and his juniors in the Live Register were screened/regularly absorbed during 1998-99. They have also submitted that the applicant should have approached this Tribunal in 1999 itself challenging his non consideration and the consideration of his juniors in the Live Register. They have also submitted that though the screenings of the casual labourers in the Live Register were conducted during 2003, 2004 and 2005, the applicant had made the first representation against his non-consideration only in June, 2005.

4 On the question of delay, the respondents have relied upon the judgment of the Apex Court in *Ratam Chandra Sammanta & Ors Vs. The Union of India and others, JT 1993 (3) SC 418* wherein it was held as under:

"6 Two questions arise, one, if the petitioners are entitled as a matter of law for re-employment and other if they have lost their right, if any, due to delay. Right of casual labourer employed in projects, to be re-employed in railways has been recognized both by the Railways and this Court. But unfortunates, the petitioners did not take any step to enforce their claim before the Railways except sending a vague representation nor did they even care to produce any material to satisfy this Court that they were covered in the scheme framed by the Railways. It was urged by the learned counsel for petitioners that they may be permitted to produce their identity cards etc., before opposite parties who may accept or reject the same after verification. 'We are afraid it would be too dangerous to permit this exercise. A writ is issued by this Court in favour of a person who has some right. And not for sake of roving inquiry leaving scope for maneuvering. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. From the date of retrenchment if it is assumed to be correct a period of more than 15 years has expired and in case we accept the prayer of petitioner we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed. We would have been persuaded to take a sympathetic view but in absence of any positive material to establish that these petitioners were in fact appointed and working as alleged by them, it would not be proper exercise of discretion to direct opposite parties to verify the correctness of the statement made by the petitioners that they were employed between 1964 to 1969 and retrenched between 1975 to 1979".

5 The applicant has filed rejoinder. He has reiterated that he had submitted his representation on 27.3.89 and followed it up by the reminder dated 17.3.97 requesting the third respondent to include his name in the Live Register to consider him for appointment in Group 'D' service. He has also denied the receipt of any communication from the respondents for re-engagement at any point of time till the A.1 impugned letter dated 6.7.05.

OA 30/06:

6 The applicant in this OA earlier approached this Tribunal by filing OA 225/05 seeking the following reliefs:

- "a) Declare that the applicant is entitled to be considered for re-engagement/absorption as Group 'D' employee under the respondents in preference to his juniors borne in the list of retrenched casual labourers;
- b) Direct the respondents to consider, re-engage and absorb the applicant as a Group 'D' employee in preference to his juniors and at par, with all consequential benefits emanating therefrom;
- c) Award costs of and incidental thereto; and
- d) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal."

Vide Annexure.A4 order dated 18.4.2005, this Tribunal directed the respondents to consider his two representations made in this regard and pass a speaking order. The respondent's have issued the impugned Annexure.A5 letter dated 17.6.2005 in compliance with the aforesaid directions. They have stated that the applicant's name appears at Sl.No.289 in the Live Register and at the time of screening during 1998, he was called vide letter dated 15.6.98. Since he did not turn up and in view of the clear stipulation in the call letter that if the retrenched casual labours failed to report on the specific date, their names will be deleted from the Live Register, the applicant's name has been deleted and hence

his further request to consider him for screening at this belated point of time cannot be agreed to.

7. In the reply statement the respondents have raised the only objection regarding limitation. According to them, at least after making his Annexure.A1 representation dated 19.3.2003, he should have approached the Tribunal,. Whereas he filed O.A 225/05 only in the year 2005. The applicant has also not given any satisfactory explanation for the inordinate delay in seeking legal remedies. They relied upon the judgment of the Apex Court in **S.S. Rathore V. State of Madhya Pradesh, AIR 1990 SC 10**, wherein it was held that repeated unsuccessful representations would not surmount the law of limitation. On merits, they have submitted that the applicant was engaged as casual labourer for the period from 2.4.83 to 17.9.5 and after retrenchment his name was entered in the Live Register at Serial No.289. Vide Annexure.R.1 letter dated 15.6.98 , all the retrenched casual labourers in the Live Register were asked to attend the office of the respondents with necessary documents for updating the Live Register. Respondents have also submitted that the Annexure.R.1 letter was sent to the ex-casual labourers in their home address wherever available and in the remaining cases, it was sent to the offices where they have last worked. In respect of the applicant, since his home address was not available, the Annexure.R.1 communication was sent to the office of the Executive Engineer, Construction, Podanur, where he had last worked. According to them, by the letter dated 18.11.98 from the Senior Divisional Engineer/Coordination/Palghat (Sr.DEN/Co-ord/PGT), necessary intimations have been sent to all the retrenched casual labourers and to their supervisory officials where they were last working. Their names have also been exhibited on the notice boards.

OA 570/06:

8 The applicant in this case was initially engaged as a casual labourer by the Annexure A1 service Card with the LTI No.RG 532 with effect from 26.10.79 to 19.2.1980 and again from 6.9.80 to 20.10.80. His contention is that in spite of the inclusion of his name in the Live Register, the respondents have not issued any letters to him for re-engagement. When he came to know that his colleagues and juniors were re-engaged and absorbed, he made the A2 representation dated 27.11.2005. Since the respondents have not considered his aforesaid representation for re engagement/absorption, he approached this Tribunal vide O.A 131/06 which was disposed of on 6.3.2006 (A3) with the direction to the respondents to consider his representation and dispose it of, by a speaking order. The impugned A4 order has been issued in compliance of the aforesaid directions of this Tribunal. The respondents have rejected his request for screening/absorption stating that his name was at Sl.No.1187 in the Live Register of retrenched casual labourers and he was called to report to the office of the respondents to consider his screening/absorption along with others in the Live Register from Sl.No.636 to 1395. He did not report on the nominated dates. Those who have not reported and attended before the screening committee including the applicant were given another opportunity but on the next date also, the applicant did not report to the respondents' office. Therefore, the applicant's name was deleted from the Live Register. The respondents have, therefore, submitted that his request for screening/absorption at this belated point of time cannot be entertained.

9 In the reply affidavit, the respondents raised the preliminary objection that the OA is time barred as the junior of the applicant was appointed in July, 2004 and the applicant should have filed the O.A

immediately thereafter. By filing the OA in February, 2006 , there is a delay of more than 1 ½ years and no convincing or cogent reasons were given for such delay. On merits, they have submitted that since the applicant's name was at Sl.No.1187 of the Live Register, he along with other casual labourers from Serial Nos. 636 to 1395 was directed to report to the office of the Divisional Officer with requisite documents from 17.3.2003 to 19.3.2003. Since the applicant did not report, another chance was given to him to report to the office from 23.4.2003 to 25.3.2003 with the specific condition that those who failed to report the office on the prescribed dates will lose their chance and their names will be deleted from the Live Register. Since the applicant did not report on the aforementioned dates also, his name stood deleted from the Live Register and hence he was not considered for screening and absorption. The other persons who had reported the office in response to notifications of the respondents were considered and those found eligible among them have been appointed. Thereafter, further notification was issued on 10.2.95 calling on retrenched casual labourers from Sl.Nos.1396 to 2284 in the Live Register to report the office between 22.2.05 to 24.2.05 with all necessary documents to consider them for screening. The Live Register contained the names of 2284 persons and all those who have turned up for verification of their documents found eligible were appointed on regular basis. The respondents have also stated that the applicant has not given any reason for his failure to report their office on the nominated dates and that he has no case that sufficient intimation was not given to him before finalizing the list of persons who were eligible to be appointed.

10 I have heard the counsels for both parties. I have also perused the entire pleadings . In all these 3 OAs the undisputed fact is that all the applicants were retrenched casual labourers of the Palghat Division

of the Southern Railway. It is also an undisputed fact that their names were included in the Live Register. The contention of the respondents in all these cases is that the applicants were called for screening for absorption on more than one occasions, but they did not turn up on those appointed dates. In spite of the fact that there was a stipulation in the call letter that if any of the casual labour who were called for screening do not turn up, their name would be deleted from the Live Register and accordingly their names have since been deleted and their requests for re-engagement cannot be reconsidered. The respondents have also raised the preliminary objection of delay and laches in all these O.As. On the other hand, the contention of the applicants in all these O.As is that they have never received the call letters from the respondents to attend the screening.

11 First of all, I would say that the judgment of the Apex Court in *Ratam Chandra Sammanta & others (supra)* as relied upon by the respondents on the question of delay would not apply in these cases. That was a case where the petitioners had not even established their claim that they were in fact appointed and working as claimed by them. This is not the case in all these O.As. On the contrary, it is admitted by the respondents themselves that the applicants were retrenched casual labourers and their names have been registered in the Live Casual Labour Register. The only reason for rejecting their requests for absorption in Group 'D' service is that in spite of the various communications sent to them, they did not turn up and, therefore, their names have already been deleted from the Live Casual Labour Register. The applicants on the other hand have vehemently denied the receipt of any such communications from the respondents at any point of time earlier. The respondents themselves have admitted that the addresses of the applicants have not been available with them. Only in the cases of those retrenched Casual

Labourers whose addresses were available, the respondents called them by registered post for screening. In all other cases, including in the case of the applicants, the concerned supervisory officers under whom they worked last were entrusted with the task of communicating with retrenched casual labourers. The respondents have not produced a single proof to the effect that the applicants have actually been notified about the dates of screening and the applicants have actually received those communications. In the absence of such proof, it cannot be accepted that the applicants had the information and they have not attended the screening wilfully. It is also to be appreciated that the retrenched casual labourers got the opportunity to get themselves absorbed in the regular service only because of the judgment of the Apex Court in *Inder Pal Yadav's and others Vs. Union of India and others*, (1985)2 SCC 648 and the consequent orders issued by the Railway Board vide letter No.RBE 167/86 dated 11.9.86. No retrenched casual labour would like to lose that opportunity unless they were otherwise employed elsewhere in a better position. It is not the case here. I find that all of them were eagerly waiting for their absorption. The delay in filing these OAs also is not very inordinate as alleged by the respondents. The reasons given by the applicants for the delay occurred in filing these O.As are also quite satisfactory.

12 In view of the aforesaid facts and circumstances of the case, I condone the delay in filing these O.As and allow them. It is declared that the applicants are entitled to be considered for re-engagement/absorption as Group 'D' employees under the respondents in preference to their juniors borne in the Live Register of retrenched casual labourers. The respondents are, therefore, directed to call the applicants for verification of their documents within one month from the date of receipt of this order. If

applicants are found fulfilling the necessary requirements for absorption, they should be absorbed as Group 'D' staff on regular basis. The applicants shall also be entitled for notional fixation of their seniority from the date similarly placed person with same or lesser number of days of service than them has been absorbed as a Group 'D' employee. However, they shall not be entitled for arrears of pay and allowances. There shall be no order as to costs.

Dated this the 1st day of ^{August} 2007.

GEORGE PARACKEN
JUDICIAL MEMBER

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