

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 590 of 2008

Dated Monday, the 15th June, 2009

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

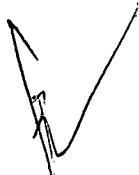
1. **T. Yesudhasan,**
S/o Thavarnan Nadar, Ex. Casual Labourer,
Southern Railway, Trivandrum Division,
Residing at Poojapuravilai,
Agasthiswaram, PO,
Kanyakumari District.
2. **G. Vijayan,**
S/o Ganapathi Asari, Ex Casual Labourer,
Southern Railway, Trivandrum Division,
Residing at Thakkaveedu Vilai,
Puthenveedu, Pacode, PO Kanyakumari Dist.
3. **R Harrison Daniel,**
S/o Robinson Daniel,
Ex. Casual Labourer,
Southern Railway, Trivandrum Division,
Residing at 520-F Kesava, Thiruppapuram,
Vetturimadom, Nagercoil-629 003.

...APPLICANTS

(By Advocate Mr. TCG Swamy and Mr Mohankumar.)

-Versus-

1. **Union of India,**
represented by the General Manager,
Southern Railway, Headquarters Office,
Chennai-3.



2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum -14.
3. The Divisional Personal, Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14.
4. The Medical Superintendent,
Southern Railway Hospital,
Pettah, Trivandrum.

...RESPONDENTS.

(By Advocate : Mr Thomas Mathew Nellimoottil & Mr Varghese John)

The Original Application having been heard on 11th June, 2009 this Tribunal delivered the following :

O R D E R

[HON'BLE DR. K B S RAJAN, JM]

Applicant No.1 in this OA is applicant No.6 in OA No.271/06, applicant No.2 in this OA is applicant No.9 in OA No.271/06 and applicant No.3 is the applicant No.1 in OA No.352/06. These OAs were disposed of on 14.3.2007 by a common order, wherein this Tribunal held as under:

"34. For the above mentioned reasons, I am of the considered view that the findings of this Tribunal in the various earlier orders on the same issue have been vindicated in the Hon' High Court's order referred to above and it is the correct and legally valid solution to the problems of this category of retrenched causal labour who have been waiting for justice for long years.

35. In the result, I quash Ministry of railway's letter No.E(NG)-II/99/CL/19 dated 28.2.2002 and the letter of even no. dated 20.9.2001 to the extent it relates to the retrenched casual labour placed in the merged seniority list tracing its origin from the directions in Inder Pal Yadav's case and as prepared consequent to this Tribunal's order in OA 1706/94 and direct that the applicants in these OAs be considered for regular absorption in the existing vacancies having regard to the seniority

in the above mentioned merged list and without applying any age limit subject to medical fitness and other conditions for such absorption being fulfilled. The appointments made so far shall not be disturbed. The respondents shall also



endeavour to exhaust this list as early as possible while filling up future vacancies so that this category are not again driven to knock at the doors of the court for justice. Appropriate orders shall be passed and communicated to the applicants within a period of four months. OAs are allowed. No costs."

[2] This order of this Tribunal was challenged before the High Court in a batch of writ petitions No.WP(C) Nos.3246/ 2007 and others and by a common judgment dated 29.11.2007, the High Court held as under:

"In the result, these writ petitions are disposed of issuing the following modifications to the order of the Central Administrative Tribunal"

The age limit prescribed as per Circular Nos. E(NG)II-99/CL/19 dated 28.2.2001 and E(NG)II-99/CL/19 dated 20.9.2001 will not be applicable to the casual labourers, who have completed 360 day's service. Quashing of the above said circulars is set aside. Even though the age limit is not applicable to absorption, other stipulations in the Rules like medical fitness etc. can be insisted by the Railways.

[3] In yet another identical Writ petition, [WP(C) No.29813] (Annexure-A/3) the High Court by judgment dated 11.12.2007 held - *"the point raised by the writ petitioners is covered by the judgment of this Court in WP(C) No. 16330/06 and connected case dated 29.11.07. Accordingly, this writ petition is disposed of ordering that the directions in that common judgment will govern this case also."*

[4] As the respondents did not take necessary action, contempt was filed and as there was substantial compliance, the contempt petition was closed with liberty to the applicants concerned to approach the Tribunal in case any grievances subsisted. Accordingly, this application has been filed.

[5] The respondents had invited applicants for subjecting themselves to medical examination and the applicants had participated in the same. The Medical Board issued certificate to the effect that the applicants are not fit in the cases of 'Aye-three' and 'Bee-one' medical standard. Consequently, the cases of the applicants for regularisations have been rejected. Hence this OA



praying for the following reliefs:

[i] for a declaration to the effect that refusal on the part of the respondents to considerer and absorb the applicants either as Trackman or other Group-D posts requiring lesser medical standards is arbitrary,discriminatory, contrary to law.

[II] for direction to the respondents to consider and absorb the applicants as track men or against any other Group-D posts requiring lesser medical classification, on par with their juniors in the list of retrenched casual labourers with all consequential benefits.

[6] Respondents have contested the OA. According to them they were to be considered for re-engagement as Casual Labourers in the Civil Engineering wings of the Railways, subject to the fulfillment of the conditions prescribed. In other words, the eligibility for being considered is limited to the post of Gangman only and not to any other posts in Indian Railways. The Hon'ble High Court in its judgment has held that the stipulations in the rules like medical fitness etc. can be insisted upon by the Railways and the applicants are found to be not medically fit for the said post and therefore, their claim is not liable to be considered against any other post. The prayer of the applicant, is therefore, deserves to be dismissed.

[7] In the case of Inder Pal Yadav all the retrenched casual labourers are to be considered for re-engagement as casual labourers in the Civil Engineering Wing of the railways subject to fulfillment of the conditions prescribed. Thus, the applicants are to be engaged as track man. Such track man are being asked to perform the duties as Gatekeeper as well at times. As such the medical standard accepted as 'Aye-three' and 'Bee-one' which are prescribed standard for the above post. Since the applicants did not fulfill the aforesaid medical standard, their cases have been rejected.

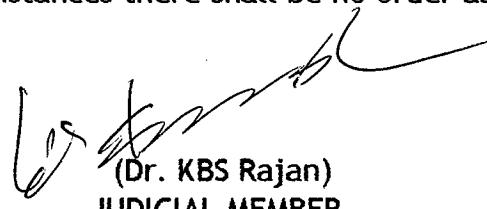
[8] Counsel for the applicants argued that in identical matter in OA 85/08, [decided on 30.3.09] this Tribunal has held that in case the applicant is not found medically fit for one post, it should be seen whether he is fit for any

other post with lesser category, if so he should be regularised in that post. In this regard, para 8 of the order dated 30.3.09 refers and the same is reproduced below:

"In the aforesaid facts and legal position it is quite clear that the respondents ought to have considered the applicant to any Group-D posts for which 'B1' medical classification is not necessary. It is not the case of the respondents that they do not have any posts for which medical classification 'C1' is only necessary. The applicant being a casual labourer admittedly having 1071½ days of service at his credit cannot be just ignored in the matter of regularisation. It is seen that the respondents have not considered his various requests for subjecting him for fresh medical examination and to appoint him against a post for which lower medical classification is sufficient. I, therefore, direct that the respondents shall subject the applicant for re-medical examination within a period of one month from the date of receipt of a copy of this order and to re-assess his medical fitness and he shall be offered Group-D post for which the lower medical classification in which he has been placed is sufficient. If he is so appointed, he shall also be given the notional seniority vis-a-vis his junior who has been appointed to the same category. With the aforesaid directions, the OA is allowed. There shall be no order as to costs."

[9] Counsel for the respondent does not dispute the fact that the case of the applicant is identical to that in the OA referred to above.

[10] As the ratio in the aforesaid judgment fully applies to the facts of the instant OA, the present OA should also be allowed. Accordingly, the OA is allowed. The respondents are directed to subject the applicants for re-medical examination within a period of one month from the date of receipt of a copy of this order and re-assess his medical fitness and the applicant shall be offered Group-D post for which the lower medical classification in which he has been placed would be sufficient. If the applicants are so appointed, then they shall also be given the notional seniority vis-a-vis his junior, who has been appointed to the same category. In the facts and circumstances there shall be no order as to costs.



(Dr. KBS Rajan)
JUDICIAL MEMBER

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