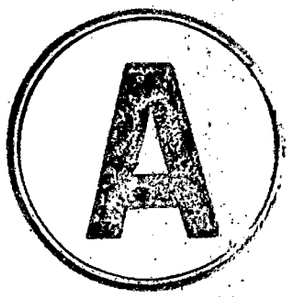

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos.593/03, 594/03, 595/03, 596/03, 600/03, 625/03, 632/03, 634/03, 642/03, 692/03, 735/03, & 736/03

this the .24th. day of .....May....., 2006

C O R A M :

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

O.A.No.593/03

C.P.Sethumadhavan,
S/o.C.Kunjiraman Nair,
Ad hoc Mate, Office of Senior Section Engineer/Works,
Southern Railway/Construction, Ernakulam Junction.
Residing at Ayyappavilasam, Desam P.O.,
Kunnumpuram, Aluva. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
   Southern Railway, Head Quarters Office,
   Park Town P.O., Chennai – 3.

2. The Chief Administration Officer,
   Southern Railway, Construction,
   Egmore, Chennai – 8.

3. The Deputy Chief Engineer/
   Construction/Southern Railway,
   Ernakulam Junction/Ernakulam. ...Respondents

(By Advocate Mr.Sunil Jose)

O.A.No.594/03

E.C.Poulose,
S/o.Chacko,
Ad Sarang, Office of Depot Store Keeper,
Southern Railway, Construction, Ernakulam Junction.
Residing at Edavamanayil, Chithikkodu Post,
(Via) Kanjiramatom, Ernakulam Dt. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 3.

2. The Chief Administration Officer,
Southern Railway, Construction,
Egmore, Chennai – 8.

3. The Deputy Chief Engineer/
Construction/Southern Railway,
Ernakulam Junction/Ernakulam. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

O.A.No.595/03

M.J.George Bernard,
S/o.Jussay,
Ad hoc Mate, Office of the Deputy Chief Engineer/
Construction, Southern Railway, Ernakulam.
Residing at Manackal House,
Gothuruthi P.O., Ernakulam. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 3.

2. The Chief Administration Officer,
Southern Railway, Construction,
Egmore, Chennai – 8.

3. The Deputy Chief Engineer/
Construction/Southern Railway,
Ernakulam Junction/Ernakulam. ...Respondents

(By Advocate Mr.P.Haridas)

O.A.No.596/03

K.K.Janaki,
W/o.Raghavan,
Ad hoc Mate, Office of the Deputy Chief Engineer,
Construction/Southern Railway, Ernakulam.
Residing at Kishakkuden House,
Pootharackal P.O. Trichur Dt. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 3.

2. The Chief Administration Officer,
Southern Railway, Construction,
Egmore, Chennai – 8.

3. The Deputy Chief Engineer/
Construction/Southern Railway,
Ernakulam Junction/Ernakulam. ...Respondents

(By Advocate Mrs.Sumathi Dandapani)

O.A.No.600/03

P.Ramachandran Nair,
S/o.Padmanabha Pillai,
Ad hoc Mate/Store Clerk, Southern Railway,
Office of the Depot Store Keeper,
Construction, Ernakulam.
Residing at Divya Bhavan,
Aroor P.O., Kallettunkara Via, Trichur. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 3.

2. The Chief Administration Officer,
Southern Railway, Construction,
Egmore, Chennai – 8.

3. The Deputy Chief Engineer/
Construction/Southern Railway,
Ernakulam Junction/Ernakulam. ...Respondents

(By Advocate Mr.Sunil Jose)

O.A.No.625/03

P.J.Joseph,
S/o.Thomma Joseph,
Permanent Way Mistry (Ad hoc), Southern Railway,
Deputy Chief Engineer/Construction/Trivandrum.
Residing at Peedika Thundiyil House,
Kallettunkara P.O. Trichur Dt. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 3.

2. The Chief Administration Officer,
Southern Railway, Construction,
Egmore, Chennai – 8.

3. The Deputy Chief Engineer/
Construction/Southern Railway,
Trivandrum. ...Respondents

(By Advocate Mr.P.Haridas)

O.A.No.632/03

Daisy.K.A.,
W/o.Jose,
Ad hoc Mate,
Office of the Assistant Executive Engineer (Construction).
Residing at Shornur, Muringathery House,
Nedupuzha P.O., Near Geordania Convent, Trichur. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 3.

2. The Chief Administration Officer,
Southern Railway, Construction,
Egmore, Chennai – 8.

3. The Deputy Chief Engineer/
Construction/Southern Railway, Calicut. ...Respondents

(By Advocate Mrs.Sumathi Dandapani)

O.A.No.634/03

H.Jerry Nigli,
S/o.late Harold Nigli,
Ad hoc Mate,
Office of the Deputy Chief Engineer/Construction,
Southern Railway, Calicut.
Residing at Plot No.40,
Kerala State Housing Board Colony,
Pullazhi, Trichur Dt. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 3.

2. The Chief Administration Officer,
Southern Railway, Construction,
Egmore, Chennai – 8.

3. The Deputy Chief Engineer/
Construction/Southern Railway, Calicut. ...Respondents

(By Advocate Mr.P.Haridas)

O.A.No.642/03

P.T.Jose,
S/o.Thomas,
Ad hoc Mate,
Office of the Assistant Executive Engineer,
Southern Railway/Construction/Shornur.
Residing at Plakkal House, Vennoor,
Melador Post, Annamanada, Trichur Dt. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 3.

2. The Chief Administration Officer,
Southern Railway, Construction,
Egmore, Chennai – 8.

3. The Deputy Chief Engineer/
Construction/Southern Railway, Calicut. ...Respondents

(By Advocate Mr.P.Haridas)

O.A.No.692/03

V.L.Ouseph,
S/o.Lonappan,
Ad hoc Mate, Deputy Chief Engineer/
Construction/Southern Railway, Calicut.
Residing at Vallechirakkaran House,
Anchery P.O., Trichur Dt. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 3.

2. The Chief Administration Officer,
Southern Railway, Construction,
Egmore, Chennai – 8.

3. The Deputy Chief Engineer/
Construction/Southern Railway, Calicut. ...Respondents

(By Advocate Mrs.Sumathi Dandapani)

O.A.No.735/03

D.Anirudhan,
Helper Bridges Grade I,
Office of the Executive Engineer,
Constructions, Southern Railway, Quilon. ...Applicant

(By Advocate Mr.Siby J Monippally)

Versus

1. Union of India represented by General Manager,
Southern Railway, Chennai.

2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum.

3. Executive Engineer, (Constructions)
Southern Railway, Quilon. ...Respondents

(By Advocate Mr.P.Haridas)

O.A.No.736/03

1. Samuel George,
Helper Bridges (Grade I),
Depot Store Keeper Office,
Southern Railway, Ferooke, Calicut.

2. J.Jose,
Helper Bridges (Grade I),
Depot Store Keeper Office,
Southern Railway, Ferooke, Calicut.

3. G.Mohanan Pillai,
Helper Bridges (Grade I),
Depot Store Keeper Office,
Southern Railway, Ferooke, Calicut.

4. P.Gopinathan Pillai,
Helper Bridges (Grade I),
Depot Store Keeper Office,
Southern Railway, Quilon. ...Applicants

(By Advocate Mr.Siby J Monippally)

Versus

1. Union of India represented by General Manager,
Southern Railway, Chennai.

2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum.

3. The Deputy Chief Engineer (Constructions),
Southern Railway, Calicut.

4. Executive Engineer, (Constructions)
Southern Railway, Quilon. ...Respondents

(By Advocate Mrs.Sumathi Dandapani)

These applications having been heard on 15th March 2006 the Tribunal on ....24.5.2006..... 2006 delivered the following :-

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

The issue involved in all these cases are identical and the facts are also similar. Therefore all the above O.As are disposed of by this common order.

2. All the applicants herein are initially appointed as casual labourers and treated as temporary in the scale Rs.800-1150 and were promoted in the scale of pay of Rs.950-1500 during 1994. They were empanelled and absorbed as a Group D employees in terms of a memorandum dated 10.4.1997 issued by the Chief Engineer/Construction, Southern Railway, Madras and were retained in the construction organisation as Ad hoc Mate in the scale of pay of pay of Rs.950-1500/3050-4590. Since the regularisation of the applicants against Group D post was ignoring the

Railway Board letter bearing RBE No.53/97 dated 9.4.1997, the applicants along with other approached this Tribunal in O.A.50/98 praying to quash the order absorbing the applicants in a Group D post and for a declaration that they are entitled to be considered for absorption in a Group C post carrying a scale of pay of Rs.950-1500 and for consequential directions. The Tribunal by a common order dated 30.8.2000 declared that the applicants are entitled to be considered for regularisation in a Group C post and they cannot be denied the wages for the work that they have been doing and are continuing to do. In compliance of the above order the Railway considered the cases of the applicants and issued order dated 31.8.2001 (Annexure A-4) stating that their case will be considered along with eligible casual labourers, skilled artisans for absorption in Group C as and when vacancies arises in 25% direct recruitment quota in Trivandrum Division. The applicants continued to work in the present post and the respondents were treating them as regular employees making necessary recoveries as applicable to regular employees. While the matter stood thus the respondents had issued the impugned orders stating that the applicants are allowed to continue as Project Casual Labourers as per the directives of the Hon'ble C.A.T., Ernakulam Bench. The case of the applicants in O.As.593/03, 594/03, 595/03, 596/03 & 600/03 a common order as in Annexure A-1 has been issued and in the case of other applicants in O.As.625/03, 632/03, 634/03, 642/03, 692/03, 735/03 & 736/03 similar orders have been issued allowing them to continue as Project Casual Labourers and stopping further recoveries towards Group Insurance. The common grievance of the applicants are that by the above impugned orders their status has been reduced from regular employees to casual labourers and that it is against the direction of this Tribunal in O.A.50/98 and connected cases and not based on any relevant

consideration and is without application of mind and hence discriminatory and unconstitutional.

3. Respondents have filed statement contending that the submission of the applicants that their regular status is attempted to be converted into one of Project Casual Labourer is totally incorrect and it is pointed out that the status of the applicants is "Project Casual Labourers" right through for all purposes. The Railway Construction Organisation is a work charged establishment and the staff requirement of the Construction unit keeps on changing because of the nature of its work. The casual labourers in project were engaged in different pay scales to suit the exigencies of service and also depending upon the requirement of work in the particular project. Apart from drafting regular employees in the open line, Project Casual labourers are also engaged depending on the needs from time to time and they are absorbed against Group C or Group D vacancies in the open line based on their aggregate service. During the year 1996, the Railway decided to abolish casual labour system in Railways and to regularise all the casual labourers. Accordingly a circular dated 3.9.1996 was issued by the Railway Board to regularise approximately 56,000 casual labourers by providing lien in the respective territorial jurisdiction of the Division where the casual labourers are working. Accordingly, the applicants herein were also regularised in Group D and empanelled as per Annexure R-2 order. But the applicants preferred to continue as casual labourers and therefore filed O.A.50/98 before this Tribunal with a prayer to regularise them in Group C and not in Group D category. The applicants prayed for consideration in terms of the Railway Board's circular dated 9.4.1997 which provides for regularisation of casual labourers working in Group C scales as skilled artisans subject to suitability. The Tribunal has passed a

common order dated 30.8.2000 holding that they are entitled for regularisation in Group C according to their qualification and entitlement giving them the benefit of Railway Board's order dated 9.4.1997 and that till such orders are issued they shall not be disturbed from the present posting and they shall be continued to be paid at the same rate as they were being paid. In strict compliance of the Tribunal's order the applicants have been retained in Construction Organisation in the same capacity as Project Casual Labour. They would be considered for regularisation by giving them a chance to appear in examination conducted by Railway Recruitment Board and also against 25% of the promotional quota. As there are no vacancies available in Trivandrum Division the applicants have to wait for their turn. According to the respondents the impugned order does not attempt to change the status of the applicants but it only reiterates the present status as Project Casual Labour. Regarding the stoppage of recovery under GIS it is submitted that Group Insurance Scheme is not applicable to casual labourers according to the Railway Board's letter dated 24.12.1980 and the erroneous recovery which has been made from 1997-2000 is being refunded to them.

4. We have heard the learned counsel and also gone through the pleadings on file. The service details of the applicants and other facts are not in dispute and have been admitted. The only point of contention as argued by learned counsel for the applicants is that by the impugned order the respondents have acted contrary to the direction of this Tribunal in O.A.50/98 and reduced the status of the applicants again to that of casual labour when their prayer for regularisation to Group C post as against Group D post had been granted by the Tribunal as early as in 2000. It was the contention of the learned counsel for the respondents that the

applicants herein challenged the empanellment in Group D post and prayed to set aside the empanellment order and to regularise them in Group C post in terms of Railway Board circular dated 9.4.1997. The applicants instead of accepting the above proposal to empanel them as Group D have already chosen to remain as Project Casual Labour till such time they are absorbed on regular basis and they cannot now turn around and argue that they are not casual labour but on par with regular employees. There can be only two choices, either the applicants accept the Group D empanellment and get the benefits on par with regular employees or to remain as Project Casual Labour. The applicants are trying to gain undue advantages by making misleading statements before the Tribunal.

5. In order to resolve this issue it is necessary to appreciate the reliefs prayed for by the applicants in O.A.50/98 and the actual directions given by the Tribunal in the said O.A. It is correct that all the applicants who were empanelled in Group D post of Gang Mates had challenged their orders as illegal and unjustified on the ground that they were continuing to work in Group C scales in the Construction Organisation on the self same job they were doing prior to the empanellment. Since the Tribunal came to the conclusion that Railway Board had on 9.4.1997 issued an order regarding regularisation of casual labourers working in Group C scales and that the respondents have not given the benefits of this order to the applicants, the respondents are, therefore, liable to give them the benefits of this order. The operative portion of the said order is extracted as under :-

> In the result, all these applications are disposed of with the following declaration and directions :

> The applicants in all these cases shall be considered for regularisation in Group C according to their qualification and entitlement giving them the benefit of Railway Board's order dated 9.4.1997.
>
> So long as the applicants are retained in the construction organisation for performing the work which they have been doing prior to their empanelment by order dated 10/11.3.1997 they shall be continued to be paid at the same rate as they were being paid till that date. Respondents shall consider the regularisation of the applicants in Group C giving them the benefit of the Railway Board's circular dated 9.4.1997 as expeditiously as possible and till the resultant orders are issued they shall not be disturbed from the present posting. No costs.

6. The above orders do not make any mention of the regularisation and empanelment of the applicants in Group D post and even though the applicants have prayed for setting aside the same there is no direction to that effect. The tenor of the order is intended to give the benefit of regularisation to the applicants in the higher post of Group C and their retention in the said post in which they had been working and their entitlement for the payment of wages at the same rate as they were being paid. The order of empanelment and absorption in Group D has not been interfered with by the Tribunal and the intention of the Tribunal was only to give them the benefits of empanelment to a higher post in terms of the Board's circular. Therefore, the arguments of the respondents that having not accepted and challenged the empanelment orders the applicants cannot sing a different tune now is not very convincing. In fact in Para 12 of the reply statement the respondents themselves have stated that "Moreover, despite the fact that such PCLs (Project Casual Labourers) are charged against the work charged posts temporarily, it is essential that their 'lien' is maintained in the open line, so that the service interests of such employees are protected for the purpose of granting promotion (as and when due), arranging settlement after retirement etc. Therefore even

according to the respondents it is necessary to maintain the lien of the applicants in the open line by continuing their regular appointment as Group D in the open line even when they are working against the post in the construction project. The rule position being so there remains no doubt that all the applicants herein are maintaining their lien against the Group D post in the open line while continuing to work as Ad hoc Mates in the construction project in accordance with the directives of this Tribunal in the common order dated 30.8.2000. That being so what prompted the respondents to issue the impugned order at Annexure A-1 is not clear and it is the wording of this order which has created apprehension in the minds of the applicants. Since the Tribunal had already directed that the applicants would continue in the Group C post in the same scale and draw the same scale of pay as they had been drawing in 1997 and till they are absorbed as Group C employees the same facts could have been reiterated in the order instead of only mentioning the fact regarding their continuance as Project Casual Labour which has created the doubt in the minds of the applicants that their lien in the Group D post has been given a go-by. However, during the argument further orders issued by the respondents clarifying the position regarding the provisions of lien and the continuance of lien in the Open Line Engineering Department by order dated 28.1.2005 have been brought to our notice. This should have set at rest the doubt in the minds of the applicants and therefore, we do not see any reason to interfere with the impugned orders in the O.As though we are constrained to observe that the respondents should have paid more attention to the drafting and wording of the above orders which could have avoided this unnecessary litigation.

7. It is also noticed that this issue of regularisation of casual labourers in Group D open line posts and their continuance in the higher posts under Group C has been the subject matter of much litigation and recently the Hon'ble Supreme Court had occasion to deal with two such cases and we would like to draw the attention to the order of the Apex Court in this matter. The first case is that of **Indra Pal Yadav & Ors. Vs. Union of India & Ors. reported in 2006 SCC (L&S) 119.** The prayer by ad hoc promotees was not to be reverted to the lower post in which they are regularised in Group D category of Khalasi in the open line division and for their continuance on provisional or ad hoc promotion granted to them in a particular corresponding scale of pay on the basis of the supplementary trade test held in the project itself, the Court held that their provisional local promotion in projects would not vest in them a right, either to continue in the project, or to resist reversion back to the cadre, or to enjoy higher promotion. However the Court said that they would be entitled to the same pay as their contemporaries and whenever Railway administration intends to utilise the petitioners' services, the administration must take into account the trade test passed by them and length of service rendered by them in the projects. In the second judgment i.e. **Badri Prasad & Ors Vs. Union of India & Ors reported in 2006 SCC (L&S) 92** the Apex Court held "the appellants are entitled to the pay drawn by them in Group C posts even after their repatriation to Group D post in their parent department. They shall be considered in their turn for promotion to Group C post and the period of service spent by them on ad hoc basis in Group C post shall be given due weightage and counted towards length of requisite service, if any, prescribed for higher posts in Group C. If there is any bar of age that shall be relaxed in the case of the appellants." The ratio of the above judgments would also thus seem to be that the employees who are

empanelled in Group D and continuing in the higher post in Group C are not entitled as matter of right to promotion to the Group C posts but would be entitled to protection of pay drawn in the Group C scale and also allowed to count the period of service spent by them and for relaxation of age at the time of consideration for absorption. This is also more or less in line with the direction of this Tribunal already given in O.A.50/98. Therefore the action of the respondents in continuing the applicants in the scale of pay in Group C posts in the Construction Organisation while maintaining their lien in the Group D posts in the open line cannot be held to be arbitrary or unconstitutional and hence is in line with the law settled by the Supreme Court and as and when the applicants are considered for absorption against Group C posts the respondents shall keep in view the above directions of the Hon'ble Supreme Court. With the above observations the O.As are disposed of.

(Dated the 24th day of .....May..... 2006)

GEORGE PARACKEN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

asp