

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 600 OF 2008

Monday this the 15th day of June, 2009.

CORAM:

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

P.Purushothama Das
Koovaraku Vilakathu Veedu
Edatheruv, uzthithurai
Kanyakumari District

... Applicant

(By Advocate Mrs. K Girija)

versus

1. Union of India represented by the
General Manager
Southern Railway, Headquarters Office, Park Town P.O
Chennai - 3
2. The Chief Personnel Officer
Southern Railway, Headquarters Office, Park Town P.O
Chennai - 3
3. The Senior Divisional Personnel Officer
Southern Railway
Trivandrum Division
Trivandrum - 14

... Respondents

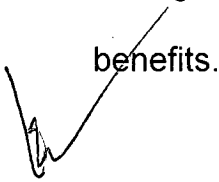
(By Advocate Mr.K.M.Anthru)

The application having been heard on 11.06.2009, the Tribunal on ~~15-06-09~~ delivered the following:

ORDER

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

The applicant, initially engaged as Casual Labourer during late Seventies and Eighties has preferred this OA seeking inclusion of his name in the Live Register of retrenched Casual Labourers duly reckoning his seniority and for empanelment /regular absorption in preference to persons having lesser length of service than him and for further consequential benefits.



2. Briefly stated, vide annexure A-1 the applicant was engaged as Khalasi on casual labour basis and later on he was retrenched prior to 01.01.1981. The Apex Court in Dakshin Railway Employees Union case (AIR 1987 SC 1153) and the Railway Board in some of its orders permitted pre 01.01.1981 retrenched casual labourers to submit their claims before 31.03.1987. According to the applicant, he did his part of the job by sending a communication to Divisional Personnel Officer, Southern Railway, Thycaud, Trivandrum vide Annexure A-2 communication dated 20.03.1987. Thus according to the applicant well before the cut off date he had preferred his claim for regular absorption.

3. Subsequent to the above representation, the applicant is stated to have made inquiries through correspondence and had been waiting for his turn. In 2000 also he had sent a communication vide Annexure A-4. A number of casual labourers who had subsequently been engaged, approached the Tribunal in various OAs for regularization and their cases were dealt with vide Annexure A-5 order by which direction was give to the respondents 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 casual labour who have been waiting for justice for long years.*

35. *In the result, I quash Ministry of Railways Letter No E(NG)-II/99/CL/19 dated 28.2.2001 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.

4. The applicant, though not one of the applicants in the above decision, had been hoping that he would also get the benefits. However, as he could not hear anything from the Department he preferred Annexure A-6 application. Vide Annexure A-7, a number of individuals have been asked to submit various documents by the Railways and when the applicant inquired about his case, he was informed that the benefit of the judgment is being made available only to the applicants in the respective OAs. As the applicant is a person identically situated as of applicants in other OAs, he has preferred this application.

5. Respondents have contested the OA. According to them, prior to publication of the present live register, two lists of retrenched casual labourers were in existence; one list for the casual labourers retrenched after 01.01.1981 and the other casual labourers retrenched prior to 01.01.1981. The above lists were merged as per directions of the Tribunal on OA 1706/94. While initiating the process of merger, it was found that the list of pre- 01.01.1981 casual labourers was not having all the required details of aggregate service to arrive at their seniority. The respondents Railways, therefore, with the leave of the Hon'ble Tribunal published notifications in leading newspapers calling from the casual labourers retrenched prior to 01.01.1981 and have registered their names prior to the cut off date specified in the judgment of the Hon'ble Supreme Court in the case of Dakshin Railway Employees Union vs. General Manager, Southern Railway to submit details regarding their casual labour service. On receipt of the details from the retrenched casual labourers, who responded to the notifications, the

- present merged seniority list was published by the respondents in 1977. The above phase of work was also reported before this Hon'ble Tribunal and the same was approved. Further, the list was made available to all depots/stations and construction units for perusal of those who are desirous of doing so. Thus, it can be seen that the seniority list of the retrenched casual labourers, has become final and inclusion of persons like the applicant in the list would amount to in settling matters, adversely affecting several retrenched casual labourers, borne in the list and awaiting empanelment / absorption.

6. Counsel for applicant submitted that this is a clear case where the respondents even after receiving communications from the applicant had not taken due steps for regularization. It was not their case that the applicant did not take up the matter with them. The respondents tried to argue that though the acknowledgment is there, it is not exactly known as to the contents thereof. Having failed to take proper action at the appropriate time, the respondents tried to wash off their hands by the above arguments.

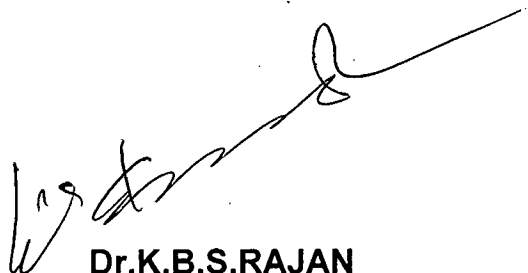
7. Counsel for respondents reiterated the contentions of counter extracted above.

8. Arguments were heard and documents perused. Admittedly, annexure A-1 casual labour card and its enclosures are not in dispute. It is stated that the applicant is in possession of various originals. The respondents appear to have omitted to take action after receipt of Annexure A-2. It is trite law that no one can take advantage of his own mistake or omissions. (Bholanath Vs. Monika, 2007 (14) SCC 302). Again equally it is trite order that a person should not be penalised for no fault of his. (Mohd

Gazi Vs. State of Madhya Pradesh 2000(4) SCC 342). In the instant case all that the applicant could do and expected to do, is to apply for regularization and wait for the response of the respondents, which he did. A number of communications were stated to have been sent by him and a few have been made as a part of the pleadings as well. None of the representation had evinced any response from the Department. Thus it is evident that the respondents have not taken any action at all to any of the communications made by the applicant. It is not denied that the applicant's case is identical to that of other cases vide Annexure A-5. As such, the Department having not taken prior action at the appropriate time the applicant should not be penalized.

9. In view of the above, **this OA is allowed**. The applicant is entitled to have his name registered in the Casual Labour Live Register and taking into account his past services of 632 days of casual service, he is eligible for regularization. As, according to the applicant a large number of persons with lower seniority have already been regularised, respondents shall take suitable steps to regularize the service of the applicant by strictly ensuring the fulfillment of the conditions attached to such regularizations, such as medical examination etc. If the applicant is found medically fit for any Group 'D' post, he shall be considered for the same. The applicant shall co-operate with the Department in furnishing necessary details. This order shall be complied with within a period of six weeks from the date of communication of this order. No costs.

Dated, the 15th June, 2009.



Dr.K.B.S.RAJAN
JUDICIAL MEMBER