

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No. 603 of 2008

Thursday, this the 25th day of November, 2010

CORAM:

Hon'ble Mr. K. George Joseph, Administrative Member

1. K. Chelliah, aged 52 years, S/o. Kutti Nadar, Ex-Casual Labourer, Southern Railway, Trivandrum Division, Residing at Edayan Vilai, Chanthayadi P.O., Kanyakumari Dt.
2. R. Suyambu Kesavan, aged 49 years, S/o. S. Rajamoni Nadar, Ex-Casual Labourer, Southern Railway, Trivandrum Division, Residing at South Thamarai Kulam, Kanyakumari Dt.
3. S. Gunasingam, aged 53 years, S/o Samuvel Nadar, Ex-Casual Labourer, Southern Railway, Trivandrum Division, Residing at No. 158/6, Singamkulam, Assazam P.O., Kanyakumari Dt.
4. G. Muthian, aged 50 years, S/o. Gopal Nadar, Ex-Casual Labourer, Southern Railway, Trivandrum Division, Residing at Naduthalai Vilai Veedu, (via) Kuzhithurai, Vanniur P.O., Kanyakumari Dt.
5. V. Jesuraj, aged 47 years, S/o. Varghese, Ex-Casual Labourer, Southern Railway, Trivandrum Division, Residing at Pampan Vilai Road, Anandan Nadar, Kudiyiruppu P.O., Kanyakumari Dt.

Applicants

(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-3.
2. The Divisional Railway Manager, Southern Railway, Trivandrum Division, Trivandrum-14.



3. The Divisional Personnel Officer, Southern Railway,
Trivandrum Division, Trivandrum-14. **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This application having been heard on 23.11.2010, the Tribunal on 25.11.2010 delivered the following:

ORDER

Hon'ble Mr. K. George Joseph, Administrative Member

This O.A. has been jointly filed by 5 ex-casual labourers of Southern Railway for regularisation of their service. During the pendency of this O.A., the first, fourth and fifth applicants have already been absorbed in service. The third applicant is found to be medically unfit for absorption and he has been informed accordingly vide letter dated 01.07.2010. Now only the issue of the 2nd applicant, Shri R. Suyambu Kesavan, survives in this O.A.

2. The respondents contended that Shri R. Suyambu Kesavan's name is not available in the seniority list as he has not responded to the 1997 notification issued in the local newspaper. However, they have stated that the name of one Shri R. Suyamalakan is found in the seniority list. The respondents are not sure whether the name is that of the 2nd applicant or not.

3. The second applicant submitted that his name is in the LTI register with 307 days of casual service during the period from 21.01.1980 to 05.12.1980. He has produced another casual labour card for the period from 20.02.1979 to 05.05.1979 covering a period of 72 days. But the respondents



do not have any record of the said period of casual service of the applicant.

4. In the affidavit filed on 21.09.2010 by the respondents, it is stated that the 2nd applicant has not re-entered or re-registered his name after the judgement of the Apex Court in ***DREU vs. General Manager, Southern Railway and Others***, AIR 1987 SC 1153. The counsel for the applicant submitted that the seniority list register contains the name of the applicant as R. Suyamalakhan at serial No. 1548. In the affidavit filed on 02.11.2010, it was stated by the respondents that even if the total casual labour service proved to be more than 360 days, the 2nd applicant cannot be considered for regularisation as his name is not available in the list prepared on the basis of the order in O.A. No. 1706/1994. It was further stated that no person by name R. Suyamalakhan has been given appointment by them. The respondents could not get any reply from the Construction unit for the purpose of verification of casual labour service card of the 2nd applicant for the period from 20.02.1979 to 05.05.1979 and 21.11.1982 to 05.12.1980 as the records could not be traced out.

5. I have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. Thomas Mathew Nellimoottil, learned counsel for the respondents and have perused the records.

6. The respondents have stated in their reply statement that there is one R. Suyamalakhan in their records and that it is not revealed whether it is the 2nd applicant or not. The name of Shri R. Suyamalakhan is registered at



serial No. 1548. Shri R. Suyamalakhan with serial No. 1548 in the seniority list register has not been given appointment by the respondents. Therefore, there is good enough reason to assume that Shri R. Suyamalakhan could be the 2nd applicant, Shri R. Suyambu Kesavan on account of wrong recording of his name by the respondents. The preponderance of probability lies in favour of the applicant.

7. If it is assumed that the name of the 2nd applicant is misspelt as R. Suyamalakhan, the issue of his not responding to the advertisement for registration does not arise at all. He had responded to the advertisement. His name is shown at serial No. 1548, but it is wrongly written in the record of the respondents as R. Suyamalakhan.

8. The 2nd applicant had no role in wrongly recording his name in the record of the respondents. Therefore, he cannot be penalised by depriving him of his right for consideration for regularisation for the mistake of the staff in the office of the respondents who misspelt his name.

9. The respondents have not disputed the copy of casual labour service card produced by the 2nd applicant at Annexure A2/2 for the period from 21.01.1980 to 05.12.1980 (307 days). He has also produced another casual labour service card for the period from 20.02.1979 to 05.05.1979 covering 72 days. Both put together, he will be having more than 360 days of casual service. If the respondents do not have any documents to verify, the left thumb impression available in the copies of the casual labour service card produced by the applicant may be tallied with his left thumb impression.




Enquiries can also be made with the co-workers of the 2nd applicant as to the veracity of his casual labour service.

10. In the conspectus of the facts and circumstances of the instant case, it is only fair and just that the 2nd applicant is considered for absorption in service just as the co-applicants have been considered by the respondents. Therefore, the O.A. is allowed. The respondents are directed to consider the 2nd applicant, Shri R. Suyambu Kesavan for regular absorption as Group-D employee in the Trivandrum division of Southern Railway without any age restriction in preference to the persons with lesser days of service than him and to grant all consequential benefits if he is found fit to be absorbed, on the same basis as the other three co-applicants have been absorbed. This direction should be complied with, within a period of 60 days from the date of receipt of this order.

11. No order as to costs.

(Dated, the 25th November, 2010)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

CVR.