

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.606/2004

Thursday this the 8th day of September, 2006

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HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.C.Sudevan,
aged 45 years, S/o Chamiar,
Ex-Casual Labourer, Southern Railway,
Palakkad Division,
residing at Kizhakkepura,
Manakkampadam, Parali,
Palakkad District. Applicant

(By Advocates M/s Santhosh and Rajan)

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

(By Advocate Mrs. Sumati Dandapani)

ORDER (Oral)

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant is an ex-casual labour of the Palakkad Division of Southern Railway engaged as Casual Labour Khalasi under the Permanent Way Inspector (Construction). According to the averment in the O.A. he was initially engaged on 29.11.1983, worked for 254 days and retrenched on completion of work on 17.8.84. He is found fit under B1 medical



classification and later vide letter dated 5.3.99 was called for to attend the office of the Senior Divisional Engineer with original documents of casual labour card, community certificate, school certificate, two passport size photograph etc. for updating the live register of casual labourers. It is further averred that in the updated live register the applicant at Sl.No.835, While vide Annexure A4 the second respondent called for the casual labourers in the live register between Sl.No. 636 to 1395 for filling up some of the vacancies of Trackman/Gangman of Palakkad Division. The applicant also reported before the second respondent. He understood that the respondents have empanelled 125 casual labourers including many of the applicant's junior for absorption. The applicant was not empanelled for the reason that he crossed the age of 40 years. Aggrieved by the said inaction he has filed this O.A. Seeking the following reliefs:

- (i) Declare that the non-empanelment of the applicant for absorption as trackman (Gangman) as illegal.
 - (ii) Declare that the non-empanelment of the applicant for regular absorption as Trackman(Gangman) on the ground that he has crossed the age of 40 as arbitrary, discriminatory and unconstitutional.
 - (iii) Direct the respondents to consider the applicant for regular absorption as Trackman/Gangman without any restriction on age and direct further to grant the consequential benefits.
 - (iv) Award costs of and incidental to this application.
 - (v) Grant such other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."
2. The respondents have filed a detailed reply statement contending that during 1998 based on the sanction communicated by the Chief Personnel Officer, Madras for retrenched casual labours borne in the live



register from 1 to 635 were considered for empanelment out of which 245 persons were empaneled. Call letter A3 was issued to the applicant for furnishing necessary documents for the purpose of updating the live register. Further sanction was communicated vide letter dated 27.1.03 for filling up of 270 posts of Trackmen from the Live Register calling from the retrenched casual labourers 636 to 1395 to report the Divisional Office. The applicant has reported the office accordingly. The Railway Board has granted age relaxation upto the upper age limit of 40 years in the case UR, 43 in the case of OBCs and 45 in the case of SC/ST vide Annexure.R.1 notification dated 20.9.01. The Chief Personnel Officer, Madras informed vide letter dated 18.2.03 that age for the purpose of absorption of ex-casual labours may be reckoned as on 1.1.03 (R2).

3. The applicant belongs to OBC and age relaxation granted is up to 43 years. The date of birth of the applicant is 9.4.59 and therefore his age has exceeded 43 years as on 1.1.03. As he is not satisfied the condition as regards age limit, he was not considered for absorption. The provisions of the Indian Railway Establishment Manual are framed by the Railway Board. The same Railway Board has issued instructions regarding the age relaxation in the case of casual labourers (R1). As per Rule 123 of the Indian Railway Establishment Code Vol.I Railway Board has got power to frame rules in respect of Group C and D employees. Since the applicant has exceeded even the relaxed age standard as prescribed by the Railway Board he was not considered for screening, submits the respondents.

4. Shri T.A.Rajan appeared for the applicant and Smt.Sumati Dandpani and Shruthi Sarin appeared for the respondents. The learned

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counsel for applicant has taken me to various pleadings, evidence and materials placed on record. The counsel for applicant submitted that admittedly the applicant is at Sl.No.835 in the live register of casual labourers, his juniors with specific reference to OA 633/03 who ranks Sl.No.1877 and bottom has already been absorbed and it is a clear discrimination and violation of the rules governing the subject. The learned counsel for the respondents on the other hand argued that Annexure.R.2 dated 18.2.03 governs the field and R.1 cannot read in isolation with that of R.2. They are co-related and it must be understood that the date to be reckoned for age relaxation is as on 1.1.03 and not 20.9.01.

5. I have given anxious consideration to the arguments advanced by the learned counsel on either side. As per the directions of the Hon'ble Supreme Court in **Inderpal Yadav and others Vs. Union of India and others, 1985 SCC L&S 526 and Dakshin Railway Employees Union, Trivandrum Division Vs. General Manager, Southern Railway and others** (WP(C) No.332 of 1986 decided on 23.2.1987) the Railway Board has framed a scheme for absorption of casual labourers in the Railways which has been incorporated in para 179(xiii)(c) of the IREM. The Supreme Court has given a broad outlook for absorption of retrenched employees and the very purpose of the scheme is for granting absorption to such candidates who has been kept outside the purview of employment. According to the applicant he had approached the respondents for employment as is evidenced by the pleadings in the reply statement (para 8). His claim was rejected on the ground that he is over aged as on 1.1.03.



The respondents taken up the plea "It is humbly submitted that the applicant is a person belonging to OBC and age relaxation granted is upto 43 years. The date of birth of the applicant is 9.4.59 and therefore his age has exceeded 43 years as on 1.1.2003. As he has not satisfied the condition as regards age limit, he was not considered for screening." Admittedly the age of persons who have been absorbed earlier was 30/33/35 in respect of UR/OBC/SC-ST candidates. For absorption of ex-casual labourers borne in the live register the Railway Board vide Annexure.R.1 granted relaxation upto 40/43/45 in regard to UR/OBC/SC-ST candidates. There is no dispute in regard to the continuous or broken spells of the engagement in regard to the applicant. This court in OA 633/03 had occasion to consider an almost identical matter wherein it is argued that age to be verified as on 1.1.03 and the upper age has been restricted accordingly. This court found that even the casual labourers whose name have been placed as per para 171(Xiii)(c) of th IREM no age restriction has been given. On a perusal of the Hon'ble Apex Court ruling supra it is clear that no age relaxation whatsoever has been fixed in the decision. It is settled law that rule/regulation or any other instruction cannot have a life before it is borne. Annexure.R.1 is dated 20.9.01 and admittedly by that time the process of selection has already started. Therefore as far as this case is concerned, I am of the view that the age to be reckoned from 20.9.01 as per Annexure.R.1. The contention of the respondents that this is to be reckoned as per Annexure.R.2 ie., from 1.1.03 has been considered by me. The very aspect that in Annexure.R.1 the relaxation that has been granted is by the Railway Board. This is in continuation of the



instructions contained in the Ministry's letter No.II/99/CL/71 dated 25.7.91 read with their letter dated 11.1.99. For better elucidation Annexure.R.1 is reproduced below.

"Copy of Railway Board's letter No.E(NG)-II/99/CL/19 dated 20.9.01

Sub:- Absorption in the Railways of ex-casual labour borne on the Live/Supplementary live Casual Labour Registers.

In terms o Para 6 of this Ministry's letter of even number dated 28.2.01, relaxation of upper age limit for absorption of ex-casual labour borne on Live Casual Labour/Supplementary Live casual labour Registers has been allowed up to 40 years in the case of general candidates, 43 years in the case of OBC candidates and 45 years in the case of SC/ST candidates, provided hat they have put in minimum three years service in continuous spell or in broken spells as per instructions contained in this Ministry's letter No.E(NG)-II/91/CL/71 dated 25.7.1991, read with their letter No.E(NG)-I/95/PM-I/1 dated 11.1.1999.

2. The question of removal of minimum three years service condition (continucus or broken) for the purpose of grant of age relaxation to ex-casual labour as mentioned above has been taken up in the PNM-NFIR vide agenda item No.41/2001. AIRF have also taken up the question of enhancing the upper age limit. The matter has been carefully considered by this Ministry. It has been decided that, in partial modification of the instructions quoted above, the ex-casual labour who had put in minimum 120 days casual service, whether continuous or in broken spells, and were initially engaged as casual labour within the prescribed age limit of 28 years for general candidates and 33 years for SC/ST candidates, would be given age relaxation up to the upper age limit of 40 years in the case of general candidates, 43 years in the case of OBCs and 45 years in the case of SC/ST candidates. Other provisions for their absorption in Group D will remain unaltered.

3. It has also been decided that the ex-casual labour, who become eligible as a result of above modification, will be considered for absorption with prospective effect.

4. Please acknowledge receipt.

Sd/- Devika Chhikara
Executive Directions Establishment(N)
Railway Board."

Annexure.R.2 has been issued by the Chief Personnel Officer and on going

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through Annexure.R.2 I find that without any rhyme or reason the said authority has declared that age for the purpose of absorption of ex-casual labourers may be reckoned as on 1.1.03. The question now comes is whether such a junior authority can sit on judgment of the Railway Board letters and deny the benefit to the applicant. The Railway Board letter has one which has been issued under Article 309 of the Constitution which has got a statutory application whereas Annexure.R.2 is only an executive order in supersession of Annexure.R.1 which cannot be accepted. On going through Annexure.R.2 I find that the rule has come into effect as on 20.9.01 and this court had occasion to consider that aspect in OA 633/03 and upheld the date. The same has not been challenged before any higher forum and the judgment in OA 633/03 has become final. The distinction the respondents wanted to draw with OA 633/03 and this case is that in that order Annexure.R.2 has not been referred to. Even assuming this order has been brought to the notice of the Tribunal in that OA the concept to reckon the date as 1.1.03 cannot be accepted since that has been passed by a lower authority without any reason and total denial of Annexure.R.1 notification based on the Ministry's letter. Therefore, I hold that the age of the retrenched casual labourers should be reckoned from 20.9.01 the date of R.1. Any improvement or modification made therein by a lower authority cannot have a superseding effect. If the reckoning date is extended from time to time, it may result in a situation that most of the candidates in the Live Register have to be eliminated since they may cross the age and the benefit of relaxation cannot be enjoyed. It help for elimination rather than selection, which is not the spirit of the Scheme and



Annexure.R.1. The finding of the Tribunal in Para 8 of the judgment in OA 633/03 is reproduced below:

"The age is to be verified on 1.1.2003 and the upper age limit has been restricted to 40 years in the case of general candidates, 43 years in the case of OBCs and 45 years in the case of SC/ST candidates. Admittedly, even the casual labourers whose names have been placed as per paragraph 171(xiii)(c) of Indian Railway Establishment Manual no age restriction has been given. On a perusal of the Hon'ble Supreme Court's ruling it is also clear that no age restriction whatsoever has been placed in that decision. Moreover, it is an admitted fact that the absorption to the vacancies arose in 1998/1999/2000 and process of selection was started in 1998 and it was completed on 24.3.2000. It is a well settled rule that a rule/regulation or by other instruction cannot have a life before it is born. This Railway's Board's letter is dated 20.9.01. By the time, the process of selection has already started and therefore, I am of the considered view that this letter at first will have prospective effect and not a retrospective effect. Therefore, the age restrictions if any could only be implemented subsequent to 20.9.01 and not much before that. Learned counsel for the applicant also fortified this decision by referring a decision of the Hon'ble Supreme Court reiterated in Y.V.Rangaiah and others V. J.Sreenivasa Rao and others, 1983 SCC (L&S) 382) wherein it is categorically declared that "the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules."

6. In the conspectus of facts and circumstances, I am of the view that the applicant is entitled for consideration for absorption in the said vacancies since he has not reached 43 years age as on 20.9.01 and therefore, he shall be considered for absorption in the vacancies irrespective of the fact that he has crossed the age as on 1.1.03. If there is still vacancies which is not actually filled, the applicant should be considered if he is otherwise eligible.
7. In the light of what is stated above, I direct the respondents to review the entire matter and reconsider the applicant for absorption forthwith if he is found otherwise eligible and pass appropriate orders granting the benefit



and communicate the same within a period of four months from the date of receipt of a copy of this order. However, I make it clear that the applicant cannot have a march over the other selected/absorbed candidates in the seniority and other benefits.

8. OA is disposed of as above. No order as to costs.

Dated this the 8th day of September, 2005



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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