

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 615/2004

Wednesday, this the 30th day of November, 2005.

C O R A M :

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

K. Viswanathan,
S/o. Kannan Nadar,
Ex-Casual Labour,
Nadutheri Veedu, 44-A,
Unnamalakodai P.O.,
Kanniyakumari District.

... **Applicant.**

(By Advocate Mr. Martin G. Thottan)

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

... **Respondents**

(By Advocate Mrs. Sumathi Dandapani)

O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant, who is a retrenched casual labourer having more than 700 days of casual service, was included in the live register maintained in the Trivandrum Division at serial No. 2134. According to the applicant, in the year 1999 several juniors to the applicant were reengaged/absorbed overlooking the applicant's preferential right. Earlier, the applicant had filed O.A. No. 519/1999

in which the respondents contended that his seniority was revised to 2641 and no junior to him in the live register was considered for reengagement. Based on the said submission, the O.A. was dismissed. As against this, the applicant approached the Hon'ble High Court in O.P. No. 36331/2000 which came to be disposed of vide its judgement dated 29.3.2001 (A/1) directing to reconsider the claim of the applicant treating his rank number as 2134. Accordingly, the applicant was placed at serial No. 2134. Again in December, 2003, certain persons after serial No. 2550 were given reengagement overlooking the claim of the applicant. Applicant submitted A3 representation for which there is no response till date. Aggrieved by the non-action on the part of the respondents, the applicant has filed this OA seeking a declaration that the applicant is entitled to be considered for re-engagement/absorption in preference to persons lower down in the live register than at serial No. 2134 and to direct the respondents accordingly with all consequential benefits.

2. The official respondents have filed a detailed reply statement contending that the O.A. is highly belated. As per the order of this Tribunal in OA No. 1706/94, when merged seniority was prepared the applicant was at serial No. 2641 and that the person below serial No. 2134 were reengaged well before 1.7.1996 on the basis of their better seniority position in the seniority list as on 1.4.1985 wherein the applicant's name was at serial No. 2222. In compliance of the orders of Hon'ble Supreme Court in Inder Pal Yadav vs. Union of India, a seniority list of Project Casual Labourers retrenched on and after 1.1.1981 was prepared and



finalised wherein the applicant stood at serial No. 2222. It was contended that the applicant's plea that he had put in more than 700 days of casual labour service is not correct. In fact, he had put in only 601 days of service. In the integrated seniority list of Project Casual Labourers retrenched after 1.1.1981 furnished by the Construction Organisation as on 1.4.1985, he was at serial No. 2222 and the total number of working days shown against him was 171 days. When the merged list was formed by placing the names available in the pre 1.1.1981 and post 1.1.1981 lists in compliance of the order of this Tribunal in OA No. 1706/94, the applicant's name as per the application submitted by him in 1987 came to be placed at serial No. 2134. In the merged seniority list his name came to be placed at serial No. 2641 as per the position already available in the seniority list as on 1.4.1985. Since he figured at serial No. 2641 in the merged seniority list, this Tribunal correctly dismissed the O.A. 519/99. But in the judgement in O.P. No. 36331/2000, Hon'ble High Court observed that his correct position is at 2134. After reckoning his seniority position as 2134, assurance was given that he would be considered for re-engagement subject to requirement, availability of sanction, verification of identity and fulfilling all the conditions prescribed for such reengagement, including production of Original Casual Labour Card with thumb impression issued at the time of retrenchment. At the time of issue of A/2, the policy of the Railways was not to re-engage any casual labourers. As a result, he could not be reengaged/absorbed in 2001/2002. In terms of Railway Board's letter dated 20.9.2001, the prescribed age limit for absorption of ex-casual labourers is 40 years in the case of General candidates, 43



years in the case of OBCs and 45 years in the case of SC/ST employees. The applicant belongs to OBC category and as on 1.1.2003, he has crossed the prescribed age of 43 years. Hence, he was not considered for reengagement. The applicant's contention that he is entitled to be considered in the vacancies that arose during the period 1998 to 2002 is not correct. The applicant has not even established the availability of vacancies meant for this period. He would be considered for reengagement subject to fulfillment of conditions prescribed for reengagement. During the year 2003, the applicant was considered for reengagement but found to be overaged and hence, he could not be reengaged. As regards the averments regarding paragraph 179 (xiii) (c) of the Indian Railway Establishment Manual, it was submitted that the said provision has no application in this case since the applicant is a retrenched Casual Labourer. It is applicable only to Casual Labourers on rolls whereas the applicant, who has been retrenched 23 years back in 1981 and thereafter, not at all in the service of Railways even for a single day, is not entitled to claim the benefit under this provision.

3. The applicant has filed rejoinder contending that the respondents cannot take advantage of their own wrong action. When person figuring from serial No. 2135 to 2145 were reengaged overlooking the applicant's seniority position at 2134, he filed OA No. 519/99 and in the reply statement, it was contended by the respondents that the applicant's seniority position was at serial No. 2641 and the said OA was dismissed on a misrepresentation made by them that no persons junior to the applicant in the live register were considered for

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reengagement. The applicant submits that even in the merged seniority list, he was at serial No. 2134 and the contention of the respondents that his placement in the merged seniority list at serial No. 2134 was not available, is incorrect. As per the Scheme framed and approved by the Hon'ble Supreme Court in Inderpal Yadav and Ors. vs. Union of India and Ors., 1985 SCC (L&S) 526, and as per the provision of Para 179 of the IREM, the applicant is entitled to be considered for reengagement.

4. I have heard Mr. Martin G. Thottan, learned counsel for applicant and Mrs. Sumathi Dandapani, learned counsel for the respondents.

5. Learned counsel for the applicant argued that in the live register, applicant is at serial No. 2134. By A/2 letter dated 6.9.2001, the applicant was informed that he will be considered as and when requirement arises and subject to availability of sanction. Contrary to the assurance, the respondents have reengaged persons upto serial No. 2550 from the live register overlooking applicant's preferential right. As a matter of fact, persons with lesser number of days of service and lower down in the seniority list were considered and reengaged/absorbed in Group 'D' posts. The action of the respondents is highly arbitrary and violative of Articles 14 and 16 of the Constitution. The learned counsel for the respondents, on the other hand, persuasively argued that even assuming that the applicant is at serial No. 2134, he does not fulfill other conditions such as age and vacancy position. Earlier, this Court has dismissed the



case of the applicant and even placing him at serial No. 2134, he will not get any benefit. Since the applicant was not in the rolls of casual labourers, the provisions contained in the Indian Railway Establishment Manual are not applicable to his case.

6. I have given thoughtful consideration to the pleadings, arguments and the material placed on record. In the case of Inderpal Yadav vs. Union of India, Hon'ble Supreme Court has directed the respondents to frame a Scheme for reengaging the casual labourers who were retrenched prior to 1.1.1981 and accordingly, a live register had been prepared by the respondents. Para 179 (xiii) (c) of the Indian Railway Establishment Manual Vol.I also provides that a register should be maintained by all Divisions concerned regarding the casual labourers. For better elucidation, the said clause is reproduced as under:-

“ A register should be maintained by all divisions concerned to indicate the names of casual labourers, substitutes and temporary workmen who have rendered six months service either continuous or broken periods, for the purpose of future employment as casual workmen and also as regular employees, provided they are eligible for regular employment. The names should be recorded strictly in the order of their taking up casual employment at the initial stage and for the purpose of empanelment of regular Group 'D' posts, they should as far as possible be selected in the order maintained in aforesaid register. In showing preference to casual labourer over other outsiders, due consideration and weightage should be given to the knowledge and experience gained by them. The other conditions being equal the total length of service as casual labourer either continuous or in broken periods irrespective of whether, they had attained temporary status or not, should be taken into account so as to ensure that the casual labourers who are senior by virtue of



longer service are not left out.

Note: Absorption of casual labourer/substitutes in regular vacancies will be subject to each casual labourer/substitute being found eligible and suitable for such absorption."

7. The contention of the respondents is that this provision has no application as far as retrenched casual labourers are concerned as this is applicable only to the casual labourers on rolls. Even assuming that the said argument is accepted, the position in this case is that the applicant was placed at serial No. 2641 in the merged seniority list prepared by the respondents and when the applicant filed OA No. 519/99, the respondents specifically contended that no person junior to the applicant was considered for reengagement. In para 7 of the reply statement, it was stated that since he was figuring at serial No. 2641 in the merged seniority list, this Tribunal correctly held that he could not be reengaged/absorbed. Again, their specific plea is that in the integrated seniority list of casual labourers retrenched after 1.1.1981 furnished by the Construction Organisation, the total number of days of service shown against him was 171 days and he was at serial No. 2222. Further, it was stated that his placement in the merged seniority list at serial No. 2134 was not available at this juncture. It is admitted that in compliance of order in OA No. 519/99, the applicant's name as per the application submitted by him in 1987 came to be placed at serial No. 2134. However, this position has been settled by the judgement of Hon'ble High Court dated 29.3.2001 in O.P. No. 36331 of 2000 against the orders of this Tribunal in OA 519/99. The said judgement reads as follows:



“ Heard counsel on either side. According to the counsel for the appellant, the correct rank number of the appellant as per Ext. P8 is 2134. We notice that the Tribunal proceeded as if his Rank No. is 2641. This is admittedly a mistake. In such circumstances, we are inclined to dispose of this writ petition with a direction to the fourth respondent to reconsider the claim of the petitioner as if his rank No. is 2134. We make it clear that we are not expressing any opinion on the merits of the case. We quash Exts. P1 and P10 orders and direct that final orders will have to be passed thereon within a period of two months from today.”

8. Though Hon'ble High Court did not express any view as to merit of the case of the applicant, it fixed the rank of the applicant as 2134 and in compliance of the said judgement, the respondents have passed A/2 order declining the right of the applicant on the ground as follows:

“Regarding the reengagement of persons below Sl. No. 2134, it is advised that such re-engagements were done prior to 1.7.96, i.e., before the operation of merged seniority list prepared in compliance with the orders of the Hon'ble Central Administrative Tribunal, Ernakulam Bench in OA 1706/94, considering their better seniority positions in the seniority list as on 1.4.85 than that of your seniority position.

It is also advised that as per the orders in OA 1706/94, any re-engagement after 1.7.96 shall be based on the merged seniority list and the re-engagements already done prior to 1.7.96 will not be disturbed.”

9. The respondents' contention is that since the merged seniority was not available to the applicant as on 1.7.96, the juniors who had a better seniority position in the seniority list as on 1.4.85 was considered and reengaged prior to



1.7.96. Admittedly, the merged seniority which was prepared in the year 1997 was produced by the applicant wherein he was figuring at serial No. 2134. Since the engagement was done prior to 1996, the applicant could not be given the benefit despite the fact that many juniors to the applicant have been reengaged. This cannot be said to be a correct decision. To make it very clear, the contention of the respondents was that the "persons below serial No. 2134 were reengaged well before 1.7.96 on the basis of their better seniority position in the seniority list as on 1.4.1985 wherein the applicant's name was at serial No. 2222. It was admitted by the respondents that the applicant had put in 601 days of service. In para 6 of the reply statement, it was further stated that in the integrated seniority list of Project Casual Labourers retrenched after 1.1.1981 furnished by the Construction Organisation as on 1.4.1985, he was at serial No. 2222 and the total number of days of service shown against him was 171 days. These pleas are inconsistent and parallel. It is quite evident that had the number of days as admitted by the respondents, as 601 been taken instead of 171 days, the applicant's rank would have been much better and he would have even been considered as on 1.4.85. I am of the view that the respondents cannot take advantage of their own wrong. Had the services of the applicant been counted as 601 days, he would have been placed much above Sl. No. 2134. Had he given the benefit at the appropriate time, the question of age and vacancy did not come into picture. Since Hon'ble High Court fixed the seniority of the applicant as 2134, this Court has to accept the same and in view of the discussion made above, this Court is of the view that the applicant is entitled to

all the benefits. The contention of the respondents that his placement in the merged seniority list at serial No. 2134 was not available to him at this juncture, cannot be acceptable.

10. In the conspectus of the facts and circumstances, I am of the view that the applicant is entitled to be considered for reengagement/absorption fixing him at serial No. 2134 and accordingly, I direct the respondents to reengage the applicant forthwith or in the next available vacancy in the Trivandrum Division without disturbing the seniority of those who have already been engaged by now and grant the benefits to the applicant notionally.

11. The O.A. is allowed as indicated above. In the circumstances, no order as to costs.

(Dated, the 30th November, 2005)



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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