

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 72 of 2010

Wednesday, this the 15th day of March, 2011

CORAM:

Hon'ble Mr.George Paracken, Judicial Member
Hon'ble Ms.K.Noorjehan, Administrative Member

1. S.M Peer Mohamed, aged 53 years
S/o Syed Mohamed, residing at 2/162
Yasin Manzin, Match Box Street
Thiruvathamcode P.O
Kanyakumari District
2. T Swamy Khan, aged 54 years
S/o Thirumala Perumal Nadar residing at
95/1/1-Kumarappapuram, Maharajapuram
Kottaram P.O, Kanyakumari District **Applicants**

(By Advocate – Mr.Martin G Thottan)

V e r s u s

1. Union of India represented by
the General Manager, Southern Railway
Head Quarters Office, Chennai
2. The Senior Divisional Personal Officer
Southern Railway, Trivandrum Division
Trivandrum **Respondents**

(By Advocate – Mr.Thomas Mathew Nellimoottil)

This application having been heard on 15.3.2011, the Tribunal
on the same day delivered the following:



ORDER

By Hon'ble Mr. George Paracken, Judicial Member

1. This joint application has been filed by two of the retrenched casual labourers of the Southern Railway, Trivandrum Division. According to them, at the time of their final retrenchment, they had 969 and 650 days of casual service respectively at their credit and their names have figured at SI.Nos.1861 & 2105 of the Live Register maintained by the Southern Railway prepared in terms of the judgment of the Honourable Supreme Court in the case of Indrapal Yadav Versus Union of India and others reported in 1985 (2) SCC 648. They have been waiting for their turn to be called for re-engagement. However, when many of juniors have been absorbed and they were ignored, they inquired their position and came to know that they were not considered because they were above the age limit of 40 years prescribed by the respondents. Later on, some of the similarly placed retrenched casual labourers challenged the decision of the respondents to restrict the age limit for re-engagement before this Tribunal vide O.A 271 of 2006 and connected cases. This Tribunal allowed those cases and set aside the order of the respondents prescribing age limit and directed them for considering all of them for absorption subject to their fulfilling the medical requirements. The respondents challenged those Orders before the Hon'ble High Court of Kerala vide WPC 3246 of 2008 and connected cases, but the High Court, vide its judgement dated 29 Nov 2007 upheld the Orders of this Tribunal with the modification that all the casual labourers who have rendered a minimum of 360 days of casual service are not to be subjected to any age restriction. The Applicants have, therefore, argued that they also should have been absorbed as casual labourers as admittedly they have more than 360 days of casual service at their credit.



2. During the pendency of this Original Application, the respondents themselves have issued Annexure R-1 letter No.V/P.407/I/ECL/Vol.XI (Pt.4) dated 23.3.2010, calling the second Applicant Shri T.Swamy Kkan for appointment as temporary Trackman in Group D service in the scale of pay of Rs.4440-7440 plus Grade Pay of Rs.1400 in Civil Engineering Department of Trivandrum Division. According to the respondents, the first Applicant could not be treated at par with the second Applicant. While the second applicant had already submitted his application for re-engagement in time, the first applicant did not apply at all. In this regard, they relied upon an earlier order of this Tribunal dated 18.08.2009 in O.A No.665/08 - K Francis versus Union of India and others wherein there was inordinate delay on the part of the applicant therein in approaching this Tribunal. They have also submitted that the aforesaid order was based on the judgment of the Apex Court in Civil Appeal No. 4486/09 dated 17.07.09 (Chuba Jamir & Ors. Vs. State of Nagaland & Ors.) wherein it has been held as under :-

"In our view the inordinate delay of seven or eight years by the appellants – Writ Petitioners in approaching the High Court was a very valid and important consideration. This aspect of the matter was also brought to the notice of the Single Judge but he proceeded with the matter without saying anything on that issue, one way or the other. It was, therefore, perfectly open to the Division Bench to take into consideration the conduct of the appellants – Writ Petitioners and the consequences, apart from the legality and validity, of the reliefs granted to them by the learned Single Judge".

3. We have considered this matter carefully. Admittedly, both the applicants have put in more than 360 days of casual service before they were disengaged and their names are available in the Live Register. The respondent Railways was applying the age restriction on all those casual labourers who have crossed 40 years and they were not considered for re-engagement. However, their decision was rejected by this Tribunal as well as the Hon'ble High Court of Kerala. Thereafter, large number of similarly placed persons have been re-




engaged in service without applying any age restriction. In our considered view, the respondent Railways themselves should have taken the necessary initiative to re-engage the applicants as per the information already available with them. Therefore, in our considered opinion, both these applicants are similarly placed. The view taken by the respondents that when they have affixed a notification in the notice board in the year 2003 the first applicant did not respond at all while the second applicant had submitted his application cannot be accepted as a valid reason for rejecting his case. The respondents view in the matter is highly technical. Both the applicants having more than 360 days of casual service in their credit, they should have been treated alike. The very objective of the Supreme Court's judgment in Inderpal Yadav's case (supra) is to ensure that all the eligible retrenched casual labourers are taken back and re-engaged in the service of Railways. Therefore, the respondents shall not raise any technical objection against first applicant to deny him the benefit of re-engagement as he has fulfilled all the requisite conditions for re-engagement as in the case of other similarly placed persons.


5. In the above facts and circumstances, we direct the respondents to consider the first applicant for absorption as in the case of second applicant subject to the requisite medical fitness, within a period of two weeks from the date of receipt of a copy of this order. As regards the seniority and other matters, both the applicants shall be treated in the same manner as in the case of other similarly placed persons who have been absorbed subsequently by the respondents on the basis of the Order of this Tribunal in O.A 271 of 2006 and connected cases as up held by the High court of Kerala in W.P No.3246 of 2008 (supra). Since the second applicant has already been absorbed by the



respondents as stated by the learned counsel for the applicant, no further order/directions is required to be issued in his case. This O.A is accordingly allowed. There shall be no order as to costs.

(Dated this the 15st day of March, 2011)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(GEORGE PARACKEN)
JUDICIAL MEMBER

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