

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Original Application No. 84 of 2010
with
Misc. Application No. 512 of 2010**

Monday, this the 5th day of December, 2010

C O R A M :

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. V N Ramachandran, S/o. V.C. Narayanan, Ezhuthachan, aged 47, Trackmen, Southern Railway, Calicut Section, GNS No. 6, Elathur, residing at Vadakkeveedu, Odanur, Parali-PO, Palakkad, Kerala-678 612.
2. M.V. Muraleedharan, S/o. Vasu, aged 47 years, Trackmen, SR, Time Section, GNS No. 1, Jimnavayar residing at Modankadu, Odanur, Parali-PO, Palakkad.
3. P.G. Narayanankutty, S/o. P.K. Gopalan, aged 47 years, Trackmen, Time Section, GNS No. 1, Tvaya, residing at Paralekad House Thenur, Parali PO., Palakkad.
4. V.K. Prabhakaran, S/o. V.U. Kappenkutty, Ezhuthachan, aged 48 years, Trackmen, Time Section, GNS No. 2, Timnavaya, residing at Varikamoochikal House, Thenur-PO, Parali, Palakkad.

... **Applicants**

(By Advocate : Mr. M.R. Hariraj)

V e r s u s

1. Divisional Personnel Officer, Palakkad Division, Southern Railway, Palakkad.
2. Chief Personnel Officer, Southern Railway, Madras.

... **Respondents**

(By Advocate : Mr. Thomas Mathew Nellimoottil)

This application having been heard on 30th November, 2010 this Tribunal on 06.12.10 delivered the following :-



ORDER**HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

This O.A. was filed by the applicants seeking to quash casual live register dated 17.09.1996 at Annexure A-4 to the extent it refuses to reckon the actual casual service of applicants 1 to 3 reflected in Annexures A1 to A3 and to direct the respondents to grant them appropriate positions in Annexure A4 and for a further direction to grant appointment to the applicants a temporary trackmen with effect from the date of appointment of any one in Annexure A4 having less casual service than them or with effect from the date of appointment of Shri Radhakrishnan Pillai at Serial No. 683 whichever is earlier with all consequential benefits.

2. The applicants were casual labourers of Palghat Division who were retrenched. The casual labour live register containing names of 2284 retrenched casual labourers was published for the purpose of future re-engagement on 17.09.1996. The applicants were included in the said register, but the length of their casual service was wrongly reckoned. The register was updated in the year 1998. The applicants were in the dark about the mistake in the live register as the register was not published to their notice. The applicants were appointed as temporary trackmen in the year 2004. On joining service, they came to understand that persons with less length of casual service than them were appointed as temporary trackmen in 1999 itself. The applicants obtained under Right to Information Act a copy of the live register on 12.11.2009. As the casual service of the applicants 1 to 3 was wrongly reckoned and applicant No. 4 was overlooked for grant of promotion, the applicants have moved this O.A.



3. The applicant submits that they have more casual service than the persons joined in 1999 and that the seniority of the 4th respondent was overlooked in granting promotion. The applicants were retrenched in 1984. The live register was published on the notice boards at the offices of the respondents in 1996. The applicants got information of the mistake only later when copy of the register was obtained under the Right to Information Act. In this context, the delay in challenging the Annexure A4 may be condoned.

4. The respondents contested the O.A. The live register was published on 17.09.1996. Any representation in regard to discrepancy in the live register should have been submitted before 25.10.1996. Not having filed any representation within the stipulated time, the applicants cannot reopen the issue after a lapse of nearly 14 years. Their juniors were appointed in the year 1999, but it was not challenged for the last 10 years. The applicants were appointed in the Railway in 2004, nearly 6 years have lapsed before approaching this Tribunal. Therefore, the O.A. is time barred. Based on the live register, the eligible persons were appointed during 1999, 2003, 2004 and 2005 and the live register is now exhausted. If the claim of the applicants for higher position in the live register is entertained after 14 years of its publication, it disrupts the seniority, promotion etc. granted to those appointed from the live register from 1999 onwards. It is established position of law that seniority once settled should not be disturbed at a later date. Wide publicity was given to the revised seniority list / live register duly notifying the same in the notice boards of all the Unit offices of Engineering department as also the various gangs comprising the PWI unit. The respondents relied on the decisions of the Apex

Court in 1993 Supp. (4) SCC 67 and 1998 (2) SCC 523 to buttress their arguments regarding delay in filing the O.A. After the appointment of the applicant in 2004, seniority list was published in 2006 and subsequently also. The applicants have no case that they made any representation regarding their position in the said seniority lists. The precise circumstances under which the 4th applicant was not considered for appointment during 1999 though his name appeared above Sri Radhakrishnan in the live register could not be identified as the related file is not available for verification at this distant date. The live register containing 2284 names had attained finality in the year 2005. If it is allowed to be revised on the plea of the applicants, it will open the flood gates for litigation from persons who are affected and put the appointments made from the live register in disarray and there would be no finality of the appointments made from the live register from 1999 onwards. Since the applicants have failed to make representation within the time limit, they cannot raise the issue of non consideration of the entire casual labour service while publishing the Annexure A4 list.

5. Heard Mr. M.R. Hariraj, learned counsel for the applicant and Mr. Thomas Mathew Nellimoottil, learned counsel for the respondents and perused the records.

6. The M.A. 512/2010 for deletion of the name of the 3rd respondent, i.e. Union of India represented by the Ministry of Railway, New Delhi, is allowed, following the decisions of Mumbai Bench of this Tribunal in O.A. Nos. 583/2005 and 187/2009. Accordingly, the name of the respondent No. 3 has been deleted from the array of the respondents.

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7. The live register in question was published in the year 1996. The forwarding letter in this regard dated 17.09.1996 is reproduced as under :

“SOUTHERN RAILWAY
No: J/P 407/IX/CLR/Live Register.
Divisional Office
Personnel Branch
Palghat 678 009

All PWIs/IOWs/BRIs of
PGT Division.

Dated 17.9.96

Sub: Casual Labour live Register of Civil Engineering
Department of PGT Division (Open Line and Project/Construction)
publication of -

The Casual Labour Live Register of Civil Engineering
Department of PGT Division (Open Line and Project/Construction)
published vide this office letter of even number dated 13.2.95 is now
revised as per orders contained in CPO/MAS letter dated 12.7.96. The
revised Live Register is published and a copy of the same is enclosed
for information and due notification.

As per rules, a copy of the same is to be maintained at the field
units.

The same may be notified in your Notice Board. Various
gangmates also may be advised to give wide publicity of the
availability of a copy of the Live Register in your office.

Any representation in this regard should be collected and
forwarded in one bunch to this office in a cover addressed to
APO/E/PGT on OR before 25.8.96.

Respective supervisors may please send the acknowledgement
in writing regarding receipt of this note and the enclosed list.

Encl: 64 sheets with 2284 names.

DIVL. PERSONNEL OFFICER
S.RAILWAY/PALGHAT

Copy to : Sr. DEN/Co-Ord./PGT “



8. From the above, it is clear that all concerned were directed to notify the casual labour live register on the notice boards and to advise various gangmates to give wide publicity to the availability of a copy of the same on the notice boards. It was also stated that any representation in regard to the the said live register should be made before 25.10.1996. On their part, the respondents have made all efforts to give wide publicity to the live register so that any representation with regard to any discrepancy could be brought to their notice before the stipulated date of 25.10.1996.

9. The contention of the applicants is that the register was not published to their notice. Therefore, they could not get the mistake in recording the length of their casual service in the live register rectified. They were not in service as they were retrenched at the time of publication of the register. They became aware of the mistake regarding length of their service in the register on joining the service in the year 2004. No malafide on the part of the respondents in not publishing the register to the applicant's notice is alleged. It is not their case that they should have been individually served notice with a copy of the live register. There is no rule or instruction enjoining the respondents to do so. The counsel for the applicants argued that there is no proof of having notified the matter of rectification of discrepancies in the live register in the news papers in 1996. Even if there was a failure to notify the matter in the news papers in 1996 that failure cannot justifiably create an enforceable right for the applicants in the year 2010 when they filed this O.A.

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10. The applicants could get their names included in the casual live register in 1996 and in 1998 when it was updated. On the basis of their position in the register they could get appointment in the Railway in 2004. If so, it was possible for them to get their casual service reckoned correctly in the live register before the lapse of 14 years. By their own admission, when they were appointed in 2004 they came to know about the appointment given to their juniors in 1999. Till 2009, when they sought information under RTI Act, they have not taken any action at all. They could have at least represented to the authorities concerned. They were silent when seniority list was published in 2006 and subsequently also. The applicants should have been alert in securing their right to get their casual service correctly reckoned. By virtue of their inaction for a number of years, they have forfeited the claim for rectification of the mistake in recording the length of their casual service in the live register. Any sympathy at this late stage, would be out of place, if it does not take into account the disastrous consequences of endless litigation and the disturbance to the settled position of a large number of affected persons, throwing the administration into disarray.

11. The Hon'ble Apex Court in the case of *B.S. Bajwa and Another vs. State of Punjab and Others*, 1998 (2) SCC 533 observed as under :

“7. It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable.....”



12. Again, in the case of *Ratan Chandra Sammanta and Others vs. Union of India and Others*, 1993 Supp. (4) SCC 67, the Apex Court held as under :

“6. A writ is issued by this Court in favour of a person who has some right and not for the sake of roving enquiry leaving scope for maneuvering. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well...”

13. Considering the facts and circumstances of this O.A and the settled position of law as seen in the judgements of the Apex Court referred to above, I find no merit in the contention of the applicants. In the result, the O.A. is dismissed with no order as to costs.

(Dated, the 16th December, 2010)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

CVR.