

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.107/10

Wednesday this the 23rd day of June 2010

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

J.Sreekumar,
Ex-Casual Labourer,
Southern Railway, Trivandrum Division.
Residing at T.C.141/386, Thekke Veedu,
Kuriyathy, Mancaud PO, Thiruvananthapuram – 695 009. ...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,
Chennai – 3.
2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum. ...Respondents

(By Advocate Mr.P Haridas)

This application having been heard on 23rd day of June 2010 this Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER


This is third round of litigation by the applicant, who is a retrenched casual labourer, waiting for his absorption in the Railways in terms of the judgment of the Apex Court in Inderpal Yadav Vs. Union of India [(1985) SCC (L&S) 526].



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2. The brief facts of the case are that he was engaged earlier for 629 days as casual labourer. However, the respondents, while working out his seniority, has reckoned only 171 days of casual service rendered by him. As a result, he was pushed down from Sl.No.2112 to Sl.No.2713 in the retrenched casual labourer register. The applicant's request for regularisation was rejected by the respondents on the ground that he has crossed 40 years and became over aged as on 1.1.2003. He has, therefore, approached this Tribunal initially vide OA 852/06 and the same was allowed vide order datd 8.6.2007 declaring that the applicant was entitled to be considered for regularisation treating his total casual service period as 629 days and not 171 days. Consequently, this Tribunal has also held that since his junior with Sl. No.2113 in the casual labourer register was appointed on 1.1.2003 and had he been appointed along with him, he would have been within the prescribed age limit and, therefore, the objection of the respondents regarding over age was over-ruled. The respondents were, therefore, directed to review the matter and to fix his seniority and effect his re-engagement/regularisation from the date any one who had rendered 629 or nearby days of service had been so re-engaged/regularised.

3. In implementation of the aforesaid order of this Tribunal, the respondents directed the applicant to report to their office to undergo medical examination. However, as the medical authority has found him 'unfit' in the medical classification B-One, the respondents



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rejected his request for regularisation and informed him that he cannot be offered any appointment and there was no provision for considering him for appointment in another category requiring lower medical classification.

4. The applicant again challenged the aforesaid order of the respondents by seeking a direction to them to consider him for absorption in any Group 'D' post which requires lower medical classification. This Tribunal in OA 394/09 considered the aforesaid relief prayed for by the applicant and disposed of the same with a direction to the respondents to subject him for re-medical examination and re-assess his medical fitness. This Tribunal has also rejected the contention of the respondents based on its earlier decision in OA 590/08 and directed the respondents to offer him a Group 'D' post for which a lower medical classification is sufficient, if he is found suitable for the same. The respondents were also directed to grant him notional seniority vis-a-vis his junior who has joined in the same category. Again, in compliance of the aforesaid directions of this Tribunal the respondents issued the impugned Annexure A-2 letter dated 20.10.2009 wherein it has been stated that the applicant was found 'unfit' in B-2 and C-1 but found fit in C-2 with glasses. It was further stated that there were no vacancies available in the category with C-2 medical classification in Engineering Department for the time being and he will be considered for appointment as and when a suitable vacancy in Engineering Department with C-2 medical classification arises.




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5. The contention of the applicant in this OA is that the respondentss have limited his consideration only to the Engineering Department as he could have been considered for appointment in other Department of the Southern Railway as held by the Tribunal in similar cases.

6. During the course of the pleadings in this case, this Tribunal directed the respondents to examine whether it was possible for them to consider the applicant for appointment in posts with C-2 medical classification other than in Engineering Department and also to verify whether there was any post with C-2 medical classification in the Engineering Department and, if not, the likely date on which the vacancy was to arise.

7. The respondents in their reply statement has submitted that the number of posts for which C-2 medical classification is required is very limited. In Civil Engineering Department, only the categories of Senior Record Sorter, Record Sorter, Jamedar Peon and Peon are available but there are no vacancies in these categories at present. They have also submitted that a lot of medically decategorised employees having regular status in Railways and those having put in long years of service are waiting to be considered for alternative appointment as they are also found fit in C-2 classification like the applicant. Their cases are also to be considered pursuant to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and other instructions. They have also relied upon the order of this Tribunal in OA 767/09 – T.Gnanavel Vs.



Union of India and another decided on 21.1.2010 wherein this Tribunal has accepted the contention of the respondents that the applicant's case can be considered only in his turn subject to fulfillment of attendant condition for such appointment.

8. I have heard learned counsel for the parties. It is seen that the respondents have already agreed to absorb the applicant in his turn against a Group 'D' post for which C-2 medical classification is required. But they have submitted that there are number of medically decategorised persons who are waiting for their turn for appointment to such Group 'D' posts and it will take long time for them to accommodate the applicant. The entitlement for absorption of the applicant was already considered and settled by this Tribunal in earlier OA 852/06 (supra) decided on 8.6.2007 filed by him. It was categorically held therein that the applicant's seniority should have been fixed from, at least, 1.1.2003 ie. the date from which his junior has been re-engaged/regularised in the service of the Railways. It was purely due to the mistake of the respondents that he was not assigned the aforesaid date as his date of seniority as they have taken into consideration only 171 days of casual labour service rendered by him instead of the actual number of 629 days. As a corollary of the said order if the applicant was found medically unfit in B-1 category to be appointed as Trackman at the relevant time and found him fit for only Group 'D' post with C-2 medical classification, his seniority for such waiting would have been from 1.1.2003. Therefore, while agreeing with the respondents



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submissions that the applicant will be considered for absorption against a Group 'D' post for which the medical classification required is only C-2, his seniority in the waiting list for such absorption shall be reckoned as 1.1.2003. Further, the applicant shall be given priority in appointment vis-a-vis the medically de-categorised employees as they are already in service against supernumerary posts but the applicant is still unemployed.

9. In the above circumstances, I allow this OA with a direction to the respondents to absorb the applicant as a Group 'D' employee which requires medical classification of C-2 category treating his date of priority for such absorption as 1.1.2003 on priority basis compared to the medically de-categorised employees with longer years of service. The respondents shall also inform the applicant about his position of waiting for such absorption and the likely time by which his turn would come, within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 23rd day of June 2010)


GEORGE PARACKEN
JUDICIAL MEMBER

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