

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.122 of 2007

Wednesday this the 12th day of September, 2007

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

R.Balan (alias) R.Balakrishnan, aged 49 years
S/o Rajamanickam,
Ex-Casual Labourer, Southern Railway,
Palghat Division, Rajaji Street, Balampuram,
Vangal Road, Karur 1
Tamilnadu.

....Applicant

(By Advocate Mr.T.C.Govindaswamy)

V.

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

(By Advocate Mr.Thomas Mathew Nellimootil)

This application having been finally heard on 5.9.2007 the Tribunal on 12.9.2007 the following:

ORDER

Hon'ble Mr.George Paracken, Judicial Member

This O.A is directed against the Annexure.A2 letter dated 23.11.2004 issued to the applicant by the respondent No.1, purportedly in compliance of the directions of the Madras Bench of this Tribunal

✓

contained in the order in O.A 965/03 dated 13.7.2004, which was not on record, informing him that his request for regular appointment in Group 'D' service could not be considered as his name did not appear in the Live Register of the Casual Labourers. On the directions of this Tribunal, the counsel for respondents has made available a copy of the aforesaid order of the Madras Bench. It was filed by Marumalarchi Railway Trade Union represented by its General Secretary, Shri C.Kannaiyan and another person named, Shri P.Ramakrishnan annexing therewith a list containing names of large number of persons alleged to have been worked as casual labourers under the Southern Railway seeking regularization/absorption in service. The Madras Bench had disposed of the said OA with the direction to the persons concerned to represent their case to the appropriate authority, if no such representations had already been made by them and the authorities concerned to dispose of those representations within a specified time limit.

2 In terms of the aforesaid directions, the applicant in this OA made the Annexure.R.4 representation stating that he worked as a project casual labourer/open line casual labourer for the period from 7.11.78 to 30.7.82 in Palghat Division. The authorities concerned considered the aforesaid representations but rejected the same by the impugned Annexure A2 order dated 23.11.2004 stating that though the Live Register of casual labourers retrenched prior to 1.1.81 was published on 13.2.95 and the merged Live Register containing the names of all casual labourers including those retrenched after 1.1.81 was published on 17.9.96, the applicant has never made any representation for inclusion of his name in the Live Register and there is no provision to include any additional names

[Signature]

afresh in the said Live Registers already published. On the contrary, the contention of the applicant is that he worked as a casual labourer during the period from 7.11.78 to 30.7.82 and his name was actually included in the Live Register at Sl.No.672 but the respondents did not absorb him because of certain discrepancies in his name as recorded in the Live Register. He submitted that in the Live Register, his actual name has been recorded as 'R. Balakrishnan', but in the Annexure.A1 casual labour service card issued to him, it was recorded as 'R.Balan'. The casual labour card also contain the name of his father as Rajamanicham, his date of birth as 10.4.55, period he worked as 7.11.78 to 30.7.82, the total number of days he worked as 343 days, his LTI No.as 128, his Left Hand Thumb Impression and the signature of PWI,S.RLy, Karur. The applicant had also made Annexure A3 representation dated 17.3.05 pointing out the above facts before filing this OA.

3 The applicant has also filed M.A 142/07 for condonation of delay in filing the Original Application stating that he remained unemployed after the retrenchment and he belonged to OBC category hailing from the lower strata of the society. He submitted that his actual name is R. Balakrishnan as recorded in the school register and the community certificate issued to him, but only in the casual labour service card, his name was wrongly shown as R.Balan. When he came to know that the name R. Balakrishnan recorded at Sl.No.672 in the list of retrenched casual labourers was in fact, his own name, he made the Annexure.A3 representation dated 17.3.05. He has further submitted that he should have approached this Tribunal on or before 17.9.06 but he could not do so for reasons beyond his control and occurred a delay of 183 days in filing

✓

the present OA which was not on account of any wilful negligence on his part.

4 The respondents denied the contentions of the applicant both on merits as well as on the question of delay. On merits they have submitted that according to the casual labour card produced by him, his name was R.Balan with LTI No.128 and the period shown to have worked by him was from 7.11.78 to 30.9.82 when there was no such person named R.Balan in the Live Register. However, against Sl.No.672 in the Live Register, there is a person, named, Shri R.Balakrishnan with LTI No.203/128 and the period he worked was from 24.9.72 to 5.7.82. The respondents have also submitted that the applicant is over aged and being an OBC, he should have been within the age limit of 43 years, where as he has crossed that limit as his date of birth is 12.4.1955. On the question of delay, they have submitted that in terms of the directions of the Madras Bench of this Tribunal in OA 965/03, the representation of the applicant was disposed of by the Annexure A2 letter dated 23.11.2004 and if he was aggrieved, he should have approached this Tribunal within one year of passing of the said letter ie., before 23.11.2005. However, he has filed this OA only on 15.2.2007 causing a delay of one year and three months. Even considering the Annexure A3 representation dated 17.3.2005 as the date on which the cause of action has arisen, he should have approached this Tribunal immediately after expiry of six months ie. by 17.9.05. The respondents have also submitted that the applicant has not given any convincing reasons for approaching this Tribunal late and they have relied upon the judgment of the Apex Court in **S.S.Rathore V. State of Madhya Pradesh, AIR 1990 SC 10** and **Bhoop Singh V. Union of India and**

2

others, JT 1992(3) SC 322 in this regard.

5 I have heard Advocate Mrs.Rajitha for the applicant and Mr.Thomas Mathew Nellimootil for the respondents.

6 As regards the delay in filing the present OA is concerned, it is seen that the applicant has been trying to get absorbed in the Group 'D' service of the Southern Railway by filing OA 965/03 before the Madras Bench of this Tribunal. The Madras Bench disposed of that OA on 13.7.2004 with the direction to the applicants concerned to make representations and the respondents to consider and dispose of them within a time frame. The applicant had in fact made representation on 13.8.2004 and the same was disposed of on 23.11.2004. The reply given to the applicant was that he should have made representation against the non-inclusion of his name in the Live Register when the same was published initially on 13.2.95 and later on 17.9.96. The contention of the respondents was that the applicant's name was not included in the Live Register. However, it was only much later that the applicant came to know that his actual name was included in the Live Register at Sl.No.672, which was, of course, slightly different from the name recorded in the casual labour card. This fact was brought to the notice of the respondents only by the Annexure.A3 representation dated 17.3.2005. The respondents have not considered this representation at all. It is only in the reply to this OA that the respondents have indicated the discrepancies in the name of the applicant as shown in the casual labour card produced by him and that in the Live Register. In the above facts and circumstances of the case, the delay in filing the OA was beyond the control of the applicant who is only a retrenched casual labourer with no access to the official records. The

3

delay is, therefore, condoned.

7 Coming to the merits of the case, there is no conclusive proof that the name R.Balakrishnan which appears in the Live Register is that of the applicant himself. The contention of the applicant is that his actual name is R.Balakrishnan and it has been correctly recorded at Sl.No.672 of the Live Register maintained by the Palghat Division and further it tallies with his name as recorded in the school certificate and the caste certificate in his possession and it was only by a mistake that his name was recorded as R.Balan in the casual labour card showing that he worked during the period from 7.11.78 to 30.7.82. However, according to the respondents, R.Balakrishnan whose name has been recorded at Sl.No.672 of the Live Register is a different person as his service particulars differs from the service particulars given by the applicant. He had worked for the period from 24.9.72 to 5.7.82. The applicant's explanation could have been accepted straightaway provided the period of casual service rendered by him shown against the name of R.Balakrishnan in the Live Register tallied with the period of service recorded in the casual labour card. The period of service indicated in both these documents are entirely different. Again, LTI number shown in the service card is 128, whereas the same against Sl.No.672 in the Live Register is 203/128. There is no explanation as to how two LTI numbers have been given against the name of the person shown at Sl.No.672 in the Live Register. In any case the LTI No.128 is common in both the casual labour card produced by the applicant as well as in the Live Register at Sl.No.672. With the aforesaid differences still persisting, in my considered opinion, the identity of the applicant has not yet been established.

3

8

The other contention of the respondents is that the applicant is overaged and, therefore, he is not entitled to be absorbed as a Group 'D' employee. This contention is no more valid as it has already been held by this Tribunal in several cases that the age of the applicants shall not be a bar for absorbing them as regular Group 'D' employees. In OA 633/03, it was held as under:

"In the conspectus of facts and circumstances, I am of the view that the applicants are entitled for considering for absorption in the said vacancies irrespective of the fact that they have crossed the age limit. If there is still vacancies in existence for the said period, which is not actually filled, the applicants should be considered, if they are otherwise eligible.

In the light of what is stated above, I direct the respondents to review the entire matter with the above observations and reconsider the applicants for absorption forthwith, if they are found otherwise eligible and pass appropriate orders and granted them benefit if any, and communicate the same within a period of four months from the date of receipt of copy of this order."

9

The Hon'ble High Court of Kerala has also upheld the aforesaid position in its judgment in W.P(C) No.30832 of 2004(S) where it was held as under:

"5 The Railway Administration has filed these writ petitions pointing out that as a matter of fact, a relaxation had been given in respect of these group of persons and it was only in cases where maximum relaxation was not permissible, more strict standards have been enforced. It is pointed out that under para 179 of the Indian Railway establishment Manual, appointment to Class IV category is subject to the age prescribed under clause (C). It has been fixed as between 18 and 28. The upper age limit is relaxable by 5 years in the case of Scheduled castes and Scheduled Tribes. However, taking notice of the special situation on the applicants who are to be regularized on the strength of the Supreme Court judgment, the age had been relaxed upto 40 years

2

for general category, 43 years in the case of OBC and 45 years in the case of Scheduled castes and Scheduled Tribes.

6 The Tribunal had noticed that these instructions had come long after the petitioners had been brought to the Live Register and the Railway Administration had not taken note of the circumstances that it was not a case of fresh recruitment as such. There was no such embargo, prescribed as could be gathered from the judgment of the Supreme Court in Inderpal Yadav. It was for the above reason that the Tribunal had directed that the cases of applicants should be considered ignoring the age factor."

10 In the above facts and circumstances of the case, I direct the respondents to first of all compare the LTI available in the Annexure A1 Casual Labour Card with the LTI Nos.203 and 128 available in the Live Register against Sl.No.672. In case the LTI of the applicant in the casual labour card tallies with the LTI Nos.203 and 128 in the LTI Register, it will be confirmed that the applicant with his name as R.Balan recorded in the casual labour card is the same as the person with the name R.Balakrishnan at Sl.No.672 in the Live Register. Since the period of service entered against Sl.No.672 differs from the period of service rendered by the applicant as shown in the casual labour card, in the absence of any documents available with the respondents to support the entry made against Sl.No.672, the casual labour card produced by the applicant and the entries made therein shall be considered as authentic. In the event that the applicant's LTI as entered in the casual labour card tallies with the LTI at Sl.Nos.203 and 128, the applicant shall be absorbed as a Group 'D' employee in the regular establishment of the respondents treating his period of service from 7.11.78 to 30.9.82 as shown in the Annexure.A1 Casual Labour Service Card except arrears of pay and

8

allowances. This exercise shall be completed within a period of three months from the date of receipt of this order, failing which the applicant will be entitled to full pay and allowances attached the post from the expiry of the said date onwards. There is no order as to costs.

Dated this the 12th day of September, 2007.


GEORGE PARACKEN
JUDICIAL MEMBER

s