

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**ORIGINAL APPLICATION NO.13/2009.
DATED THE 1st DAY OF DECEMBER, 2009.**

CORAM:
HON'BLE Mr GEORGE PARACKEN, JUDICIAL MEMBER

B Sreekandan Nair,
Ex Casual Labourer,
Southern Railway, Trivandrum Division,
Residing at Melekombadickal Vedu,
Maruthoor, Neyyattinkara P.O.,
Trivandrum District. ... Applicant

By Advocate Mr T C G Swamy

V/s

- 1 Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai-3.
- 2 The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
- 3 The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14. ... Respondents

By Advocate Mr Thomas Mathew Nellimoottil

This application having been heard on 01.12.2009 the Tribunal on the same day delivered the following

(ORDER)

HON'BLE Mr GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is a retrenched casual labourer under the territorial jurisdiction of Trivandrum Division, Southern Railway with 674 ½ days of casual service at his credit and his name has been entered at Serial No. 2043 of the Live Casual Labour Regular maintained by the respondents. His grievance is



that the respondents have not absorbed him as a Trackman so far even though he was fully qualified for such absorption.

2 During 2003, the 3rd respondent, namely, The Divisional Personnel Officer, Southern Railway, Trivandrum Division alerted the retrenched casual labourers, including the applicant, in batches to apply for absorption as Group 'D' employees. The applicant reported to the authorities and handed over all the relevant documents, including the original Casual Labour service card, to them. The respondents have also got his left hand thumb impression recorded in a separate register maintained by them. However, they have not taken any further action to absorb him as a Trackman/Group 'D' employee. He came to know from reliable source that he was not absorbed as a Group 'D' employee/Trackman because he was overaged.

3 However, question of age limit for absorption of retrenched casual labourers as Group 'D' employee was an issue before this Tribunal in OA 271/06 and connected cases. The Tribunal allowed the said OA vide order dated 14.3.2007 and its operative part is as under:-

"35 In the result, I quash Ministry of Railways Letter No. E(NG)-11/99/CL/19 dated 28.2.2001 and the letter of even No dated 20.9.2001 to the extent it relates to the retrenched casual labour placed in the merged seniority list tracing its origin from the directions in Inder Pal Yadav's case and as prepared consequent to this Tribunal's order in OA 1706/94 and direct that the applicants in these OAs be considered for regular absorption in the existing vacancies having regard to the seniority in the above mentioned merged list and without applying any age limit subject to medical fitness and other conditions for such absorption being fulfilled. The appointments made so far shall not be disturbed. The respondents shall also endeavour to exhaust this list as early as possible while filling up future vacancies so that this category are not again driven to knock at the doors of the court of justice. Appropriate orders shall be passed and communicated to the applicants within a period of four months. OAs are allowed. No costs."

4 Thereafter, the applicant vide Annexure A-2 representation dated 25.7.2007, made a request to the Divisional Manager, Trivandrum Division to



absorb him as a Trackman. However, the respondents did not take any action on it as the aforesaid order of this Tribunal was under challenge before the Hon'ble High Court of Kerala in Writ Petition No.21777/07 and the same was pending. Later on, the High Court, vide its judgment dated 29.11.2007, held that the age limit will not be applicable to Casual Labourers who have completed 360 days of casual service (Annexure A-3).

5 According to the applicant in the light of the aforesaid Annexure A-3 judgment of High Court, the respondents were bound to consider him for absorption but they did not do so. As a result, he had to approach this Tribunal by the present OA.

6 In the reply statement, filed on 23.3.2009 the respondents have clearly admitted that the "applicant is a retrenched casual labourer under the territorial jurisdiction of Trivandrum Division and in the merged seniority list of retrenched casual labourers, his name is at SI No.2043 and the number of days of service rendered by him is 674 $\frac{1}{2}$ days."

7 I have heard Advocate Shri Mohan Kumar for Mr T C G Swamy, learned counsel for applicant and Advocate Mr Thomas Mathew Nellimoottil, Senior Standing counsel for the Respondents. I fail to understand as to why the respondents have not so far considered the applicant for absorption even after the Hon'ble High Court of Kerala has upheld the orders of this Tribunal in OA 271/06 with modification as in the Annexure A-3 judgment way back on 29.11.2007. The attitude of the respondents that in each and every case, the petitioner should approach this Tribunal/Court for the redressal of their grievance cannot be appreciated. The respondents have driven the applicant unnecessarily to this Tribunal. Strange thing in this case is that even after admitting in the reply dated 18.3.2009 that the applicant was fully eligible to be



considered for absorption, the respondents have not taken any action to absorb him so far. Applicant being a retrenched casual labourer could have saved the expenses of this litigation, if the respondents themselves had considered him for absorption as Trackman after the pronouncement of the judgment of the Hon'ble High court (supra) without dragging him to this Tribunal.

7 In view of the above position, the OA is allowed. I declare that the applicant is entitled to be considered for regular absorption from the date his immediate junior in the merged list of retrenched casual labourers was absorbed as a Trackman/Group 'D' employee, if he is otherwise qualified for such absorption and the respondents shall, consider him for such absorption within two months from the date of receipt of a copy of this order. I, further direct the respondents to grant him the benefits of seniority etc on par with his junior. He will also be entitled to arrears of pay and allowances arising from the date he has filed this OA i.e. from 5.1.2009. As the respondents have forced the applicant to approach this Tribunal without any valid reasons, he is also entitled to Rs.2500/- as cost of this litigation which shall be paid to him by cheque/pay order within the aforesaid period of two months.



GEORGE PARACKEN
JUDICIAL MEMBER

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