

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.14/2001

Monday this the 7th day of October, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

P.C.Vasu
Payyattukadu House
Kallur P.O.
Palakkad District.

Applicant.

(By advocate Mr.T.A.Rajan)

Versus

1. Union of India rep. by
The General Manager
Southern Railway
Chennai - 3.
2. The Divisional Railway Manager
Southern Railway
Palakkad.

Respondents.

(By advocate Mr.Thomas Mathew Nellimoottil)

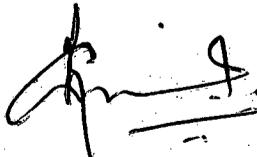
The application having been heard on 7th October, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

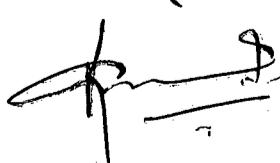
Applicant, a retrenched casual labour carpenter of the Palakkad Division of Southern Railway, aggrieved by A-7 order of the 2nd respondent dated 14.11.99 by which the 2nd respondent had rejected his request for consideration for regular appointment in the posts requiring lower medical classification, filed this Original Application seeking the following reliefs:

- i) Call for the records leading to A-7 order and set aside the same.
- ii) Declare that the medical examination declaring the applicant unfit for appointment to the post of Gangman as illegal.
- iii) Declare that the applicant is entitled to be considered for appointment to the post of Gangman based on A-2 certificate or in the alternative, declare that the applicant is entitled to be considered for appointment to posts requiring lower medical classification based on A-4 order.



- iv) Declare that the non-consideration of the applicant for appointment to the posts requiring lower medical classification as illegal.
- v) Direct the respondents to appoint the applicant as Gangman or in the alternative direct the respondents to appoint the applicant in any one of the posts which require lower medical classification from the date of appointment of his immediate junior with all consequential benefits, and
- vi) Grant such other further reliefs that this Hon'ble Tribunal may deem fit and proper.

2. According to the averments of the applicant in the OA, he was a retrenched casual labour carpenter of the Palakkad Division of Southern Railway. He was initially engaged as a casual labour khalasi under the permanent way inspector/construction, Southern Railway, Palakkad on 23.12.83 and he had worked as such till 9.5.84. From 10.5.84 to 9.9.84 he had worked under him as a casual labour carpenter. Thereafter he had worked as a casual labour carpenter under Inspector of Works, Construction, Southern Railway, Palakkad from 10.9.84 to 17.9.85. He had a total service of 633 days under the respondents, in support of which he produced A-1 casual labour service card. Applicant claimed that while working under the Permanent Way Inspector, he was sent for medical examination and was found fit in B-I classification as per A-2 medical certificate dated 20.8.84. As per A-2 certificate, he was granted temporary status with effect from 23.12.84. He registered his name for re-engagement and accordingly his name was included in the live register of casual labourers of Palakkad Division. By A-3 letter dated 15.6.98 the applicant was directed to attend the office of the second respondent on or before 25.6.98 along with original copies of casual labour card, community certificate, school certificate and two recent passport size photographs for updating the live



register of casual labourers. Pursuant to A-3, the applicant attended the office along with the original certificates. Thereafter he was asked to attend the office in December 1998 along with the original certificates for considering him for appointment to the post of Gangman. Accordingly, he attended the office. He was directed to attend a medical examination. Applicant attended the medical examination and the medical officer told him that he was found unfit in B-I classification. Applicant claimed that no certificate to the unfitness was issued to him and the reasons for the unfitness was not communicated to him. He submitted A-5 representation dated 8.6.99 requesting to consider him for appointment in the post requiring lower medical classification. Not getting any reply to the representation and finding that many of his juniors had been absorbed in service, the applicant filed OA 1004/99 before this Tribunal and this Tribunal by A-6 order dated 14.9.99 disposed of the said OA directing the 2nd respondent to consider and dispose of the A-5 representation. Pursuant to the directions of this Tribunal, the applicant received A-7 reply from the 2nd respondent. Aggrieved by A-7, the applicant filed this OA seeking the above reliefs. According to the applicant, as per the orders of the Railway Board, he was not required to attend the re-medical examination till he attained the age of 45 years and he could have been appointed straightaway on the basis of A-2 medical certificate. His re-medical examination and his non-appointment was therefore arbitrary, unjust and illegal. Applicant relied on A-4 letter dated 13.12.72 of the Railway Board and submitted that the standard of medical examination of a casual labourer for first



appointment to class IV categories should not be the one that was required for first appointment but should be a relaxed standard as prescribed for re-examination during service. Further, as per A-4, even if he was found unfit in B-I classification, he could be considered for appointment in alternative posts requiring lower medical classification. Applicant submitted that he had not been examined in relaxed standards.

3.. Respondents filed reply statement resisting the claim of the applicant. According to them, the applicant was a retrenched casual labour borne on the live register as Sl.No.471 with 477 days. They submitted that he was considered for absorption along with other retrenched casual labourers borne on the live register according to his seniority position and was sent for medical examination for medical classification B-I prescribed for the post of Gangman. The competent Railway medical authority had certified him as unfit in B-I classification and hence the applicant could not be absorbed as Gangman. They submitted that the same was in order and there was no legal or factual basis for the claim of the applicant.

4. Heard the learned counsel for the parties. Learned counsel for the applicant relying on A-4 submitted that the applicant was not all required to undergo medical examination as he had already undergone such an examination and for those who were in B-I classification, there was no medical examination. He further submitted that even if it was accepted that the applicant had to be examined medically, it should have been on the basis of a relaxed standard as per A-4. Further, even if the applicant

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was found unfit for B-I classification, he should have been offered alternative employment in categories requiring lower medical classification. He also referred to the order of this Tribunal in OA No.141/2001 dated 15.11.2001. Learned counsel for the respondents submitted that A-4 circular was regarding serving casual labourers and that in A-4 there was no mention that it was regarding retrenched casual labourers. He submitted that as per the Railway Board's instructions contained in the Master Circular No.48, such of the casual labourers who had rendered a minimum of 6 years of service whether continuous or in broken periods and who were empanelled for regular appointment and who had not been medically examined earlier should be sent for medical examination which should be of a relaxed standard as prescribed for medical reexamination of Railway servants during service. He submitted that even if this provision was made applicable to the applicant, though the same was applicable to serving casual labourers only, he would not be entitled for medical examination of a relaxed standard since he had not got 6 years service as casual labour as provided under the rules. He submitted that there were no rules/instructions to the effect that retrenched casual labourers should be subjected a medical examination of relaxed standard as applicable in the case of medical re-examination of Railway servants during service when considered for absorption.

5. We have given careful consideration to the submissions made by the learned counsel for the parties and have perused the documents brought on record.

6. Even though the respondents are relying on Master Circular

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No.48 for their plea that the applicant would not be entitled for medical examination of a relaxed standard since he had not got 6 years casual labour service, they have not produced the Master Circular so that the Tribunal can see whether the same would be applicable to the applicant in this case. The applicant has produced A-4 circular dated 13.12.72. The said circular reads as under:

"Copy of Board's letter No.E/NG/11-71/CL/84 dated 13.12.72 from the Asst. Director, Estt., Railway Board, New Delhi to the General Managers All Indian Railway and others.

.....

Sub: A relaxed standard on medical examination of casual labourers on first appointment to class IV service and absorption against posts with lower medical classification in the case of their medical unsuitability.

.....

As a result of the discussion held in the departmental council under the J.C.M. the Railway Board have decided to grant the following concessions to casual labourers.

(i) When casual labourers are included in a panel for appointment to class IV posts and sent for medical examination for 1st appointment to regular service, the standard of medical examination should not be the one that is required for first appointment but should be a relaxed standard as prescribed for re-examination during service. For this purpose, the period of their employment as casual labourers whether on project or non-project worker should be treated as qualified service for such relaxed standards.

(ii) Such of the casual labourers as are found on medical examination to be unfit for the particular category for which they are sent for medical examination despite the relaxed standard prescribed for re-examination may be considered for alternative category requiring a lower medical classification subject to their suitability for the alternative category being adjudged by the servicing committee to the extent it is possible to arrange absorption against the alternative posts requiring the lower medical classification. This orders shall take effect in respect of panels, which are formed after the date of issue of this letter.

Sd/-

Asstt. Director (Estt.)
Rly. Board, New Delhi."



7. We find that the above circular does not indicate anything regarding the length of service to be put in for application of the relaxed standard of medical examination. Whether the Master Circular referred to by the respondents was issued in modification of the letter dated 13.12.72 or not has also not been clarified. In fact, in the reply statement, the respondents have not made any averment as to whether the applicant was subjected to relaxed standard or normal standard for the medical examination. Further, from the reply statement, we find that the respondents were not appointing the applicant but were absorbing him along with other retrenched casual labourers. If they were absorbing the applicant, the list which is available with them has to be treated as a panel and if such is the case, A-4 circular, in our view, would be applicable in the case of the applicant. Respondents have also not stated as to why para 2 of A-4 circular, which prescribed absorption of casual labourers who on medical examination were found unfit for particular category for which they were sent for medical examination and who were to be offered alternative category requiring lower medical standard, would not be applicable. As we have already found that A-4 circular would be applicable to the applicant, in the facts and circumstances of this case and following the order of this Tribunal in OA No.141/2001, we are of the view that the applicant be permitted to submit a detailed representation to the General Manager to reconsider his case.

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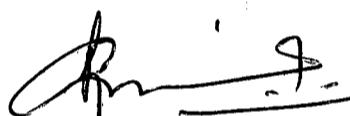
8. Keeping all the aspects in view, we permit the applicant to submit a representation to the first respondent, the General Manager, Southern Railway, Chennai detailing his grievances including review of the medical examination result. The first respondent shall consider the representation and pass appropriate orders thereon within a period of three months from the date of receipt of the representation.

9. The OA stands disposed of as above with no order as to costs.

Dated 7th October, 2002.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

Applicant's Annexures:

1. A-1: True copy of the casual labour service Card of the applicant issued by the Railway.
2. A-2: True copy of medical certificate dated 20-8-84 of the Divisional Medical Officer, Southern Railway, Palakkad.
3. A-3: True copy of letter dated 15.6.98 of the Senior Divisional Engineer, Southern Railway, Palakkad.
4. A-4: True copy of letter dated 13.12.72 of the Assistant Director (Estt.), Railway Board, New Delhi.
5. A-5: True copy of representation dated 8.6.99 of the applicant to the 2nd respondent.
6. A-6: True copy of this Hon'ble Tribunal's order dated 14.9.99 in OA 1004/99.

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22.10.02