

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 145/2004

FRIDAY, THIS THE 10th DAY OF FEBRUARY, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

1 P. Varghese
Nellivelayil Veedu
Madichal Post
Kanyakumari District
Tamil Nadu-629 163

2 Anpaiah
Pandaravilayil veedu
Marathkamcode PO
Kanyakumari distract
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Applicants

By Advocate Mr. C.S. Ajith Prakash

Vs

1 Union of India represented by the
General Manager
Southern Railway
Madras.

2 The Senior Divisional Personnel Officer
Southern Railway
Trivandrum Division
Trivandrum

Respondents

By Advocate Mr. Sunil Jose, ACGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants herein are retrenched Casual Labourers in the Southern Railway of Trivandrum Division. According to the applicants they have completed 664 and 671 days respectively. They have registered their names in the Department as per the direction in the Dakshin Railway Employees Union Vs. General Manager, Southern Railway and as per the project casual labour

notification issued by the Railway. As per the merged seniority list their names found place at Sl. No. 2083 and 2047 respectively. On 24.3.2003 Railway invited application for re-engagement from the merged seniority list ranging from Sl. No. 1878 to 2190. They submitted all the required documents in the said notification. However, they were not considered and no reply has been given for their rejection at the same time their juniors were engaged. The applicants claim that they are entitled to be considered as per the scheme framed on the direction of the Hon'ble Supreme Court as well as the direction of this Tribunal in OA 1706/94. Therefore they seek a direction to consider their case for re-engagement.

2 The respondents have denied the averments in the OA and submitted that the prayer is not maintainable in as much as the applicants have been considered for absorption already as per Annexure A4 and A5 produced by the applicants and found ineligible as in terms of Railway Board's letter No. E(NG) II/99/CL/19 dated 20.9.2001 the prescribed age limit for absorption of ex casual labourers is 40 years in the case of General candidates, 43 years in the case of OBCs and 45 years in the case of SC/ST employees. On verification of the school certificates it was found that the date of birth of the first applicant is 15.5.1957 and the 2nd applicant is 2.5.1957 and they belong to OBC community, both the applicants have completed 45 years of age as on 1.1.2003. Since both of them have crossed the age limit prescribed for OBC communities they are not eligible to be re-engaged.

3 The applicants have filed a rejoinder in which they have mentioned the case of one Shri P. Subramanyan and one Smt. Meenakshi who have been engaged even though they have crossed the age limit. Smt. Meenakshi is said to be aged 53 at the time of re-engagement. It was pointed out that the respondents are silent on the date of birth of Shri Subramanian who was junior to the applicants and that the Railway Board's letter is not applicable to the applicants as their re-engagement is governed by the scheme formulated on

the direction of Hon'ble Supreme Court in Inder Pal Yadav's case .

4 In the additional reply statement, the respondents have denied the above averments in the rejoinder stating that Smt. Meenakshi is a casual labourer retrenched prior to 1.1.1981 and was empanelled as per the instructions applicable at that time according to which casual labourers who have been initially engaged within the prescribed age limit were eligible to be considered for empanelment and relaxation of upper age limit was automatic at the time of empanelment. For empanelment during 2003 the Railway Board's letter has been made applicable. As regards Subramanian it is stated that he belonged to SC community and was only 42 years as on 1.1.2003 and therefore within the age limit.

5 The applicants have filed an additional rejoinder also claiming that they were eligible for similar treatment as Smt. Meenakshi as it was clear from the averments of the respondents that the age relaxation was given to her with the only criteria that the initial engagement should be within the age limit.

6 I have heard the learned counsel for both the parties. The short question that arises for consideration is whether the Railway Board Circular dated 20.9.2001 for absorption of retrenched casual labourers is applicable in the case of the applicants in this O.A. This question had come up before this Tribunal earlier in similar cases like O.A. 386/2005 wherein it was categorically concluded that such age limits are applicable to cases of fresh recruitment and in the totality of circumstances under which the direction to formulate a scheme as in Inder Pal Yadav's case (AIR 1985 (2)SCC 548) was given the Hon'ble Supreme Court did not contemplate that any upper age limit should have been prescribed or made a bar for future employment. The Hon'ble High Court of Kerala had also made similar observations confirming this view of the Tribunal. The ratio of the judgment of the Tribunal upheld by the High Court of Kerala is applicable to the applicants in this case as well. The applicants were also

Casual Labourers who were employed prior to 1.1.1981 and in such cases the age limit prescribed by the subsequent instructions were not applicable and the respondents have also considered similar cases that of Smt. Meenakshi without applying the age bar. Therefore the applicants are eligible for consideration without applying the age restriction. The OA is allowed. The respondents are directed to consider the applicants for re-engagement and absorption without applying the age limit and to take a decision within a period of three months from the date of receipt of a copy of this order.

Dated 10.2.2006.

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SATHI NAIR
VICE CHAIRMAN

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