

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 154 OF 2007

Dated the 9th July, 2008

CORAM:

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR. K.S.SUGATHAN, ADMINISTRATIVE MEMBER

V.O. Joseph,
S/o Ouseph,
Senior Trackman, Southern Railway,
O/O the Senior Section Engineer
Permanent Way, Kottayam,
Resident at Vidyathil Panekkadan,
VR Puram Road, Near Railway Station,
Chalakkudi, Trichur District.

Applicant

[By Advocate: Mr TC Govindaswamy and Ms RR Rejitha]

-Versus-

1. Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town PO, Chennai.
2. The Chief Personnel Officer, Southern Railway, Headquarters Office, Park Town, PO, Chennai.
3. The Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum.
4. The Chairman, Railway Recruitment Board, Chennai.

Respondents

[By Advocate : Mr Thomas Mathew Nellimoottil & Varghese John]

This application having been heard finally on 28th May, 2008, the Tribunal delivered the following: -

ORDER

[Hon'ble Dr.KS Sugathan, AM]

The applicant is a Senior Trackman under the Senior Section Engineer, Permanent Way, Kottayam in Southern Railway. He is a holder of Diploma in Civil Engineering. The applicant joined the Railways as a Casual Labour Technical Mate on 3.5.1982 and was subsequently treated as Temporary w.e.f. 01.01.1984. He was later absorbed as Trackman and presently holding the post of Senior Trackman on substantive basis. The 3rd respondent by communication dated 23.10.2006 notified two unreserved vacancies of the post of Junior Engineer Grade-II/P.Way to be filled up by a process of General Departmental Competitive Examination (for short GDCE). The applicant applied for participating in GDCE notified by the respondents. The applicant was under *bona fide* belief that he would be given age relaxation however, when the list of candidates short listed for appearing in the written examination was announced his name did not find place in the list. He is aggrieved by the failure of the respondents to include his name in the list for appearing in the GDCE examination for appointment to the post of Junior Engineer Grade-II. Hence this OA.

2] The respondents have contested the OA. In the reply statement filed by them it is contended that the applicant is not entitled for relaxation of upper age limit prescribed in the Notification dated 23.10.2006. The provisions of the Railway Board Order No. 53/97 dated 9.4.1997 is not applicable to the applicant as he is not a casual labour now. The applicant has crossed the maximum age limit of 42 years as on 01.1.2007. On

an earlier occasion he was imposed the penalty of removal from service for unauthorised absence. The penalty was however, set aside by the Tribunal and in compliance to the directions of this Tribunal, the applicant was reinstated in service. The Instructions of the Railway Board dated 9.4.97 are applicable to the Casual labourers and not to the regular employees. The applicant cannot take advantage of an inadvertent mistake in notification dated 23.10.2006(Annexure-A2). It is nowhere stated in Annexure-A3 communication dated 9.4.97 that regular employees are eligible for relaxation of upper age limit. The respondents, therefore, prayed for dismissal of the OA.

3] We have heard learned counsel for the applicant Sri T. Govindaswamy and learned counsel for the respondents Sri Thomas Mathew Nellimoottil.

4] The issue for consideration in this OA is whether the applicant is eligible for upper age relaxation as provided in the notification dated 23.10.2006 (Annexure-A2). The relevant clause regarding age relaxation is reproduced below:

..(C) Age: There shall be a maximum age limit of 42 years for General candidates, 45 years for OBCs and 47 years for SC/ST candidates as on 0101.2007. However, in respect of persons who have already worked as Casual Labour/substitutes in Group-C scale age relaxation is authorized vide Railway Board Letter NO. E(NG)-II/97/R-1-3/4 dated 09.07.1997."

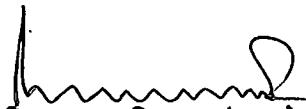
5] It is clear from the above provisions that employees who had earlier worked as casual labourers are eligible for relaxation of upper age in accordance with the Railway Board's order dated 9.4.97. The date mentioned in the notification at Annexure-A2 extracted above, viz., 09.07.97, is a mistake and the actual date of the Railway Board's order referred to was

09.04.97, which is at Annexure-A3. It is the contention of the respondents that Annexure-A3 does not talk about regular employees and that the relaxation in age bar provided in the notification dated 9.4.97 is only for the casual labourers. However, we are unable to accept the contention of the respondents in this regard. The provisions of the RB order dated 9.4.97 has to be read with clause 3 of the Notification dated 23.10.2006. The said clause extracted above make it abundantly clear that those who had already worked as casual labourers are eligible for upper age relaxation. The contention of the respondents that there is an inadvertent error in clause (c) of the Notification dated 23.10.2006 cannot be accepted at this belated stage. If there was indeed any error they should have corrected it by issuing corrigendum/notification in this regard. The original notification was issued on 23.10.2006. After receiving the applications the respondent short listed the list of candidates from 22.2.2007. There was sufficient time for the respondents to issue a modified notification amending the clause (c) if there was indeed a mistake. It is only now that the respondents have come forward with a plea that there was an inadvertent mistake and the candidates like the applicants are not entitled to get this benefit. We are not inclined to accept this contention. As per interim order issued by this Tribunal, the applicant had participated in the examination and the result has been withheld. Having regard to the evidence available before us, we are of the view that the applicant is eligible for upper age relaxation in accordance with the notification dated 23.10.2006.

6] For the reasons stated above, the OA is allowed. It is declared that the applicant is entitled to the upper age relaxation as provided in the Annexure-A2 notification dated 23.10.2006 and his candidature for General Departmental Competitive Examination shall be considered accordingly. The respondents shall take necessary steps for publication of the result of the GDCE and take steps for appointment of the selected candidates. No order as to costs.

Dated the.....9/7.....July, 2008


(Dr.K.S.Sudathan) _____
Administrative Member


(George Paracken) _____
Judicial Member

st