2. The Divisional Personnel Officer,
S.Railway, Palghat.

3. The Sr. Divisional Signal and
Telecommunication Engineer(Works),
S.Railway, Podanur.

4. The Chief Personnel Officer,
S.Railway, Madras-3. - Respondents

By Advocate Shri TPM Ibrahimkhan

O.A.No.158/93

1. KK Muraleedharan,
Khalasi Helper, Edapally,
S&T Department, Trivandrum Division,
S.Railway, Trivandrum-14

2. KG Vijayan,
Blacksmith, Gr.II, S&T Department,
S.Railway, Quilon RS & PO.

3. P Haridasan,
Electrical Signal Maintainer,
Gr.III, Alwaye, S.Railway,
Trivandrum Division. - Applicants

By Advocate Shri P Sivan Pillai

Vs.

1. Union of India through
the General Manager,
S.Railway, Madras-3.

2. The Chief personnel Officer,
S.Railway, Madras-3.

3. The Divisional Personnel Officer,
S.Railway, Trivandrum Division,
Trivandrum-14.

4. The Sr.Divisional Signal and
Telecommunication Engineer,
S.Railway, Podanur. - Respondents

By Advocate Shri TPM Ibrahimkhan

O R D E R

N DHARMADAN, JUDICIAL MEMBER

All these cases were heard together for disposal by this common judgement on agreement of parties.

2. The issues arising in these cases are same. All the applicants in these cases are claiming the benefit of judgement of this Tribunal

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in C Arumugham and 27 others V Union of India and 4 others in O.A.849/90 delivered on 27.1.1992. The operative portion of the judgement reads as follows:

> "In the conspectus of facts and circumstances, therefore, we allow this application, set aside the impugned order at Annexure-A5 and hold that the applicants have been in continuous service under the Sr.DSTE which is a non-project permanent establishment right from the date of their initial continuous engagement as casual labour and are deemed to have attained temporary status on expiry of six months of such dates as indicated in the OA as non-project casual labour. The respondents are directed to treat the applicants as temporary Railway servants under para 2511 of the Indian Railway Establishment Manual with all consequential benefits.

3. According to the applicants in all these cases, they are similarly situated like the applicants in OA-849/90 and that the judgement in that case is a declaratory judgement to be uniformly applied to the applicants in these cases as well. The respondents are bound to grant the benefit of that judgement to the applicants even if they do not approach the officers concerned for granting for benefits.

4. The applicant in OA-236/93 had earlier filed OA-1559/92 after submitting a representaton before the concerned authorities for getting the benefit of the judgement in OA-849/90. This Tribunal considered the grievances, after hearing the respondents and passed the judgement in Annexure-A1 in that case on 27.1.1992 and the Tribunal directed the respondents to consider and pass orders on the representation in accordance with law. The orders passed on the representation, Annexue-A4 in OA-236/93, is creptic and does not contain reasons. The relevant portion reads as follows:

> "The Administration has filed an appeal in the form of a special leave petition against the judgement in OA-849/90 and the same is yet to be disposed of by the Hon'ble Supreme Court of India. Under the circumstances, even in respect of the applicants in OA-849/90, the orders of the Hon'ble Tribunal have been implemented provisionally subject to the outcome of the SLP. Therefore, I have to advise you that the decision of the Hon'ble CAT/ERS in OA-849/90 is no applicable in your case during the pendency of your appeal before the Hon'ble Supreme Court of India."

5. It is submitted at the Bar that the SLP has been dismissed and the respondents are prepared to examine the claim of the

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applicants in the proper perspective, bearing in mind the principles laid down by this Tribunal in OA-849/90.

6. In the light of the above submission, we are satisfied that the original applications can be disposed of with appropriate directions, in the interest of justice.

7. However, we are not satisfied the way in which the representation has been aleady disposed of by the Railway, particularly when there was directions by this Tribunal. The very object of the direction and the disposal was to examine the grievances of the applicant with reference to official records bearing in mind the declaratory judgement and decide whether the applicants are similarly situated like the applicants in OA-849/90 for getting the benefit on the basis of the principles laid down by that judgement. It appears no attempt in that line was madeby the DPO. So there were no implementation of the direction in the perspective in which it was issued. We deprecate this attitude of the Railway. In fact he has taken a technical view and decided to reject the request stating that the judgement in OA-849/90 is not applicable to him. It is wrong and against the view taken in a number of cases. Hence this decison cannot be sustained. We are inclined to set aside Annexure-A4 in OA-236/93 and similar decisions taken by the DPO in other cases covered by this judgement.

8. The learned counsel for respondents submitted that the applications are belated and they are to be rejected. This contention is strongly opposed by the learned counsel for applicants. He submitted that the status of the applicants in OA-849/90 has been discussed in detail in the judgement and this question was also decided in favour of the applicants. It is a declaratory judgement, the benefit of which is available to all the applicants. It being a declaratory jugement, it is binding on the respondents for granting a similar benefit to persons in the same category. Since this question is again raised by the respondents and it is contested, we are not

examining the issue and expressing our final opinion on that. It is for the concerned authorities to take a decision in the light of the contentions and the earlier decisions of this Tribunal. Therefore, we make it clear that it is open for the respondents to go into the matter in detail with an open mind uninfluenced by the commitments made by the respondents in their reply.

9. It is the duty of the Railway to examine the grievances of the applicant with an open mind bearing in mind the principles in the judgement of this Tribunal in OA-849/90 and take a decision in a fair manner. If all the applicants are found to be similarly situated like the applicants in OA-849/90, it goes without saying that they are entitled to the benefits of that judgement and that should be extended to them also.

10. In this view of the matter, as already indicated we dispose of all these applications with directions to Chief Personnel Officer, Southern Railway, Madras to consider the grievances of the applicants with an open mind and take a decision in accordance with law. This shall be done within a period of six months from the date of receipt of a copy of this judgement

11. All the applications are disposed of in the above line. There will be no order as to costs.

Dated, the 5th November, 1993.

Sd/-
(S KASIPANDIAN)
ADMINISTRATIVE MEMBER

Sd/-
(N DHARMADAN)
JUDICIAL MEMBER

trs

CERTIFIED TRUE COPY
Date 12-11-93
Deputy Registrar